

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, DECEMBER 18, 2012

The Council of the City of San José convened in Regular Session at 9:07 a.m. in the Council Chambers at City Hall.

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

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

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

Documents Filed: Letter from the Professional & Technical Engineers, Local 21, dated December 17, 2012, regarding Retiree Healthcare Negotiations.

Public Comments: Michael R. Seville, IFPTE Local 21, Acting Senior Representative, stated he sent a request for more information regarding the Supplemental Retirement Benefit Reserve on December 3, 2012 and has not received a response from the City.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:10 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel with respect to Public Employment/Public Employee Evaluation pursuant to Government Code Section 54957: (1) Department of Finance; Title: Acting Finance Director. (2) Retirement Services; Title: Acting Retirement Director. (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (c) with respect to anticipated litigation in one (1) matter. (C) to confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (a) with respect to existing litigation: (1) IAFF Local 230 v. City of San José; Names of Parties Involved: International Association of Firefighters, Local 230, City of San José; Court: State of California Public Employment Relations Board; Case No. SF-CE-970-M; Amount of Money or Other Relief Sought: Damages according to proof.

CLOSED SESSION (Cont'd.)

(D) to confer with Legal Counsel with respect to Real Property Designated Representatives pursuant to Government Code Section 54956.8: Property Street Address, Parcel Number or Other Unique Reference of Property: 62 South Second Street, San Jose, California; Negotiating Parties: Richard Keit and Kelly Hyland for the Successor Agency to the Redevelopment Agency of the City of San José and the City of San José and Ronald Wendel for Comedy Club of San José, LLC (The Improv); Under Negotiation: The direction will concern price and terms of payment; Likely Range of Value of Property: Negotiated Price based on appraisal and comparable property values. (2) Property Street Address, Parcel Number or Other Unique Reference of Property: 88 East San Fernando Street, San José, California; Negotiating Parties: Jim Ortbal and Laura Wells for the City of San José; Under Negotiation: The direction will concern price and terms of payment; Likely Range of Value of Property: Negotiated Price based on appraisal and comparable property values. (E) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (2) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (3) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP. (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP. (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of 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

CLOSED SESSION (Cont'd.)

Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc. Web: <http://www.sanjoseca.gov/employeerelations/moa.asp>; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 11:07 a.m. and reconvened to Regular Session at 1:34 p.m. in the Council Chambers.

Present: Council Members - Campos, Chu (2:17 p.m.), Constant, Herrera, Kalra, Liccardo, Nguyen, Oliverio (1:42 p.m.), Pyle, Rocha; Reed.

Absent: Council Members - All Present.

INVOCATION (MAYOR)

Sally Ashton, Santa Clara County Poet Laureate, presented the Invocation.

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

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, and Ceremonial Items 1.3 and 1.4 were dropped. (9-0-2. Absent: Chu, Oliverio.)

CLOSED SESSION REPORT

Mayor Reed disclosed the following Closed Session actions of December 18, 2012:

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

Department: Department of Finance.
Title: Julia H. Cooper, Director of Finance

Department: Retirement Services.
Title: Roberto Pena, Director of Retirement Services.

CEREMONIAL ITEMS

- 1.1 Presentation of a commendation to Harker School student Sameer Vij for his exceptional leadership in founding TiEYouth, a nonprofit youth entrepreneurship conference held at TiEcon 2012, the largest entrepreneurship conference in the world. (Herrera/Constant)**

Mayor Reed and Council Members Herrera and Constant recognized and commended Sameer Vij for his extraordinary leadership.

- 1.2 Presentation of a commendation to the San José Vietnam War Memorial Foundation for raising funds and completing the installation of the San José Vietnam War Memorial to be dedicated in late December. (Liccardo)**

Mayor Reed and Council Member Liccardo recognized and commended the San José Vietnam War Memorial Foundation.

- 1.3 Presentation of a commendation to Mr. Cung Le in honor of his outstanding martial arts performance and his international representation of the United States and the City of San José as a UFC Champion in China. (Nguyen)**

Action: Dropped per Orders of the Day.

- 1.4 Presentation of a commendation to Wilma Acosta for her courageous efforts in saving a special needs student from a burning school bus near Sylvandale Elementary School. (Nguyen)**

Action: Dropped per Orders of the Day.

