

## MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, OCTOBER 16, 2012

The Council of the City of San José convened in Regular Session at 9:41 a.m. in the Council Chambers at City Hall.

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

Absent: Council Members - All Present.

### STRATEGIC SUPPORT SERVICES

#### 3.2 Accept Labor Negotiations Update.

Office of Employee Relations Executive Analyst Marco Mercado provided a brief outline of the proposed agreement between the City and the Association of Legal Professionals.

Public Comments: President of the Police Officer's Association Board of Directors, Jim Unland, addressed comments made by Council Member Herrera in reference to the POA's "playbook" and references to a "work slowdown" by the police force.

### CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:44 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code subsection (c) of Section 54956.9 with respect to anticipated litigation: Number of matter(s) to be discussed: one (1); (B) to confer with Legal Counsel pursuant to Government Code subsection (b) of Section 54956.9 with respect to anticipated litigation (Claim Not Filed): Number of matter(s) to be discussed: four (4); (C) to confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (a) with respect to existing litigation: (1) Truslow v. City of San José, et al.; Names of Parties Involved: David T. Truslow, City of San José City Council; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-233574; Amount of Money or Other Relief Sought: Petition for

## CLOSED SESSION (Cont'd.)

Writ of Mandate; (2) San Jose Police Officers' Association v. City of San José.; Name(s) of Parties Involved: San Jose Police Officers' Association; City of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV231271; Amount of Money or Other Relief Sought: Petition to Compel Arbitration; (D) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (2) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (3) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP. (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP. (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO. (6) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW. (8) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (9) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3. (10) San José Police Officers' Association (SJPOA); Nature of Negotiations: 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.; (E) to confer with Chief of Police regarding potential threat to public services or facilities pursuant to Government Code Section 54957(a). Web: <http://www.sanjoseca.gov/?nid=186>; 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 pertaining to the Successor Agency to the Redevelopment Agency of the City of San José in one (1) matter.

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

By unanimous consent, Council recessed from the Closed Session at 11:20 a.m. and reconvened to Regular Session at 1:31 p.m. in the Council Chambers.

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

Absent: Council Members - All Present.

## **INVOCATION**

The Committee to Promote Square Dancing performed a square dance routine.

## **PLEDGE OF ALLEGIANCE**

Mayor Reed led the Pledge of Allegiance accompanied by third-grade students from Lynhaven Elementary School.

## **ORDERS OF THE DAY**

Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Item 4.3 to be heard directly following the Ceremonial Items. (11-0.)

## **CLOSED SESSION REPORT**

### **A. Authority to Initiate Litigation**

City Attorney Richard Doyle disclosed authority to initiate litigation in one (1) matter. The name of the action and the defendant, as well as the substance of the litigation shall be disclosed to any person upon inquiry once the action is formally commenced.

Council vote: Ayes: - Campos, Chu, Constant, Herrera, Kalra, Liccardo, Nguyen, Oliverio, Pyle, Rocha; Reed.

Noes: None

Abstain: None.

Not Present: None.

## **CEREMONIAL ITEMS**

### **1.1 Presentation of a proclamation declaring the Week of October 21 – 27, 2012 as “National Save for Retirement Week” in the City of San José. (Constant)**

Mayor Reed and Council Member Constant acknowledged the Week of October 21 – 27, 2012 as “National Save for Retirement Week” in the City of San José.

### **1.2 Presentation of a proclamation declaring the Month of October 2012 as “National Cybersecurity Awareness Month” in the City of San José. (Constant)**

Mayor Reed and Council Member Constant acknowledged the Month of October 2012 as “National Cybersecurity Awareness Month” in the City of San José.

### **1.3 Presentation of a proclamation declaring October 16, 2012 as “Food Allergy Awareness Day” in the City of San José. (Herrera)**

Mayor Reed and Council Member Herrera acknowledged October 16, 2012 as “Food Allergy Awareness Day” in the City of San José.

### **1.4 Presentation of a proclamation recognizing the Month of October 2012 as “Underground Railroad Awareness Month” in the City of San José. (Kalra)**

Mayor Reed and Council Member Kalra acknowledged the Month of October 2012 as “Underground Railroad Awareness Month” in the City of San José.

