



MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, DECEMBER 3, 2013

The Council of the City of San José convened in Regular Session at 9:32 a.m. in the Council Chambers at City Hall.

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

Absent Council Members Constant. (Excused)

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

None provided.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:33 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code subsection (a) of Section 54956.9 with respect to existing litigation: (1) SJJC Aviation Services, LLC v. City of San José, et al.; Names of Partie(s) Involved: SJJC Aviation Services, LLC, City of San José, City Council of the City of San José, and Does 1 through 25; Court: Superior Court of California, County of Santa Clara; Case No: 1-13-CV-246057; (2) People/City v. Chot Nho Café and Chot Nho 2; Names of Partie(s) Involved: People of the State of California, ex rel., City Attorney of the City of San José and the City of San José, Jason Vuong Tran, an individual dba Chot Nho Café; Huong Viet Incorporation, a California Corporation; Uyen Thile Dang, an individual dba Chot Nho Café, and formerly dba Chot Nho 2; Kha Nguyen, an individual dba Chot Nho 2; Anh Duong Incorporation, a California Corporation; Antonio Galindo, an individual; Lucia Galindo, an individual; Beatriz Alvarez, an individual; Cristina Alvarez, an individual; Choi Family Trust, a trust; Ka Fai Choi aka Kevin Ka Fai Choi aka Kevin Choi, an individual and co-trustee of the Choi Family Trust; Mary L. Choi, an individual and co-

CLOSED SESSION (Cont'd.)

trustee of the Choi Family Trust; Ka Hang Choi, an individual; Jean L. Choi, an individual and Does 1 through 100; Court: Superior Court of California, County of Santa Clara; Case No: 1-13-CV-254599; Amount of Money or Other Relief Sought: Damages According to Proof; (3) San José Police Officers' Association v. City, et al.; Names of Partie(s) Involved: San José Police Officers' Association, City of San José, Board of Administration for Police and Fire Department Retirement Plan of City of San José and Does 1-10; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-225926; Amount of Money or Other Relief Sought: Declaratory and injunctive relief; (4) San José Retired Employees Association, et al. v. City, et al.; Names of Partie(s) Involved: San José Retired Employees Association, Howard E. Fleming, Donald S. Macrae, Frances J. Olson, Gary J. Richert and Rosalinda Navarro, City of San José Does 1 through 50, Board of Administration for the Federated City Employees Retirement System; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-233660; Amount of Money or Other Relief Sought: Declaratory and injunctive relief; (5) Sapien, et al. v. City of San José, et al., Names of Partie(s) Involved: Robert Sapien, Mary Kathleen McCarthy, Thanh Ho, Randy Sekany, Ken Heredia, City of San José, Debra Figone in her official capacity as City Manager of the City of San José, Does 1 through 15, the board of Administration for the 1961 San José Police and Fire Department Retirement Plan; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-225928; Amount of Money or Other Relief Sought: Challenge to Measure B; (6) Harris, et al. v. City of San José, et al.; Names of Partie(s) Involved: Teresa Harris, Jon Reger, Moses Serrano, Suzann Stauffer, City of San José, Debra Figone, in her capacity as City Manager of the City of San José, the Board of Administration for the 1975 Federated City Employees' Retirement Plan, Does 1 through 15; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-225928; Amount of Money or Other Relief Sought: Challenge to Measure B; (7) Mukhar, et al., v. City of San José, et al.; Names of Partie(s) Involved: John Mukhar, Dale Dapp, James Atkins, William Buffington, Kirk Pennington, City of San José, Debra Figone, in her capacity as City Manager of the City of San José, the Board of Administration for the 1975 Federated City Employees' Retirement Plan, Does 1 through 15; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-226574; Amount of Money or Other Relief Sought: Challenge to Measure B; (8) AFSCME, et al. v. City of San José, et al., Names of Partie(s) Involved: American Federation of State, County and Municipal Employees, Local 101 on behalf of its members, City of San José, Debra Figone, in her capacity as City Manager of the City of San José, the Board of Administration for the 1975 Federated City Employees' Retirement Plan, Does 1 through 15; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-225928; Amount of Money or Other Relief Sought: Challenge to Measure B;. (B) 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 Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (2)

CLOSED SESSION (Cont'd.)

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

By unanimous consent, Council recessed from the Closed Session at 11:15 a.m. and reconvened to Regular Session at 1:33 p.m. in the Council Chambers.

Present: Council Members Campos, Chu (1:38 p.m.), Herrera, Kalra, Khamis, Llicardo, Nguyen, Oliverio (1:44 p.m.), Rocha; Reed.

Absent Council Members Constant. (Excused)

INVOCATION

Fred Ferrer, CEO of The Health Trust, provided the Invocation, honoring World AID's Day.

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Herrera, seconded by Council Member Khamis and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Items 3.3 and 3.8 heard together. (8-0-3. Absent: Chu, Constant, Oliverio.)

CEREMONIAL ITEMS

1.1 Presentation of proclamation declaring the week of December 9 – 15, 2013 as “Computer Science Week” in the City of San José. (Liccardo)

Mayor Reed and Council Member Liccardo recognized the week of December 9 – 15, 2013 as “Computer Science Week” in the City of San José.

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: Constant.)

2.1 Approval of Minutes.

None.

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 29344 – Rezoning certain real property situated on the northwest corner of Race Street and Parkmoor Avenue (529, 581 and 691 Race Street) from the HI-Heavy Industrial Zoning District to the IP – Industrial Park Zoning District.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29344 executed on November 22, 2013, submitted by the City Clerk.

Action: Ordinance No. 29344 was adopted. (10-0-1. Absent: Constant.)

2.2 (Cont'd.)

- (b) **ORD. NO. 29345 – Rezoning certain real property situated westerly of Bering Drive between East Brokaw Road and Crane Court on a 31.09 gross-acre site (APNS 237-16-071, 237-16-072, 237-16-073) from the IP Industrial Park, LI Light Industrial, CG Commercial General, R-2 two-family residence, and IP(PD) Zoning Districts to the TEC Transit Employment Center Zoning District.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29345 executed on November 22, 2013, submitted by the City Clerk.

Action: Ordinance No. 29345 was adopted. (10-0-1. Absent: Constant.)

- (c) **ORD. NO. 29346 – Prezoning certain real property situated on the west side of Thornton Way approximately 260 feet northerly of Maywood Avenue from County of Santa Clara to the R-M Multiple Family Residence Zoning District.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29346 executed on November 22, 2013, submitted by the City Clerk.