- 1.5 Presentation of a commendation to Council Member Nancy Pyle for her service to the residents of the City of San José. (Orders of the Day)**

Mayor Reed and the City Council recognized and commended Council Member Nancy Pyle for her exemplary service and dedication to the District 10 residents and the community of San José.

CONSENT CALENDAR

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

2.1 Approval of Minutes.

There were none.

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 29183** – Amending Section 10.32.010 of Chapter 10.32 of Title 10 of the San José Municipal Code to exclude properly trained airport employees and contract biologists discharging firearms within the perimeter of the Airport as part of the Airport’s Federal Aviation Administration-required wildlife hazard management program from the prohibition on discharging firearms within the limits of the City.

Documents Filed: Proof of Publication of the Title of Ordinance No. 29183 executed on December 7, 2012, submitted by the City Clerk.

Public Comments: Chris Sarbaugh commented about firearm discharge at the San José Airport.

Action: Ordinance No. 29183 was adopted. (11-0.)

- (b) **ORD. NO. 29184** – Amending Title 3 of the San José Municipal Code to amend various Sections of Chapter 3.28 and to add a new Chapter 3.49 for the purpose of establishing an option between the Tier 2 Defined Benefit Plan and a Defined Contribution 401(a) Plan that excludes participation in retiree healthcare, for Unclassified Executive Management and Professional Employees (Unit 99) who are hired on or after January 20, 2013.

Documents Filed: Proof of Publication of the Title of Ordinance No. 29184 executed on December 7, 2012, submitted by the City Clerk.

Action: Ordinance No. 29184 was adopted. (11-0.)

- (c) **ORD. NO. 29187** - Rezoning certain real property situated on the east side of Monterey Road, approximately 300 feet southerly of Alma Avenue, to a Conforming Planned Development Rezoning from the CG(PD) Planned Development Zoning District to the CG(PD) Planned Development Zoning District to allow a third drive-through use (carwash at a gas station) to a previously-approved 257,296 square foot shopping center (Sun Gardens). PDC12-023

Documents Filed: Proof of Publication of the Title of Ordinance No. 29187 executed on December 7, 2012, submitted by the City Clerk.

Action: Ordinance No. 29187 was adopted. (11-0.)

- 2.2 (d) **ORD. NO. 29188 - Rezoning certain real property situated on the north side of the future Turturici Way, approximately 400 feet easterly of San Felipe Road (6782 & 6790 San Felipe Road), from the R-1-1 Single-Family Residence District to the A(PD) Planned Development Zoning District. PDC11-012**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29188 executed on December 7, 2012, submitted by the City Clerk.

Action: Ordinance No. 29188 was adopted. (11-0.)

- (e) **ORD. NO. 29189 – Rezoning certain real property of approximately 8.26 acres in size situated on the east side of Cottle Road between Coronado Avenue and Raleigh Road from IP(PD) Planned Development Zoning District to the CN-Commercial Neighborhood Zoning District. C12-030**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29189 executed on October 18, 2012, submitted by the City Clerk.

Action: Ordinance No. 29189 was adopted. (11-0.) (First Reading: 9-2. Noes: Nguyen, Rocha.)

- (f) **ORD. NO. 29190 – Rezoning certain real property situated on the south side of Alum Rock Avenue, approximately 150 feet northeasterly of Sunnyslope Avenue (4700 Alum Rock Ave), from Unincorporated County Property to the R-1-8(PD) Planned Development Zoning District. PDC11-008**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29190 executed on October 18, 2012, submitted by the City Clerk.

Action: Ordinance No. 29190 was adopted. (11-0.)

- (g) **ORD. NO. 29191 – Rezoning certain real property situated on the northwest corner of Lincoln Avenue and Auzerais Avenue on a 0.44 gross-acre site (393 Lincoln Avenue) to the CIC Combined Industrial/Commercial Zoning District. C12-015**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29191 executed on October 18, 2012, submitted by the City Clerk.

Action: Ordinance No. 29191 was adopted. (11-0.)

- 2.2 (h) **ORD. NO. 29192 – Approving a Development Agreement with Riverview Apartment Development Company, LLC., relative to the development of the Riverview Project on certain real property located in North San José and authorizing the City Clerk to execute the Development Agreement and cause the same to be recorded with the Santa Clara County Recorder’s Office. DA12-003**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29192 executed on October 18, 2012, submitted by the City Clerk.