## **COMMUNITY & ECONOMIC DEVELOPMENT**

### **4.3 Discussion continued by the City Council on September 25, 2012, review key concepts and issues associated with the Draft Santa Clara Valley Habitat Plan (Habitat Plan) and related documents to provide the Council an opportunity to evaluate and comment on the Plan’s content as specified below in advance of final action. No Council action to be taken.**

#### **(a) Summary Overview of the Habitat Plan.**

#### **(b) Key Issues for San José:**

- (1) Avoidance of Deferred Liability**
- (2) Regulatory Streamlining**
- (3) Nitrogen Deposition Fee**
- (4) Western Burrowing Owl**
- (5) Riparian Setbacks**
- (6) Case Studies**

#### **(c) Habitat Plan Implementation**

- (1) Implementing Entity**
- (2) Legislative Priorities**
- (3) Fine-tuning the Structure Fee**

#### 4.3 (Cont'd.)

**(d) Alternative to Habitat Plan Adoption**

**CEQA: EIR Resolution to be adopted when action on Habitat Plan is taken.**

**(Planning, Building and Code Enforcement)**

**[Rules Committee referral 9/19/12 – Item D(1)]**

**(Continued from 9/25/12 – Item 4.3)**

Documents Filed: (1) Memorandum from Mayor Reed, dated October 10, 2012, regarding the Draft Santa Clara Valley Habitat Plan (HCP); (2) Joint memorandum from Vice Mayor Nguyen and Council Members Campos, Liccardo and Rocha, dated October 12, 2012, accepting the Staff's report and making additional points; (3) Memorandum from Council Member Kalra, dated October 16, 2012, regarding the HCP; Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated October 15, 2012, responding to questions regarding the Habitat Plan. (4) Letter from President & CEO of the Silicon Valley Chamber of Commerce, Matthew R. Mahood, dated September 20, 2012 offering comments on the HCP; (5) Letter from Gloria Chun Hoo, President, San Jose/Santa Clara League of Women Voters, dated October 3, 2012, urging support of the HCP; (6) Letter from Habitat Conservation Now, dated October 9, 2012, offering support to the HCP; (7) Letter from the Department of Fish and Game and Fish and Wildlife Services, dated October 12, 2012, offering support of the Plan; (8) Letter from Roland Lebrun, dated October 16, 2012, offering support. (9) Five email from members of the public offering support for the HCP; (10) CD dated August 2012, "Final HCP/NCCP Final EIR/EIS – Santa Clara Valley Habitat Plan.

Mayor Reed provided an introduction to the plan, and Director of Planning, Building and Code Enforcement Joseph Horwedel, provided a presentation and projects how it relates to the City's economic health. Mayor Reed outlined the Plan in detail, and Cay Goude, Assistant Field Supervisor with the Sacramento Fish and Wildlife Service and Joseph Horwedel responded to questions and offered further clarification. Council discussion followed.

Motion: Council Member Liccardo moved approval of the memorandum he coauthored with Vice Mayor Nguyen and Council Members Campos and Rocha. Vice Mayor Nguyen seconded the motion.

Council Member Oliverio requested to amend the motion to continue to keep San Diego County's idea of a ballot initiative in focus. The amendment was accepted by Council Member Liccardo and Vice Mayor Nguyen.

Public Comments: Offering support to the Habitat Conservation Plan and providing comments to Staff's recommendations, were Abigail Ramsden, the Nature Conservancy; Shani Kleinhaus, Santa Clara Valley Audubon Society; Eileen McLaughlin, Citizens to Complete the Refuge; and Stuart Weiss. Amy Nilson (Examiner.com and Spartan Daily) recommended more research. Providing criticism of the Plan were Roland Lebrun, Brad Speers (Building Industry Association), and Jim Conklin, South County Business Council.

#### 4.3 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, with the Staff Report accepted with concerns to be addressed as outlined in the memorandum cosigned by Vice-Mayor Nguyen and Council Members Campos, Liccardo and Rocha dated October 12, 2012, and in Mayor Reed's memorandum of October 10, 2012, to keep San Diego County's idea of a ballot initiative in focus and to return before Council for action on the scheduled hearing date of December 4, 2012.

### CONSENT CALENDAR

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

#### 2.1 Approval of Minutes.

Action: There were none.