Action: Ordinance No. 29346 was adopted. (10-0-1. Absent: Constant.)

2.3 Approval of Council Committee Reports.

- (a) **Community and Economic Development Committee Report of October 28, 2013. (Herrera)**
[Deferred from 11/19/13 – Item 2.3(c)]
- (b) **Rules and Open Government Committee Report of November 6, 2013. (Mayor)**

Documents Filed: (1) Community and Economic Development Committee Report dated October 28, 2013. (2) Rules and Open Government Committee Report dated November 6, 2013.

Action: The Committee reports were accepted. (10-0-1. Absent: Constant.)

- (c) **Neighborhood Services and Education Committee Report of November 14, 2013. (Nguyen)**
- (d) **Community and Economic Development Committee Report of November 18, 2013. (Herrera)**

Action: Deferred to December 10, 2013 per the City Clerk.

2.4 Mayor and Council Excused Absence Requests.

None.

2.5 City Council Travel Reports.

(a) Travel Report from Council Member Chu. (Chu)

Documents Filed: Memorandum from Council Member Chu, dated November 14, 2013, providing a travel report from the League of California Cities Board of Directors Meeting he attended from November 7-8, 2013.

Action: The report was accepted. (10-0-1. Absent: Constant.)

2.6 Report from the Council Liaison to the Retirement Boards.

None.

2.7 Approve travel by Council Member Chu to Newport Beach, CA on November 6-8, 2013, to attend the League of California Cities League Leaders Strategic Planning Workshop and Board of Director's Meeting. Source of Funds: League of California Cities. (Chu)

Documents Filed: Memorandum from Council Member Chu, dated November 7, 2013, requesting travel to attend League of California Cities Board of Directors Meeting.

Action: The travel request was approved. (10-0-1. Absent: Constant.)

2.8 Adopt a resolution authorizing the City Manager to:

- (a) Negotiate and execute the Seventh Amendment to the Agreement with ACS Transport Solutions, Inc. (Dallas, Texas) to restate the Maintenance and Service Scope of Services to meet current operational needs, extend the term through July 31, 2016, add two one-year options to extend the Agreement, and increase maximum compensation by \$164,614 not to exceed \$644,843 for the initial twelve months;**
- (b) Exercise up to two additional one-year options to extend the Agreement subject to appropriation of funds; and**
- (c) Approve a contingency amount of \$100,000 in the event that additional services are required, or there are unanticipated material and repair costs not covered by the scope of services.**

CEQA: Not a project, File No. PP10-066(a), Purchase Order/Cooperative Purchase of Supplies, Equipment and Professional Services with no changes in the physical environment. (Finance)

Documents Filed: Memorandum from Director of Finance Julia H. Cooper, dated November 12, 2013, recommending adoption of a resolution.

2.8 (Cont'd.)

Action: Resolution No. 76860, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to (1) Negotiate and Execute a Seventh Amendment to the Agreement with ACS Transport Solutions, Inc. for the Airport Parking Access Revenue Control and Automatic Vehicle Identification System to Restate the Maintenance and Service Agreement Scope of Services, Extend the Term Through July 31, 2016, Add Two One-Year Options to Extend the Agreement, and Increase the Maximum Compensation by \$164,614 for a Total Amount Not to Exceed \$644,843 for the Initial Twelve Months, (2) Exercise Up To Two Additional One-Year Options to Extend the Agreement Subject to Appropriation of Funds, and (3) Approve a Contingency Amount of \$100,000 in the Event that Additional Services are Required, or there are Unanticipated Material and Repair Costs Not Covered by the Scope of Services”, was adopted. (10-0-1. Absent: Constant.)

- 2.9**
- (a) Approve an Agreement for Consultant Services with AON Consulting, Inc. dba AON Hewitt related to City’s health and welfare plans and actuarial services, for the initial term of January 1, 2014 through June 30, 2014, including up to three one-year and one six-month extension options, in an initial amount not to exceed \$92,500, and a maximum amount not to exceed \$781,898, subject to the appropriation of funds by the City Council; and**
 - (b) Adopt a resolution authorizing the City Manager to exercise the City's option to extend the Agreement for Consultant Services with AON Consulting, Inc. dba AON Hewitt related to City’s health and welfare plans and actuarial services for up to three one-year terms and one six-month term through December 31, 2017, subject to the 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: Memorandum from Deputy City Manager Alex Gurza, dated November 7, 2013, recommending adoption of a resolution.

Action: Resolution No. 76861, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Exercise the City’s Option to Extend the Agreement for Consultant Services with Aon Consulting, Inc. DBA Aon Hewitt Related to the City’s Health and Welfare Plans and Actuarial Services for up to Three One-Year Terms and One Six-Month Term, Subject to the Appropriation of Funds”, was adopted. (10-0-1. Absent: Constant.)

- 2.10 Adopt a resolution authorizing the City Manager to execute a joint four-year Memorandum of Understanding (Updated Governance MOU) between the Bay Area Urban jurisdictions, which is comprised of: City of Oakland, City of San José, City and County of San Francisco, County of Alameda, County of Contra Costa, County of Marin, County of Monterey, County of San Mateo, County of Santa Clara, and County of Sonoma as partners in the Bay Area Urban Areas Security Initiative grant program with an effective date retroactive to December 1, 2013 to December 1, 2017. CEQA: Not a Project, File No. PP10-066(g.), Grant Agreements and Memorandum of Understandings. (Police/Fire)**

Documents Filed: Joint memorandum from Acting Chief of Police Larry Esquivel and Acting Fire Chief Ruben Torres, dated November 15, 2013, recommending adoption of a resolution.

Action: Resolution No. 76862, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Execute a Joint Four Year Memorandum of Understanding Between the City of Oakland, City of San José, City and County of San Francisco, County of Alameda, County of San Mateo, County of Santa Clara and County of Sonoma as Partners in the San Francisco Bay Urban Areas Security Initiative Grant Program”, was adopted. (10-0-1. Absent: Constant.)

- 2.11 Adopt a resolution summarily vacating a portion of a Public Service Easement within a private property located at 1284 Rio Hondo Drive (APN 581-02-003). CEQA: Exempt, File No. PP13-091. Council District 10. (Public Works)**

Documents Filed: Memorandum from Director of Public Works David Sykes, dated November 12, 2013, recommending adoption of a resolution.