Action: Ordinance No. 29192 was adopted. (11-0.)

2.3 **Approval of Council Committee Reports.**

There were none.

Public Comments: David Wall provided comments about the Mexican Heritage Plaza.

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

There were none.

2.5 **City Council Travel Reports.**

There were none.

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

There were none.

- 2.7 (a) **Adopt a resolution authorizing the City Manager to accept the Federal Department of Energy grant increase of \$38,479 for a total grant of \$788,479 and to execute the First Amendment to Retrofit California Sub-Awardee Agreement between the Association of Bay Area Governments and the City of San José to allow for continuation of the Better Buildings Program San José until May 31, 2013 or until funds are expended;**
- (b) **Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:**
- (1) **Increase the estimated Revenue from the Federal Government – Recovery Act, in the amount of \$38,479; and**
 - (2) **Increase the City-wide Appropriation to the Environmental Services Department, Recovery Act – Retrofit California in the amount of \$38,479.**

CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Environmental Services/City Manager’s Office) (Deferred from 12/11/12 – Item 2.9)

2.7 (Cont'd.)

Documents Filed: Memorandum from Director of Environmental Services Kerrie Romanow and Budget Director Jennifer A. Maguire, dated December 5, 2012, recommending adoption of a resolution and appropriation ordinance and resolution amendments.

Action: Resolution No. 76510, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Accept a Federal Department of Energy Grant Increase and To Execute a First Amendment to the Retrofit California Sub-Awardee Agreement with the Association of Bay Area Governments for the Better Buildings Program San José"; Ordinance No. 29193, entitled: "An Ordinance of the City of San José Amending Ordinance No. 29102 to Appropriate Monies in the – General Fund Citywide Environmental & Utility Services for the Recovery Act – Retrofit California Program; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption" and Resolution No. 76511, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 76302 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2012-2013 To Adjust Revenues in the General Fund", were adopted. (11-0.)

2.8 **Approve a Change Order General Conditions Amendment to the Master Service Agreement with Pacific Gas and Electric (PG&E) to extend the term through March 31, 2013 for the Silicon Valley Energy Watch Program. CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Environmental Services) (Deferred from 12/11/12 – Item 2.10)**

Documents Filed: Memorandum from Director of Environmental Services Kerrie Romanow, dated December 4, 2012, recommending approval of a change order general conditions amendment to the master service agreement.

Public Comments: David Wall spoke in opposition to the Staff recommendations.

Action: A Change Order General Conditions Amendment to the Master Service Agreement with Pacific Gas and Electric to extend the term through March 31, 2013 for the Silicon Valley Energy Watch Program was approved. (11-0.)

2.9 (a) **Approve an ordinance amending Chapter 6.64 of Title 6 of the San José Municipal Code to amend Section 6.64.130 and add a new Section 6.64.465 to create exceptions for out of town taxi businesses and taxi drivers whose principal place of business is outside of the City and who only do business in the City at the airport from obtaining an additional license under Title 6 if properly permitted under Title 25. CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Airport/Police)**

- 2.9 (b) Approve an ordinance amending Sections 6.64.440 and 6.64.620 of Chapter 6.44 of Title 6 of the San José Municipal Code regarding Police taxicab permits to remove outdated language and to clarify hearing requirements to ensure consistency with other permit provisions in the Code. CEQA: Not a Project, File No. PP10-068(c), Municipal Code or Policy. (City Attorney's Office)**

Action: Renumbered to Item 6.2. Item 2.9 was deferred to January 29, 2013 per Administration.

- 2.10 Approve the First Amendment to the Lease Agreement between the City and the Tech Museum of Innovation (Tech) to clarify the date of the temporary certificate of occupancy, modify the operating payment schedule from monthly to quarterly, add the Tech as a participant in the Cultural Facilities Capital Maintenance Fund, and allow the City Manager to enter into minor amendments in the future without further Council approval. CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Economic Development)**

Documents Filed: Memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated November 26, 2012, recommending approval of the first amendment to the lease agreement.

Council Member Oliverio requested that Staff encourage the Tech Museum of Innovation to relocate back to the San José Convention Center.