#### 2.2 Final adoption of ordinances.

- (a) **ORD. NO. 29151 – Amending Sections 4.70.940 and 4.70.1050 of Chapter 4.70 of Title 4 of the San José Municipal Code to extend the expiration date of the cap on the amount of telecommunications users tax paid under this chapter by service users provided certain conditions are satisfied, which part shall expire on December 31, 2017 unless otherwise extended, shortened, or revised by the City Council.**

Documents Filed: (1) Proof of Publication of the Title of Ordinance No. 29151 executed on October 5, 2012, submitted by the City Clerk. (2) Statement of Declaration of Conflict of Interest Form dated June 1, 2012 from Council Member Liccardo, noting the conflict of interest from owning Cisco stock. (3) Statement of Declaration of Conflict of Interest Form dated June 1, 2012 from Council Member Oliverio, noting the conflict of interest from owning Cisco stock. (3) Statement of Declaration of Conflict of Interest Form dated September 26, 2012 from Council Member Chu, noting the conflict of interest from owning Cisco stock. (3) Statement of Declaration of Conflict of Interest Form dated September 26, 2012 from Council Member Herrera, noting the conflict of interest from owning Cisco stock.

Due to a conflict of interest, Council Members Liccardo, Oliverio, Chu and Herrera were recused from voting due to an investment in Cisco Technology, Inc. stock.

Action: Ordinance No. 29151 was adopted. (7-0-0-4. Abstain: Chu, Herrera, Liccardo, Oliverio.)

- 2.2 (a) (Cont'd.)  
(b) **ORD. NO. 29153** – Amending Title 23 of the San José Municipal Code by amending Sections 23.02.290, 23.02.940, and 23.02.1110, and adding a new Section 23.02.493 to Chapter 23.02, amending Sections 23.04.020 and 23.04.120 of Chapter 23.04, all to amend signage regulations pertaining the service station canopy signage, amending Section 23.04.035 of Chapter 23.04 to revise the maximum allowed size of a programmable electronic sign component of a freeway sign, and making other nonsubstantive, ministerial, technical, or typographical changes to said Chapter 23.02 and 23.04 of Title 23 of the San José Municipal Code.

Documents Filed: (1) Proof of Publication of the Title of Ordinance No. 29153 executed on October 5, 2012, submitted by the City Clerk.

Action: Ordinance No. 29153 was adopted. (11-0.)

- (c) **ORD. NO. 29139** – Amend Chapters 3.28, the 1975 Federated Employees Retirement Plan, and 3.36, the 1961 Police and Fire Department Retirement Plan, of the San José Municipal Code to add Sections 3.28.115 and 3.36.325, respectively, regarding the role of the boards of administration in personnel matters.

[Deferred from 09/11/12 – Item 2.2(f) et. al. and 10/2/12 – Item 2.2(h)]

Documents Filed: (1) Proof of Publication of the Title of Ordinance No. 29139 executed on August 31, 2012, submitted by the City Clerk.

Action: Ordinance No. 29139 was adopted. (11-0.)

- (d) **ORD. NO. 29154** – Amending Section 6.52.050 of Chapter 6.52 of Title 6 of the San José Municipal Code to enable one person to hold two pawnbroker permits at one time.

Documents Filed: (1) Proof of Publication of the Title of Ordinance No. 29154 executed on October 5, 2012, submitted by the City Clerk.

Action: Ordinance No. 29154 was adopted. (11-0.)

## 2.3 Approval of Council Committee Reports.

- (a) **Transportation and Environment Report of September 10, 2012. (Liccardo)**  
[Deferred from 10/2/12 – Item 2.3(a)]

Documents Filed: Transportation and Environment Committee report of September 10, 2012.

Action: The Transportation and Environment Committee report was accepted. (11-0.)

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

None provided.

**2.5 City Council Travel Reports.**

None provided.

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

None provided.