Action: Resolution No. 76863, entitled: “A Resolution of the Council of the City of San José Summarily Vacating a Portion of a Public Service Easement within a Private Property Located at 1284 Rio Hondo Drive”, was adopted. (10-0-1. Absent: Constant.)

- 2.12 Approve a consultant agreement with Kimley-Horn and Associates, Inc. for the Vehicle Registration Fee San José Signal Retiming Project in a total amount not to exceed \$291,450 with a term ending June 30, 2014, with an option for the Director of Transportation to extend the term for an additional six months, if necessary. CEQA: Resolution No. 76041, File No. PP13-099. Council Districts 1, 2, 3, 5, 7, and 10. (Transportation)**

Documents Filed: Memorandum from Director of Transportation Hans Larsen, dated November 12, 2013, recommending approval of an agreement.

Action: A consultant agreement with Kimley-Horn and Associates, Inc. for the Vehicle Registration Fee San José Signal Retiming Project in a total amount not to exceed \$291,450 with a term ending June 30, 2014, with related contingencies, was approved. (10-0-1. Absent: Constant.)

2.13 As recommended by the Rules and Open Government Committee on November 20, 2013:

- (a) Approve the Operation Prom Dress as a City Council sponsored Special Event authorizing the expenditure of funds;
- (b) Approve and accept of donations from various individuals, businesses or community groups to support Operation Prom Dress; and
- (c) Approve retroactive expenses related to the 2013 Operation Prom Dress, a City Council sponsored special event.

CEQA: Not a Project. (Nguyen)

[Rules Committee referral 11/20/13 – Item G(2)]

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

Action: Operation Prom Dress as a City Council Sponsored Special Event was approved and authorization to accept donations from various individuals, businesses or community groups to support the event, and retroactive expenses related to the 2013 Operation Prom Dress, were approved. (10-0-1. Absent: Constant.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone announced that the Police Officers' Association has ratified the tentative agreement that it reached two weeks ago with the City. The agreement will be returned before Council on December 10, 2013 for consideration.

3.3 As recommended by the Public Safety, Finance, and Strategic Support Committee on October 17, 2013, accept the 2012 Annual Performance Audit of Team San José Management of the City's Convention and Cultural Facilities. (City Auditor)

Note: Items Item 3.3 and 3.8 were heard together

Documents Filed: Memorandum from City Clerk Toni Taber, dated November 21, 2013, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee.

City Auditor Sharon Erickson provided an overview of the Audit. She and City Manager Debra Figone responded to questions from the Council.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the 2012 Annual Performance Audit of Team San José Management of the City's Convention and Cultural Facilities, was accepted. (10-0-1. Absent: Constant.)

- 3.4 As recommended by the Rules and Open Government Committee on October 30, 2013, approve an ordinance amending Chapter 12.06 of Title 12 of the San José Municipal Code to amend Section 12.06.810 and to add a new Part 11 related to Officeholder/Candidate Legal Defense Funds. CEQA: Not a Project, File No. PP10-068(b), Municipal Code or Policy. (City Attorney)
[Rules Committee referral 10/30/13 – Item G(4)]
(Deferred from 11/19/13 – Item 3.3)**

Action: Deferred to December 12, 2013 per Administration

- 3.8 (a) Approve the Team San José performance measure for 2013-2014.
(b) Adopt the following 2013-2014 Appropriation Ordinance amendments in the Convention and Cultural Affairs Fund:
(1) Decrease the Ending Fund Balance by \$150,000; and
(2) Increase the Office of Economic Development’s appropriation for Team San José Incentive Fee by \$150,000.**
CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. Council District 3. (City Manager’s Office)

Note: Items Item 3.3 and 3.8 were heard together

Documents Filed: Joint memorandum from Assistant to the City Manager, Downtown Manager, Lee Wilcox and Budget Director Jennifer Maguire, dated November 7, 2013, recommending approval of the Team San José performance measures for 2013-2014 and adoption of an appropriation ordinance amendment.

Action: Upon motion by Council Member Herrera, seconded by Vice Mayor Nguyen, and carried unanimously, the Team San José performance measure for 2013-2014 was accepted, and Ordinance No. 29347, entitled: “An Ordinance of the City of San José Amending Ordinance No. 29271 to Appropriate Monies in the Convention and Cultural Affairs Fund for the Team San José Incentive Fee; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”, was adopted. (10-0-1. Absent: Constant.)

- 3.9 As recommended by the Public Safety, Finance, and Strategic Support Committee on November 21, 2013, accept the Fiscal Year 2012-2013 Comprehensive Annual Financial Report for the City of San José. CEQA: Not a Project, File No. PP10-69(a) Annual Reports. (Finance)
[Public Safety, Finance, and Strategic Support Committee referral 11/21/13 –Item d(8)]**

Documents Filed: Memorandum from City Clerk Toni Taber, dated November 25, 2013, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee.

3.9 (Cont'd.)

Director of Finance Julia H. Cooper and staff provided a presentation on the Comprehensive Annual Financial Report, and David Bullock of Macias Gini & O'Connell LLP continued with a report on the Audit. Assistant Director of Finance, Arn Andrews responded to questions.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the Fiscal Year 2012-2013 Comprehensive Annual Financial Report for the City of San José, was accepted. (10-0-1. Absent: Constant.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 Approve an ordinance amending Chapter 17.12 of the San José Municipal Code to:**
- (a) Adopt the 2013 edition of the California Fire Code (CFC), and the Standards referenced in 2013 CFC;**
 - (b) Approve an ordinance to adopt the 2013 California Fire Code with the local amendments regarding fire suppression and alarm requirements, firefighter breathing air replenishment system for high-rise buildings, and the requirements relating to the design and installation of fire protection and special systems and hazardous material systems.**

CEQA: Exempt, File No. PP13-082. (Planning, Building and Code Enforcement/Fire)

[Community and Economic Development Committee referral 9/23/13 – Item D(6)(2) and Public Safety, Finance, and Strategic Support Committee referral 10/17/13 – Item D(4)]

[Deferred from 11/5/13 – Item 4.1(b) and from 11/19/13 – Item 4.1]

Documents Filed: (1) Joint memorandum from Council Members Herrera, Campos, Khamis and Chu, dated November 1, 2013, recommending approval of Staff recommendations with amendments. (2) Memorandum from City Clerk Toni Taber, dated October 24, 2013, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee. (3) Supplemental memorandum from Acting Fire Chief Ruben Torres, dated November 22, 2013, recommending revisions to local amendments to the Fire Standards Ordinance. (4) Three letters, each dated November 5, 2013, from (a) Matthew Mahood, President and CEO of the San José Silicon Valley Chamber of Commerce; (b) Seth Bland, Block 3 Development Partners LLC, and (c) F. Matthew DiNapoli, D.C.P. Partners; each expressing opposition to the Firefighter Air Replenishment System.