- 2.7 (a) Adopt an ordinance ratifying the final 2011-2012 appropriation increases detailed in the staff memorandum.**
- (b) Adopt the following 2011-2012 Appropriation Ordinance and Funding Sources Resolution amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Central Fund:**
- (1) Increase the Earned Revenue estimate by \$2,803,231;**
  - (2) Increase the Transfer to Council District 1 by \$162,736;**
  - (3) Increase the Transfer to Council District 2 by \$135,416;**
  - (4) Increase the Transfer to Council District 3 by \$135,457;**
  - (5) Increase the Transfer to Council District 4 by \$126,867;**
  - (6) Increase the Transfer to Council District 5 by \$214,886;**
  - (7) Increase the Transfer to Council District 6 by \$247,082;**
  - (8) Increase the Transfer to Council District 7 by \$217,600;**
  - (9) Increase the Transfer to Council District 8 by \$132,518;**
  - (10) Increase the Transfer to Council District 9 by \$122,378;**
  - (11) Increase the Transfer to Council District 10 by \$94,405;**
  - (12) Increase the Transfer to City-Wide by \$795,172; and**
  - (13) Increase the Transfer to the General Fund – Parks Eligible Maintenance Costs by \$418,714.**
- (c) Adopt the following 2011-2012 Appropriation Ordinance and Funding Sources Resolution amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Maintenance Yards Purposes:**
- (1) Increase the Earned Revenue estimate by \$7,278; and**
  - (2) Increase the Transfer to the General Fund – Parks Eligible Maintenance Costs by \$7,278.**
- (d) Adopt the following 2011-2012 Appropriation Ordinance amendments in the General Fund:**
- (1) Increase the Workers' Compensation Claim – Fire appropriation by \$183,745;**
  - (2) Decrease the Workers' Compensation Claims – Transportation by \$85,000;**
  - (3) Decrease the Workers' Compensation Claims – Public Works by \$75,000; and**
  - (4) Decrease the Workers' Compensation Claims – Other Departments by \$23,745.**



- 2.7 (e) **Adopt the following 2011-2012 Appropriation Ordinance amendments in the Low and Moderate Income Housing Fund as of January 31, 2012:**
- (1) **Increase the Transfer to the Redevelopment Obligation Retirement Fund by \$726,214; and**
  - (2) **Decrease the Housing Loans and Grants appropriation by \$726,214.**
- CEQA: Not a Project, File No. PP10-067(b), Appropriation Ordinance. (City Manager's Office)**  
**(Deferred from 9/25/12 – Item 2.7)**

Documents Filed: Replacement memorandum from Budget Director Jennifer Maguire, dated October 10, 2012, recommending adoption of an ordinance, appropriation ordinances and funding sources resolutions.

Action: Ordinance No. 29158, entitled: “An Ordinance of the City of San José Authorizing and Ratifying Certain Encumbrances and/or Expenditures in Various Funds Made During City’s 2011-2012 Fiscal Year in Excess of Sums Appropriated Therefore”; Ordinance No. 29159, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund: Park Purposes Central Fund to Account for the Over-Expenditures that Occurred at the End of Fiscal Year 2011-2012; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”; Ordinance No. 29160, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund: Parks Maintenance Yards Purposes for the Transfer to the General Fund – Parks Eligible Maintenance Costs; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”; Ordinance No. 29161, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the General Fund for the Increase in Workers’ Compensation Claims – Fire, for the Decrease in Workers’ Compensation Claims – Transportation, for the Decrease in Workers’ Compensation Claims – Public Works, and for the Decrease in Workers’ Compensation Claims – Other Departments; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”, Ordinance No. 29162, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the Low and Moderate Income Housing Fund for the Transfer to the Redevelopment Obligation Retirement Fund; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”; Resolution No. 76448, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 75872 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2011-2012 to Adjust Revenues in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Central Fund”, Resolution No. 76449, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 75872 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2011-2012 to Adjust Revenues in the Construction Tax and Property Conveyance Tax Fund: Parks Maintenance Yards Purposes”, were adopted. (11-0.)

**2.8 Adopt a resolution:**

- (a) Authorizing an alternative competitive process for the sale of the property at 1795 Courtney Ave, APN: 477-30-011;**
- (b) Approving an agreement between the City and Global Business Solutions, LLC, for sale of the property in the amount of \$65,000; and**
- (c) Authorizing the City Manager or her designee to execute the sale agreement, the deed and all other documents necessary to complete the transaction.**

**CEQA: Exempt File No. PP10-016. Council District 7. (Economic Development)**

Documents Filed: Memorandum from Director of Economic Development/Chief Strategist Kim Welsh, dated September 24, 2012, recommending adoption of a resolution.