Mayor Reed offered criticism of the recommendation, citing problems regarding the proprietary system.

4.1 (Cont'd.)

Motion: Council Member Liccardo moved approval of the Staff recommendations with the exception of specific changes to the air replenishment system that were addressed at the Council meeting of November 5, 2013. The motion was seconded by Council Member Oliverio.

Substitute Motion: Council Member Herrera moved deferral of the item until further review. The substitute motion was seconded by Council Member Chu.

Public Comments: Offering opposition to the Staff recommendation and suggesting alternative, more economically feasible products, were Jim Reed, San José Silicon Valley Chamber of Commerce; Rich De LaRosa, Forest Consulting; and Mark E. Tersini, KT Properties. Scott Knies, San José Downtown Association, offered support to a deferral.

Director of Planning, Building and Code Enforcement Joseph Horwedel and City Attorney Richard Doyle responded to questions from the Council, and extensive discussion followed.

Vice Mayor Nguyen and Council Member Kalra urged the amendment of the San José Municipal Code as recommended, citing an issue of public safety and reasoning that there is already enough information to go forward.

Action: On a call for the question, the substitute motion carried, Ordinance No. 29349 entitled: “An Ordinance of the City of San José Amending Chapter 17.12 of Title 17 of the San José Municipal Code to Adopt the 2013 California Fire Code with Local Amendments Relating to Fire Flow, Sprinkler and Fire Alarm Systems and Standards, Access Control Devices, Large Battery Charging Systems and Continuous Gas Detection Systems and to Maintain Existing Fire Protection and Regulatory Authority”, was passed for publication, as amended, with 4.1(a), adopting the 2013 edition of the California Fire Code (CFC), and the Standards referenced in the 2013 CFC adopted, and with action on 4.1(b) regarding installation of a firefighter breathing air replenishment system for high-rise buildings deferred until Council has an opportunity for further review. Staff was directed to return with an update to the Rules and Open Government Committee within 90 days for further discussion, with particular emphasis on the use of a proprietary system and with input from the Fire Fighter’s Union Local 230. (8-2-1. Noes: Kalra, Nguyen. Absent: Constant.)

STRATEGIC SUPPORT SERVICES

- 3.5**
- (a) Interview applicants for appointment to the Appeals Hearing Board;**
 - (b) Appoint two (2) members to the Appeals Hearing Board; and**
 - (c) If no appointment is made, direct the City Clerk to continue recruitment efforts and bring additional applicants forward for consideration within 90-days.**
- (City Clerk)**

Documents Filed: (1) Memorandum from Memorandum from City Clerk Toni Taber, dated November 20, 2013, transmitting the recommendations for appointments to the Appeals Hearing Board. (2) Voting results for the Appeals Hearing Board.

Action: Rajwant Bains (Incumbent) and Ronald Cabanayan were appointed to the Appeals Hearing Board for terms expiring December 31, 2017.

- 3.6**
- (a) Acknowledge receipt of the Certification by the City Clerk of results of elections conducted among employees for the nomination of an employee representative to the Civil Service Commission.**
 - (b) At the Council's discretion appoint a member of the Civil Service Commission to a term expiring November 30, 2017.**
- (City Clerk)**

Documents Filed: (1) Memorandum from Memorandum from City Clerk Toni Taber, dated November 20, 2013, transmitting the recommendations for an appointment to the Civil Service Commission. (2) Supplemental memorandum from City Clerk Toni Taber, dated November 26, 2013, certifying the employee election results from November 25, 2013.

Action: Bill Brill (Incumbent) was appointed to the Civil Service Commission for a term expiring November 30, 2017. (9-1-1. Noes: Liccardo. Absent: Constant.)

- 3.7**
- (a) Acknowledge receipt of the following:**
 - (1) The Certification by the City Clerk of results of elections conducted among active Police Department employees for the nomination of a Police Department employee representative to the Board of Administration of the Police and Fire Department Retirement Plan.**
 - (2) The Certification by the City Clerk of results of elections conducted among employee members of the Federated Retirement System for the nomination of an employee representative to the Board of Administration of the Federated City Employees' Retirement System.**
 - (b) At the Council's discretion:**
 - (1) Appoint one active Police Department employee to the Board of Administration of the Police and Fire Department Retirement Plan to a term expiring November 30, 2017.**
 - (2) Appoint one active employee member to the Board of Administration of the Federated City Employees' Retirement System (FCERS) to a term expiring November 30, 2017. (City Clerk)**

3.7 (Cont'd.)

Documents Filed: (1) Memorandum from City Clerk Toni Taber, dated November 20, 2013, transmitting the recommendations for appointments to the Retirement Boards. (2) Supplemental memorandum from City Clerk Toni Taber, dated November 26, 2013, certifying the employee election results from November 25, 2013.

Action: Upon motion by Council Member Herrera, seconded by Vice Mayor Nguyen, the motion carried unanimously, and Lisa C. Taitano was appointed Employee Representative, Federated City Employees' Retirement System to a term expiring November 30, 2017. James R. Mason was appointed Police Representative, Police and Fire Retirement Plan to a term expiring November 30, 2017. (10-0-1. Absent: Constant.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.2 (a) Approve the amended and restated lease between the City of San José and the San José Giants, dba., Baseball Acquisition Company, Inc., regarding the San José Municipal Stadium located at 588 E. Alma Avenue, in order to extend the existing lease for five years, with a new expiration date of December 31, 2018; and**
- (b) Approve a memorandum of understanding between the City, San José Giants and Sharks Ice regarding the roles and responsibilities for the management of the Municipal Stadium parking lot.**

CEQA: Exempt, File No. PP07-217. Council District 7. (Economic Development)

Action: Deferred to December 17, 2013 per Administration.

4.3 Adopt a resolution authorizing the City Manager to:

- (a) Execute an agreement with Bayscape Landscape Management, Inc. (San José, CA) for Landscape Management and Maintenance Services for Public Right-of-Way locations in three General Fund and three Special District landscape areas, for an initial two-year term ending December 3, 2015, with maximum compensation not to exceed \$1,251,200;**
- (b) Execute five one-year options to renew the agreement, subject to the appropriations of funds; and**
- (c) Execute change orders as required to add or delete sites, or change service levels due to seasonal changes or budget constraints, subject to the appropriation of funds.**

CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Finance)

Documents Filed: Memorandum from Director of Finance Julia H. Cooper, dated November 15, 2013, recommending adoption of a resolution.

4.3 (Cont'd.)

Action: Upon motion by Council Member Oliverio, seconded by Council Member Kalra, and carried unanimously, Resolution No. 76864, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Execute an Agreement with Bayscape Landscape Management, Inc., for an Initial Two Year Term Ending December 3, 2015, with Maximum Compensation not to Exceed \$1,251,200, to Execute Five One-Year Options to Renew the Agreement and to Execute Change Orders as Required, Subject to the Appropriation of Funds”, was adopted. (10-0-1. Absent: Constant.)

4.4 As recommended by Rules and Open Government Committee on November 13, 2013: authorize the City Manager to participate in a community-led process to explore a partnership with the national nonprofit Levitt Pavilions, such that the City would:

- (a) Designate a representative to sit on the “Friends of Levitt San José” Exploratory Committee, to assess the feasibility of a Levitt Pavilion in St. James Park. The duties of the Committee would include:
 - (1) Engaging the community to generate broad input concerning the implementation, location and design of a pavilion;
 - (2) Researching existing Levitt Pavilions to understand best practices in other cities;
 - (3) Exploring potential sites within St. James Park for a pavilion with local residents and city staff;
 - (4) Formulating a business plan for Friends of Levitt San José;
 - (5) Identifying and recruiting individuals to form a Friends of Levitt Board of Directors;
 - (6) If City and Levitt approval appears likely, beginning donor identification for a future capital campaign and operating support;
 - (7) Communicating regularly with Levitt Pavilions regarding the exploratory process.
- (b) Designate the Exploratory Committee an official city-sponsored event for fundraising purposes;
- (c) Bring the activities and ultimate recommendation of the Exploratory Committee before the appropriate City Boards and Commissions prior to Council approval, including the Arts Commission, Parks Commission and Historic Landmarks Commission;
- (d) Define a geographically- define district in the blocks surround St. James Park (“District”) within which to identify sources of future fees or assessments to fund the construction, operations, and maintenance of a Levitt Pavilion and other potential park improvement; and
- (e) Facilitate the Exploratory Committee’s effort to construct a potential funding plan that may include the use of any of the following tools:
 - (1) Development agreements with developers of nearby projects;
 - (2) Benefit assessment districts;
 - (3) Property-bases improvements districts;
 - (4) Infrastructure-based tax-increment financing;

4.4 (Cont'd.)

- (e) (5) **Dedication of park fees where a developer voluntarily chooses to contribute equal or greater funds;**
- (6) **Establishment of a maintenance trust;**
- (7) **Use of park fees for an “establishment period”, until other revenues emerge; and**
- (8) **Use of the San José Downtown Association’s Community Development Corporation.**

(Liccardo)

[Rules Committee referral 11/13/13 –Item G(2)]

Documents Filed: (1) Memorandum from City Clerk Toni Taber, dated November 21, 2013, transmitting the recommendations of the Rules and Open Government Committee. (2) Supplemental memorandum from Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares and Director of Economic Development/Chief Strategist Kim Walesh, dated December 2, 2013, providing staff perspective on addressing St. James Park. (3) Letter from St. James Park Neighborhood Association, dated November 26, 2013, offering support to the Staff recommendations. (4) Letters from Levitt Pavilions, and Fairfield Residential, both dated December 2, 2013, offering support to the project. (5) Email correspondence from Virginia Thomas, Keller Williams Los Gatos Real Estate, recommending that no action be taken until improvement and enforcement of current problems in St. James Park are addressed.

Deputy Director of Parks, Recreation and Neighborhood Services Steve Hammack and Director of Economic Development/Chief Strategist Kim Walesh responded to questions from Council.

Public Comments: Offering support to the partnership with Levitt Pavilions, speaking to its potential for fighting neighborhood blight, were James Reber, San José Parks Foundation; Fil Maresca; David Bird, Trinity Cathedral; Sandra Dillins, Jack Sardegna, Dave Truslow; Scott Knies, San José Downtown Association; Kymberli Brady, San José Downtown Resident’s Association; Matthew Quevedo, Dana Grover, Roma Dawson, David Nevin, Daniel Luna, Gator Marketing; Wade Atteberry, and Jim Reed, San José Silicon Valley Chamber of Commerce. John Luebben offered support, with recommendations for a committee to study the proposal and enforcement of ordinances.

Motion: Council Member Liccardo moved approval of the Staff recommendations with direction to staff as indicated below in “Action”. Council Member Herrera seconded the motion.

Council Member Oliverio expressed skepticism regarding the proposed partnership, citing unresolved issues regarding crime in the City of San José.

4.4 (Cont'd.)

Action: On a call for the question, the motion carried, the Staff's recommendations authorizing the City Manager to participate in a community-led process to explore a partnership with the national nonprofit Levitt Pavilions was accepted, with Staff directed to return to the Community & Economic Development Committee in April 2014 with more information, including how issues such as crime and blight were addressed in the successful revitalization of other urban parks and with extensive outreach to the neighboring community before returning to Council. (9-1-1. Noes: Oliverio. Absent: Constant.)

4.5 **Conduct a public hearing and adopt a resolution designating the Stevens Ranch Fruit Barn (City Landmark No. HL13-210), located at History Park (1650 Senter Road), as a landmark of special historic, architectural, cultural, aesthetic or engineering interest or value of an historic nature (City of San José, Owner). CEQA: Exempt. (Planning, Building and Code Enforcement)** **HL13-210 – District 7**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 18, 2013, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. HL13-210. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 26, 2013, transmitting the Planning Commission recommendation of approval. (3) Proof of Publication of Notice of Public Hearing, executed on November 8, 2013 submitted by the City Clerk.

Public Comment: Mayor Reed opened the public hearing. There was no testimony from the floor. Mayor Reed closed the public hearing.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Campos, and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and Resolution No. 76865, entitled: "A Resolution of the Council of the City of San José Designating, Pursuant to the Provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, the Stevens Ranch Fruit Barn, Located at 1650 Senter Road, as a City Landmark of Special Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of a Historic Nature", was adopted. (10-0-1. Absent: Constant.)