Action: Resolution No. 76450, entitled: "A Resolution of the Council of the City of San José Authorizing an Alternative Competitive Process for the Sale of Real Property at 1795 Courtney Avenue, Approving an Agreement with Global Business Solutions, LLC, for Sale of the Property in the Amount of \$65,000, and Authorizing the City Manager or Her Designee to Execute Certain Documents Necessary to Complete the Transaction", was adopted. (11-0.)

**2.9 Approve a First Amendment to the Agreement between the City of San José and Environmental Science Associates, Inc. and Jones & Stokes Associates, Inc. to expand their services on the Plant Master Plan environmental documentation to include: a) a separate CEQA process for a co-generation facility; b) coordination with regulatory agencies; and c) minor additional work within the original scope. The amendment would increase the maximum compensation by \$453,971, not to exceed \$2,453,971, and to extend the term through June 30, 2014. CEQA: Not a Project. File No. PP10-066(a), Agreements and Contracts for purchase of professional services. (Environmental Services)**

Documents Filed: (1) Memorandum from Environmental Services Director Kerrie Romanow, dated September 24, 2012, recommending approval of an Amendment to an Agreement. (2) Letter from Chairperson Chuck Reed, the Treatment Plant Advisory Committee, dated October 11, 2012, stating concurrence with the Staff recommendation.

Public Comments: David Wall questioned why a separate CEQA agreement was required.

Council Member Chu presented questions to Staff.

Action: Upon motion by Council Member Chu, seconded by Council Member Herrera and carried unanimously, a First Amendment to the Agreement between the City of San José and Environmental Science Associates, Inc. and Jones & Stokes Associates, Inc. to expand their services on the Plant Master Plan environmental documentation with related contingencies, was approved. (11-0.)

**2.10 Adopt a resolution authorizing the City Manager to execute an agreement between the City of San José and the Santa Clara Valley Water District for the operation and maintenance of the Silicon Valley Advance Water Purification Center. CEQA: Mitigated Negative Declaration, Resolution No. 75296. (Environmental Services)**

Documents Filed: (1) Memorandum from Environmental Services Director Kerrie Romanow, dated October 1, 2012, recommending adoption of a resolution. (2) Letter from Chairperson Chuck Reed, the Treatment Plant Advisory Committee, dated October 11, 2012, stating concurrence with the Staff recommendation.

Action: Resolution No. 76451, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Execute an Agreement between the City of San José and the Santa Clara Valley Water District for the Operation and Maintenance of the Silicon Valley Advanced Water Purification Center”, was adopted. (11-0.)

**2.11 Adopt a resolution authorizing the City Manager to execute the First Amendment to the Agreement for Webstreaming Software and Hosting Services to enhance existing services and to add additional functionality for a total one-time cost of \$23,050, a recurring subscription cost of \$2,550 per month, and a not to exceed 10% contingency of the revised contract amount, and increasing the amount of total compensation by \$137,750 for the initial term of the agreement ending August 15, 2015 from \$171,000 to \$308,750. CEQA: Not a Project, File No. PP10-066(a), Professional Services. (Finance)**

Documents Filed: Memorandum from Assistant Director of Finance Julia H. Cooper, dated September 24, 2012, recommending adoption of a resolution.

Action: Resolution No. 76452, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Execute a First Amendment to the Agreement for the Purchase of Webstreaming Software and Hosting Services with Granicus, Inc.”, was adopted. (11-0.)

**2.12 Adopt a resolution of intention to vacate a portion of Emory Street from Stockton Avenue to Laurel Street and set a public hearing on November 6, 2012 at 1:30 p.m. CEQA: Mitigated Negative Declaration, File No. PDC07-072. Council District 6. (Public Works)**

Documents Filed: Memorandum from Director of Public Works David Sykes, dated September 24, 2012, recommending adoption of a resolution.

Public Comments: Thomas Gorndt, Bellarmine College Prep and Scott Soper, College Park Neighborhood Association, spoke in support of the project. David Wall offered critical commentary.

Environmental Services Director Kerrie Romanow responded to questions from Council.

**2.12 (Cont'd.)**

Motion: Council Member Oliverio moved approval of the Staff's recommendations with clarifying verbiage, indicated below in "Action" as recommended by the City Attorney. The motion was seconded by Council Member Liccardo.