- 4.6 Consider a Historic Landmark Nomination and Mills Act Historic Property Contract for the "Dr. Kapp House" located at 197 South 13th Street (City Landmark No. HL13-211 and California Mills Act No. MA13-003).**
- (a) Conduct a public hearing and adopt a resolution designating the "Dr. Kapp House" as a landmark of special historical, architectural, cultural, aesthetic or engineering interest or value of an historic nature; and**
 - (b) Conduct a public hearing on the Historic Property contract (California Mills Act) between the City of San José and the property owner of the "Dr. Kapp House" (Kim Aldridge, Owner) and adopt a resolution approving a contract.**
- HL13-211/MA13-003 – District 3**

Documents Filed: (1) Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 14, 2013, transmitting the Planning Commission recommendation of approval. (2) Two Proof of Publication of Notices of a Public Hearing, both executed on October 18, 2013 submitted by the City Clerk.

Public Comment: 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 Liccardo, seconded by Council Member Herrera, and carried unanimously, the recommendation of the Planning Commission was approved, and Resolution No. 76866, entitled: “A Resolution of the Council of the City of San José Designating, Pursuant to the Provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, the Dr. Kapp House, Located at 197 South Thirteenth Street, as a City Landmark of Special Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of a Historic Nature”; and Resolution No. 76867, entitled: “A Resolution of the Council of the City of San José Approving a Historic Landmark Preservation Agreement with Kim Aldridge and Douglas Gallinat for the Dr. Kapp House (City Landmark No. HL13-211) Located at 197 South Thirteenth Street”, were adopted. (10-0-1. Absent: Constant.)

- 4.7 Consideration of an ordinance amending Title 20 of the San José Municipal Code (the Zoning Ordinance) as follows:**
- (a) Amending Chapter 20.10 (Zoning Districts Established) to add the PQP Public/Quasi-Public Zoning District to Table 20-10;**
 - (b) Amending Chapter 20.20 (Open Space & Agricultural Zoning Districts) to change the requirement from a Conditional to a Special Use Permit for exceedance of decibel levels in Table 20-45;**
 - (c) Amending Chapter 20.40 (Commercial Zoning Districts) to add land uses applicable to Urban Villages to the purposes of the CP Commercial Pedestrian Zoning District, to establish the PQP Public/Quasi-Public Zoning District and enumerate allowed uses, and to add enumerated uses applicable to the Commercial Zoning Districts including:**

- 4.7 (c) (1) Adding Permit Requirements for Conditional Uses requiring City Council approval as the initial decision-making body,
- (2) Adding Aquaculture/Aquaponics as a Special Use,
- (3) Adding “auction” and “stadiums” as Conditional Uses,
- (4) Adding Neighborhood Agriculture and “fuel cells” as Permitted Uses,
- (5) Adding Plant Nursery as a Permitted Use in the CO Commercial Office and PQP Public/Quasi-Public Zoning Districts;
- (6) Allowing animal grooming and animal boarding as Permitted Uses incidental to Neighborhood Agriculture in the CO Commercial Office and in the PQP Public/Quasi-Public Zoning Districts.
- (7) Changing Bail Bond Establishment from a Permitted Use to a Special Use in the CP Commercial Pedestrian Zoning District where located within an Urban Village;
- (8) Adding construction/corporation yard and Utility Facilities including corporation yards as Conditional Uses in the PQP Public/Quasi-Public Zoning District;
- (9) Adding Common Carrier as a Conditional Use and Common Carrier Depot as a Special Use in the PQP Public/Quasi-Public Zoning District;
- (10) Changing Mixed Use residential/commercial from a Conditional Use to a Special Use in the CP Commercial Pedestrian Zoning District where located within an Urban Village;
- (11) Changing Payday Lending Establishment from a Restricted Use to a Prohibited Use in the CP Commercial Pedestrian Zoning District where located within an Urban Village;
- (12) Changing accessory installation, sale or lease of commercial vehicles, and tires, batteries, oil change and smog check servicing from Prohibited Uses to Conditional Uses in the CP Commercial Pedestrian Zoning District,
- (13) Changing sale of vehicle parts from a Conditional Use to a Special Use in the CP Commercial Pedestrian Zoning District,
- (14) Amending Section 20.40.120 to allow outdoor animal care as an incidental use to Neighborhood Agriculture;
- (d) Amending Section 20.40.200 (Development Standards) to establish development standards for the PQP Public/Quasi-Public Zoning District and to modify development standards in the CP Commercial Pedestrian Zoning District where located within an Urban Village;
- (e) Amending Section 20.40.250 (Front Setback – Exception, Streets with Residence Districts) to exempt Lots in the CP Commercial Pedestrian Zoning District and PQP Public/Quasi-Public Zoning District from the provisions of this Section, amending Section 20.40.400 (Setback Regulations) to clarify that allowances for minor projections into Setback areas of up to twenty (20) percent of Building length apply independently and not cumulatively to Subsections B and D of this Section and to add provisions for Short-term Bicycle Parking Facilities in Setback Areas;

- 4.7
- (f) Amending Section 20.40.600 (Performance Standards) to change the requirement from a Conditional to a Special Use Permit for exceedance of decibel levels in Table 20-135 and to add performance standards for the PQP Public/Quasi-Public Zoning District,
 - (g) Amending Section 20.40.520 (Outdoor Uses Within 150 Feet of Residentially Zoned Property) to add a provision for exempting Neighborhood Agriculture from the requirements of this Section;
 - (h) Amending Chapter 20.80 Specific Use Regulations, Part 18 Temporary Trailers to allow temporary antennae while permitted alterations of existing Wireless Communication Antennae are being constructed, to change the requirement from a Conditional Use Permit to a Special Use Permit when Administrative Permit requirements cannot be met, and to lengthen the allowable duration of the Temporary Antenna Trailer operation;
 - (i) Amending Section 20.100.220 of Chapter 20.100 to add provisions for Director of Planning as the Initial Decision Making Body and Council as the Appeal Decision Making Body for Special Use Permits for school, church/religious assembly, and privately-operated museum, library, park, playground and community center uses in the PQP Public/Quasi-Public Zoning District;
 - (j) Amending Chapter 20.120 to amend Section 20.120.110 to add the PQP Public/Quasi-Public Zoning District to Table 20-170 and identify the PQP Zoning District as the conforming zoning district for the Public/Quasi-Public land use designation in the General Plan;
 - (k) Amending Chapter 20.200 Definitions, to add definitions for “Fuel Cell” and “Signature Project” and to amend definitions of “Business Support,” “Co-generation Facility,” “Downtown Core Area,” and “Solar Photovoltaic Power System”; and
 - (l) Make other technical, non-substantive, or formatting changes within those sections of Title 20.

CEQA: Final Program Environmental Impact Report (EIR) for the Envision San José 2040 General Plan, EIR Resolution No. 76041 and addenda thereto (File No. PP13-101). 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 No. PP13-101. (Planning, Building and Code Enforcement)

Action: Deferred to January 14, 2014 per Administration.

4.8 Consideration of an ordinance of the City of San José amending Title 20 of the San José Municipal Code (the Zoning Ordinance) by amending Section 20.85.020 of Chapter 20.85 to clarify the maximum allowable Building Height within geographical employment centers including the Norman Y. Mineta San José International Airport. CEQA: Airport Master Plan EIR, Resolution Nos. 67380 and 71451, and addenda thereto, including Addendum File No. PP13-100. Council District 3. (Planning, Building and Code Enforcement)

Heard Jointly with Item 6.1

Documents Filed: (1) Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 12, 2013, transmitting the Planning Commission recommendation of approval. (2) Supplemental memorandum from City Attorney Richard Doyle, dated December 2, 2013, providing a letter and response to the November 6, 2013 letter from Rutan & Tucker, representing Atlantic Aviation. (3) Letter from David Lanferman, Rutan & Tucker, LLP, dated December 3, 2013, regarding the “Signature Project”. (4) Letter from Ash Pirayou, Rutan & Tucker, LLP, dated December 3, 2013, regarding Atlantic Aviation Appeal. (5) Proof of Publication of Notice of Public Hearing, executed on October 25, 2013 submitted by the City Clerk.

Mayor Reed opened the public hearing.

Public Comment: Eric Hietala, Signature Flight Support, asserted positive action will bring long-term jobs and improvements to the City; Carl Guardino, Silicon Valley Leadership Group, Cameron Singh, San José State, and Jim Reed, San José Silicon Valley Chamber of Commerce, offered support to the proposed ordinance. Ash Pirayou and Dave Lanferman, Atlantic Aviation, asked that additional information, as noted in “Documents Filed” from Rutan & Tucker, be considered.

Mayor Reed closed the public hearing.

Director of Planning, Building and Code Enforcement Joseph Horwedel, provided a rebuttal to certain points asserted in the November 6, 2013 letter from Rutan & Tucker.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Campos, and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 29348, entitled: “An Ordinance of the City of San José Amending Section 20.85.020 of Chapter 20.85 of Title 20 of the San José Municipal Code to Adopt Maximum Allowable Building Height Restrictions Within Geographical Employment Centers including the Norman Y. Mineta San José International Airport, and to Make Other Technical, Non-Substantive or Formatting Changes”, was passed for publication. (9-1-1. Noes: Oliverio. Absent: Constant.)

TRANSPORTATION & AVIATION SERVICES

Heard Jointly with Item 4.8

6.1 Adopt a resolution authorizing the City Manager to:

- (a) Execute a ground lease and operating agreement with Signature Flight Support for the construction and operation of a Fixed Based Operation on approximately 29 acres at the west side of the Airport for a fifty-year term from the date of execution by the City and with interim construction ground rent commencing upon the date of execution by the City, in the amount of \$1,319,084 until the earlier of the twenty-fifth month from the date of execution by the City or the date a certificate of occupancy is issued for the use and occupancy of the leasehold improvements, and subsequent annual ground rent in the amount of \$2,638,168, subject to annual Consumer Price Index increases, and subject to increase by appraisal every five years during the term of the lease; and
- (b) Execute a Non-Disturbance, Consent, Estoppel and Subordination Agreement with Signature Flight Support Corporation and BCH San José LLC to provide for the continued use and occupancy of approximately nineteen acres of the leasehold by BCH San José LLC pursuant to the terms of a new ground lease and operating agreement between the City and BCH San José LLC on the same terms and conditions as the ground lease and operating agreement with Signature Flight Support Corporation, in the event that the lease with Signature is rejected in bankruptcy, terminated or otherwise cancelled at any time prior to the end of its fifty year term.

CEQA: Airport Master Plan EIR, Resolution Nos. 67380 and 71451, and addenda thereto, including Addendum File No. PP13-100. (Airport)

Documents Filed: Memorandum from Director of Aviation, Kim Becker Aguirre, dated November 12, 2013, recommending adoption of a resolution.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Campos, and carried, Resolution No. 76869, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to: (1) Execute a Ground Lease and Operating Agreement with Signature Flight Support Corporation ("Signature") for the Construction and Operation of a Fixed Based Operation on Approximately 29 Acres at the West Side of the Airport; and (2) Execute a Non-Disturbance, Consent, Estoppel and Subordination Agreement with Signature and Blue City Holdings San José LLC ("BCH") to Provide for the Continued Use and Occupance of Approximately 19 Acres of the Leasehold by BCH", was adopted. (9-1-1. Noes: Oliverio. Absent: Constant.)

4.9 Report on bids and take appropriate action based on the evaluation of bids for the Del Monte Park Project. **CEQA: Exempt, File No. PP08-094. Council District 6. (Public Works)**

Action: Deferred to December 10, 2013 per Administration

NEIGHBORHOOD SERVICES

5.1 As recommended by the Neighborhood Services and Education Committee on November 11, 2013:

- (a) Accept the Community Center Reuse Update Report;
- (b) Adopt a resolution authorizing the following:
 - (1) The Director of Parks, Recreation and Neighborhood Services (PRNS) to extend the current Reuse contracts through the completion of the solicitation period to minimize service impacts at Reuse sites; and
 - (2) The revising of Council Policy 7-12 to extend the temporary suspension of the competitive solicitation process for unique services through Fiscal Year 2019-2020 with an option for the Director of PRNS to extend this solicitation process for an additional year.

CEQA: Not a Project, File No. PP10-066(e)m Services that involve no physical change to the environment. (Parks, Recreation and Neighborhood Services)
[Neighborhood Services and Education referral 11/14/13 – Item d(3)]

Documents Filed: (1) Memorandum from Council Member Rocha, dated December 2, 2013, providing recommendations regarding Staff recommendations. (2) Memorandum from City Clerk Toni Taber, dated November 21, 2013, providing recommendations of the Neighborhood Services and Education Committee.

Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares provided the Community Center Reuse Update Report and responded to questions.