Action: On a call for the question, the motion carried unanimously, and Resolution No. 76453, entitled: "A Resolution of the Council of the City of San José Setting a Public Hearing to Consider Whether to Vacate a Portion of Emory Street, between Stockton Avenue and Laurel Street", was adopted, with direction to Staff that the purchase and sale agreement or land use permit reflect its current use as a pick-up/drop-off point for the school, and to assure the fence which closes the street is accurately reflected.

**2.13 As recommended by the Rules and Open Government Committee on October 3, 2012:**

- (a) Approve the District 2 Albanian Independence Day as a City Council sponsored Special Event; and**
- (b) Approve expending funds and accept donations from various individuals, businesses and community groups to support the event.**

**CEQA: Not a Project. (City Clerk)**

**[Rules Committee Referral 10/03/12 – Item G(6)]**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated October 4, 2012, transmitting the recommendations of the Rules and Open Government Committee.

Action: District 2 Albanian Independence Day 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, was approved. (11-0.)

- 2.14 (a) Approve the Youth Job Fair as a City Council sponsored Special Event; and**  
**(b) Approve and accept in-kind donations from businesses to support the event.**  
**CEQA: Not a Project. (City Clerk)**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated October 10, 2012, transmitting the recommendations of the Rules and Open Government Committee.

Action: The Youth Job Fair 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, was approved. (11-0.)

**2.15 As recommended by the Rules and Open Government Committee on October 10, 2012:**

- (a) Approve the District 4 Spooky Halloween and Haunted House as a City Council sponsored Special Event; and**
- (b) Approve and accept donations from various individuals, businesses, or community groups to support the event.**

**CEQA: Not a Project. (City Clerk)**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated October 11, 2012, transmitting the recommendations of the Rules and Open Government Committee.

Action: The District 4 Spooky Halloween and Haunted House 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, was approved. (11-0.)

### **END OF CONSENT CALENDAR**

### **STRATEGIC SUPPORT SERVICES**

- 3.3**
- (a) Accept the 2011-2012 City Manager's Annual Report of the Finances of the City of San José in compliance with City Charter Section 701 (F).**
  - (b) Adopt 2012-2013 Appropriation Ordinance and Funding Sources Resolution amendments in various operating and capital funds to implement the 2011-2012 Annual Report recommendations, including appropriate technical adjustments, as detailed in Section IV (Recommended Budget Adjustments and Clean-Up Actions).**
  - (c) Adopt a resolution amending Resolution No. 76128 to change the name of the fund from Affordable Housing Investment Fund to the Low and Moderate Income Housing Asset Fund, pursuant to Health and Safety Code Section 34176(d).**
  - (d) Approve the elimination of 1.0 Recreation Specialist position in the Parks, Recreation and Neighborhood Services Department, as detailed in Section IV (Recommended Budget Adjustments and Clean-Up Actions).**

**CEQA: Not a Project, File No. PP10-069(a), Annual Reports. (City Manager's Office)**

Documents Filed: Annual Report 2011-2012, dated September 2012, from the Office of the City Manager.

City Manager Debra Figone provided an overview of the Annual Report. Budget Director Jennifer Maguire continued the presentation and responded to questions. Council discussion followed.

Public Comments: David Wall offered perceived omissions in the report.

- 3.3** Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Pyle and carried unanimously, the 2011-2012 City Manager’s Annual Report of the Finances of the City of San José was accepted, Ordinance No. 29163, entitled: “An Ordinance of the City of San José Amending Ordinance No. 29102 to Appropriate Monies in the Various Funds to Implement 2011-2012 Annual Report Recommendations and Make Appropriate Technical Adjustments; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”; Resolution No. 76454, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 76302 to Implement the 2011-2012 Annual Report Recommendations and Make Appropriate Technical Adjustments to Adjust Revenues in Various Operating Funds”; Resolution No. 76455, entitled: “A Resolution of the Council of the City of San José Approving an Amendment to Resolution No. 76128 to Change the Name of the Affordable Housing Investment Fund to the Low and Moderate Income Housing Asset Fund, Pursuant to Health and Safety Code Section 34176(d)”, were adopted, and the elimination of 1.0 Recreation Specialist position in the Parks, Recreation and Neighborhood Services Department, as detailed in Section IV, was approved. (11-0.)
- 3.4** (a) **Authorize the elimination of three vacant Fire Battalion Chief positions and the addition of three Fire Division Chief positions once promotional appointments have been made and vacancies become available.**
- (b) **Adopt a resolution to:**
- (1) **Eliminate the stand-by pay practice for the Assistant Fire Chief and Deputy Fire Chief classifications and the previous stand-by pay practice for the Fire Division Chief classification.**
- (2) **Amend the City of San José City Pay Plan effective November 1, 2012 to make the following pay range adjustments:**
- (a) **Increase the pay range for Assistant Fire Chief from \$104,609.77 to 163,065.82 to \$114,024.65 to \$177,741.74;**
- (b) **Increase the pay range for Deputy Fire Chief from \$97,260.32 to 151,502.43 to \$106,013.75 to \$165,137.64;**
- (c) **Increase the top range for Fire Division Chief from \$124,074.94 to \$153,852.93; and,**
- (d) **Increase the pay range for Assistant Police Chief from \$104,609.77 to 163,065.82 to \$117,685.93 to 183,448.95.**
- (c) **Adopt the following 2012-2013 appropriation ordinance amendments in the General Fund:**
- (1) **Increase in the amount of \$66,000 in the Fire Department Personal Services appropriation; and**
- (c) (2) **Decrease in the amount of \$66,000 in the Fire Department Non-Personal/Equipment appropriation.**
- (d) **Direct the City Attorney to evaluate and prepare an amendment to Part 2 of Chapter 3.36 of Title 3 of the San José Municipal Code to exclude from membership in the Police and Fire Department Retirement Plan an Assistant Fire Chief, Deputy Fire Chief, Fire Division Chief, or Assistant Police Chief who has no prior service credit applicable to that plan.**

Action: Deferred to October 23, 2012 per Administration.

**3.5 As recommended by the Public Safety, Finance and Strategic Support Committee on September 20, 2012:**

- (a) **Accept the staff report on service delivery evaluation options for Recycle Plus Billing and Customer Service; and**
- (b) **Approve staff's proposed strategy to discontinue the in-house service delivery model and continue to evaluate two alternate service delivery options with a final recommendation to be brought forward to Council in Spring 2013.**

**CEQA: Not a Project, File No. PP10-069(a), City Organizational & Administrative Activities. (Finance/Environmental Services/Information Technology)  
[Public Safety, Finance and Strategic Support referral 9/20/12 – Item D(6)]**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated October 4, 2012, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee.

Environmental Services Director Kerrie Romanow and Assistant Director of Finance Julia H. Cooper responded to questions from Council.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the report on service delivery evaluation options for Recycle Plus Billing and Customer Service; and staff's proposed strategy to discontinue the in-house service delivery model and continue to evaluate two alternate service delivery options with a final recommendation to be brought forward to Council in Spring 2013, were accepted. (10-0-1. Absent: Kalra.)

**3.6 Council discussion and possible action on a City position regarding the following Propositions and Measures on the November 6, 2012 California General Election Ballot:**

- (a) **Measure D (Minimum Wage);**
- (b) **Measure E (Cardroom Gaming);**
- (c) **Proposition 32 (Political Contributions by Payroll Deduction, Contributions to Candidates);**
- (d) **Proposition 34 (Death Penalty);**
- (e) **Proposition 35 (Human Trafficking);**
- (f) **Proposition 36 (Three Strikes Law, Repeat Felony Offenders, Penalties); and**
- (g) **Proposition 39 (Tax Treatment for Multistate Businesses, Clean Energy, and Energy Efficiency Funding).**

Action: Deferred to October 23, 2012 per Rules and Open Government Committee.

## COMMUNITY & ECONOMIC DEVELOPMENT

### 4.1 Conduct a public hearing and adopt a resolution to vacate a portion of Cherry Avenue, east of Almaden Expressway. CEQA: Almaden Ranch Retail Center EIR (Resolution No. 76168). Council District 9. (Public Works)

Documents Filed: Memorandum from Director of Public Works David Sykes, dated September 24, 2012, recommending adoption of a resolution.