Motion: Council Member Rocha moved approval of his memorandum dated December 2, 2013. Council Member Campos seconded the motion.

Council Member Liccardo requested an amendment to the motion, recommending that the Reuse agreements not be entered into any time after June 31, 2016 with additional direction as outlined below in “Action”. Council Members Liccardo and Campos accepted the amendment to the motion.

Action: On a call for the question, the motion carried, and Resolution No. 76868, entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Parks, Recreation and Neighborhood Services to Extend the Current Reuse Contracts through the Completion of the Solicitation Period and Approving the Revisions to Council Policy 7-12 Relating to Reuse of Community Centers”, was adopted, including amendments as outlined in Council Member Rocha’s memorandum of December 2, 2013, as revised: (1) Accept the Community Center Reuse Update Report. (2) Direct Staff to report to the Neighborhood Services and Education Committee with a plan to evaluate sites on an annual basis for reactivation of any kind, and include that information in the annual budget process. (3) ~~Do not enter in Reuse agreements for any time after June 31, 2016.~~ (4)-Return to Council with the results of the community process in FY 2015-2016, for a discussion about the future of the Reuse program.

5.1 (Cont'd.)

And with further direction to staff to explore the option of meeting with nonprofit service providers to consider collaboration between the City and nonprofits for utilizing and supplementing services that the nonprofits have been providing. (9-1-1. Noes: Oliverio. Absent: Constant.)

Vice Mayor Nguyen and Council Member Chu left the meeting at 5:40 p.m.

ENVIRONMENTAL & UTILITY SERVICES

7.1 Forwarded to Council without a recommendation from the Transportation and Environment Committee on November 4, 2013:

- (a)
 - (1) Adopt a resolution authorizing the City of San José to become a member of the Western Riverside Council of Governments joint powers authority (“WRCOG”) and consenting to the inclusion of certain properties within the City of San José in the California HERO Program provided through WRCOG for the financing of renewable energy distributed generation sources and energy and water efficiency improvements, subject to the negotiation and execution of an agreement with the administrator of the California HERO program to indemnify the City;
 - (2) Adopt a resolution and consenting to the inclusion of certain properties with the City of San José in the Figtree Property Assessed Clean Energy and Job Creation Program (“Figtree PACE”), provided through the California Enterprise Development Authority, for the financing of renewable energy distributed generation sources and energy and water efficiency improvements, subject to the negotiation and execution of an agreement with the administrator of the Figtree PACE program to indemnify the City;
 - (3) Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with Renewable Funding, the administrator of the California Statewide Community Development Authority joint powers authority’s property assessed clean energy program known as the CaliforniaFIRST program for the indemnification of the City; and
- (b) Approve staff recommendation to participate in the Property Assessed Clean Energy Program offered through joint powers authorities.

CEQA: Not a Project, File No. PP10-067, Non-Project Specific Funding Mechanism. (Environmental Services)

[Transportation and Environmental referral 11/4/13 – Item D(4)]

7.1 (Cont'd.)

Documents Filed: (1) Joint memorandum from Mayor Reed and Council Members Kalra, Khamis, Liccardo and Rocha, dated November 26, 2013, offering recommendations to the Property Assessed Clean Energy (PACE) programs. (2) Memorandum from City Clerk Toni Taber, dated November 21, 2013, providing recommendations from the Transportation and Environment Committee. (3) Supplemental memorandum from City Attorney Richard Doyle, dated December 2, 2013, providing additional information regarding federally backed mortgages. (4) Supplemental memorandum from Environmental Services Director Kerrie Romanow, dated December 3, 2013, providing additional information from the November 4, 2013 Transportation and Environment Committee meeting.

Staff provided an overview of the PACE Financing Program Development programs and responded to questions from the Council.

Motion: Council Member Liccardo moved approval of the memorandum he co-authored with Mayor Reed and Council Members Kalra, Khamis and Rocha, dated November 26, 2013. Council Member Herrera seconded the motion.

Public Comments: Offering support to the PACE programs were: Mehyeddine Alayleh, Highlight Solar, Inc.; Mark Radeke, Easyturf; John Law and Mark Rodgers, Renovate America; Joe Flores, Figtree Energy Finance; Ben Chates, REC Solar; James Pope, American Vision Windows; Michael Lemyre, Ygrene Energy Fund; and Simone Bryce, California First.

Mayor Reed provided meeting disclosures.

Action: On a call for the question, the motion carried unanimously, and Resolution No. 76870, entitled: "A Resolution of the Council of the City of San José Consenting to Inclusion of Properties within the City's Jurisdiction in the California HERO Program to Finance Distributed Generation Renewable Energy Sources, Energy and Water Efficiency Improvements and Electric Vehicle Charging Infrastructure, and Authorizing the Execution and Delivery of the Amendment to a Certain Joint Powers Agreement with the Western Riverside Council of Governments Related Thereto"; Resolution No. 76871, entitled: "A Resolution of the Council of the City of San José to Join the Figtree PACE Program; Authorizing the California Enterprise Development Authority to Conduct Contractual Assessment Proceedings and Levy Contractual Assessments within the Territory of the City of San José; and Authorizing Related Actions"; and Resolution No. 76872, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Indemnification Agreement with Renewable Funding Group, Inc., the Administrator of the Property Assessed Clean Energy Program Known as CaliforniaFirst", were adopted, with direction to Staff to proceed with alternative #4 through an RFQ for a third party administrator to establish a City-wide

7.1 (Cont'd.)

Energy Finance District as outlined in the joint memorandum from Mayor Reed and Council Members Kalra, Khamis, Liccardo and Rocha, dated November 26, 2013, including direction that should staff receive only a single qualified proposer, direction be given to enter into exclusive negotiations with the selected proposer and return to Council within 150 days for consideration; and should staff receive more than one qualified response and enter into an Exclusive Negotiated Agreement (ENA), staff to return to Council for approval. (8-0-3. Absent: Chu, Constant, Nguyen.)

OPEN FORUM

- (1) Mark Trout expressed religious convictions.
- (2) Jon Max Reger offered points of conflict regarding a labor-related case.

ADJOURNMENT

The Council of the City of San José adjourned at 6:25 p.m. in memory Ray O'Flaherty who passed away on October 12, 2013. Ray dedicated himself to developing business and cultural ties between Ireland and San José over the past 27 years. (Liccardo)

Minutes Recorded, Prepared and Respectfully Submitted by,

Toni J. Taber, CMC
City Clerk

rmk/12-03-13MIN