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 Rocha, seconded by Council Member Oliverio, and carried unanimously, Resolution No. 76456, entitled: "A Resolution of the Council of the City of San José Vacating a Portion of Cherry Avenue, East of Almaden Expressway", was adopted. (11-0.)

### 4.2 Adopt a resolution:

- (a) **Declaring 1,090 square feet of Cherry Avenue, east of Almaden Expressway, surplus to the needs of the City;**
- (b) **Approving an agreement between the City and Arcadia Development Company (Arcadia) for sale of the property in the amount of \$24,000; and**
- (c) **Authorizing the City Manager or her designee to execute the sale agreement, the deed and all other documents necessary to complete the transaction.**

**CEQA: Almaden Ranch Retail Center EIR (Resolution No. 76168). Council District 9. (Economic Development)**

Action: Deferred to October 23, 2012 per Administration.

## PUBLIC SAFETY SERVICES

### 8.1 Adopt a resolution:

- (a) **Finding that the award of a contract to Fehl Construction, Inc., for the restoration of San José Fire Station No. 5 and the expenditure of funds for the project is of urgent, necessity for the preservation of life, health and property;**
- (b) **Finding that the formal bidding requirements of the San José City Charter and the San José Municipal Code are inapplicable to the award of the public works contract to Fehl Construction Inc., as authorized by Section 1217(e)(5) of the Charter and San José Municipal Code Section 14.04.050; and**
- (c) **Authorize the Director of Public Works to negotiate and execute a contract to Fehl Construction, Inc., for the restoration of San José Fire Station No. 5 in an amount not to exceed \$800,000 with a contingency of \$100,000.**

**CEQA: Exempt, File No. PP12-085. Council District 3. (Public Works)  
(Rules Committee referral 10/10/12)**



## 8.1 (Cont'd.)

Documents Filed: Joint memorandum from Director of Public Works David Sykes and Fire Chief William McDonald, dated October 12, 2012, recommending adoption of a resolution.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, Resolution No. 76457, entitled: "A Resolution of the Council of the City of San José (1) Finding that the Award of a Contract for the Restoration of San Jose Fire Station No. 5 is of Urgent Necessity Pursuant to Charter Section 1217(5); (2) Finding that Formal Bidding Requirements are Inapplicable to the Award of the Public Works Contract; and (3) Awarding a Contract for the Restoration of San Jose Fire Station No. 5 to FEHL Construction, Inc. in the Amount of \$800,000 Plus \$100,000 Contingency", was adopted. (11-0.)

## REDEVELOPMENT – SUCCESSOR AGENCY

### 9.1 **Adopt a resolution by the City Council acting in its capacity as the Successor Agency to the Redevelopment Agency, adopting a funding sources and appropriation resolution for 2012-2013 authorizing payment of expenditures for items on the Recognized Obligation Payment Schedules 2 and 3, which detail the obligations of the Successor Agency for the period of July 1, 2012 through June 30, 2013. (Deferred from 08/21/12 – Item 9.2 et. al. and 10/2/12 – Item 9.1)**

Documents Filed: Memorandum from Successor Agency Managing Director Richard A. Keit, dated September 24, 2012, recommending adoption of a resolution.

Public Comments: David Wall expressed his views on the Obligation Payment Schedules.

Action: Upon motion by Council Member Herrera, seconded by Vice Mayor Nguyen, and carried unanimously, Successor Agency Resolution No. 7016, entitled: "A Resolution of the Council of the City of San José Acting in its Capacity as the Successor Agency to the Redevelopment Agency of the City of San José Authorizing Payment of Expenditures for Items on the Recognized Obligation Payment Schedule for July 1 – December 31, 2012 (ROPS 3), Which Detail the Obligations of the Successor Agency", was adopted. (11-0.)

## OPEN FORUM

- (1) David Wall provided comments on flawed legislation and strategies for approaching the Habitat Conservation Plan.
- (2) Jeff Bedolla offered comments on the Emory Street vacation and importance of communication within the neighborhood association.

## **ADJOURNMENT**

The Council of the City of San José adjourned at 5:59 p.m. in memory of Joy M. Sinnott for her dedication to the residents of San José and the young dancers who aspire to gain skills in the art of dance. (Chu)

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis Hawkins, CMC  
City Clerk

rmk/10-16-12MIN