Public Comments: David Wall spoke in opposition to the Staff recommendations.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Constant and carried unanimously, the First Amendment to the Lease Agreement between the City and the Tech Museum of Innovation (Tech) to clarify the date of the temporary certificate of occupancy, modify the operating payment schedule from monthly to quarterly, add the Tech as a participant in the Cultural Facilities Capital Maintenance Fund, and allow the City Manager to enter into minor amendments in the future without further Council approval, was approved. Staff was directed to encourage the Tech Museum of Innovation to relocate back to the San José Convention Center. (11-0.)

- 2.11 Approve an Exclusive Due Diligence Agreement with Hopkins Real Estate Group for the potential development of the Singleton Landfill for use as a retail development and a sports complex. CEQA: Statutorily Exempt, State CEQA Guidelines Section 15262, Feasibility and Planning Studies. (Economic Development)**

Action: Renumbered to Item 4.6. See Item 4.6 for action.

2.12 Adopt a resolution:

- (a) Declaring an additional portion of land, currently within the right-of-way adjacent to Assessor's Parcel Number 015-03-013, surplus to the needs of the City.**
- (b) Authorizing an alternative competitive process for the sale of 1590 Gold Street and an adjacent portion of right of way.**
- (c) Approving the agreement between the City and Fire House, LLC, for sale of the property in the amount of \$295,000.**

CEQA: Exempt, File No. PP12-086. (Economic Development)

Documents Filed: Memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated November 26, 2012, recommending adoption of a resolution.

Public Comments: David Wall spoke in opposition to the Staff recommendations.

Action: Resolution No. 76512, entitled: "A Resolution of the Council of the City of San José Declaring Certain City Owned Property Currently Within the Right of Way Adjacent to Assessor's Parcel Number 015-03-013 as Surplus to the Needs of the City, Authorizing an Alternative Competitive Process for the Sale of 1590 Gold Street and an Adjacent Portion of Right of Way and Approving an Agreement with Firehouse, LLC for Sale of the Property in the Amount of \$295,000", was adopted. (11-0.)

2.13 Adopt a resolution:

- (a) Declaring APN 245-27-021, the approximately 2,962 square foot parcel adjacent to Sierra Road, as surplus to the needs of the City.**
- (b) Approving the quitclaim deed and agreement for transfer of such parcel APN 245-27-021 to the Santa Clara Valley Transportation Authority as part of the BART expansion to San José as indicated on Attachment A of the staff memorandum.**

CEQA: Not a Project, File No. PP12-087. Council District 4. (Economic Development)

Documents Filed: City Council Action Request from Assistant Director of Economic Development Nanci Klein, dated December 5 2012, recommending adoption of a resolution.

Public Comments: David Wall spoke in opposition to the Staff recommendations.

Action: Resolution No. 76513, entitled: "A Resolution of the Council of the City of San José Declaring Certain City Owned Property Located Adjacent to Sierra Road as Surplus to the Needs of the City and Approving the Quitclaim Deed and Agreement for Transfer to the Santa Clara Valley Transportation Authority as Part of the Bart Expansion to San José", was adopted. (11-0.)

- 2.14 Approve the Fifth Amendment to the Master Agreement between the City of San José and David J. Powers & Associates for environmental consulting services to extend the term through December 31, 2013. CEQA: Not a Project, File No. PP 10-066(e), services that involve no physical changes to the environment. (Environmental Services)**

Documents Filed: City Council Action Request from Director of Environmental Services Kerrie Romanow dated November 30, 2012, recommending approval of the fifth amendment to the master agreement.

Action: The Fifth Amendment to the Master Agreement between the City of San José and David J. Powers & Associates for environmental consulting services to extend the term through December 31, 2013, was approved. (11-0.)

- 2.15 Approve the First Amendment to the Commercial Solid Waste and Recyclable Materials Collection Franchises Agreement with Allied Waste Services of Santa Clara County dba Republic Services. CEQA: Not a Project, File No. PP10-066(e), services that involve no physical changes to the environment. (Environmental Services)**

Documents Filed: City Council Action Request from Director of Environmental Services Kerrie Romanow, dated December 6, 2012, recommending approval of the first amendment to the agreement.

Action: The First Amendment to the Commercial Solid Waste and Recyclable Materials Collection Franchises Agreement with Allied Waste Services of Santa Clara County dba Republic Services, was approved. (11-0.)

- 2.16 Adopt a resolution authorizing the Bay Area Water Supply and Conservation Agency to make a prepayment on the City's behalf of capital obligations owed to the San Francisco Public Utilities Commission pursuant to a 2009 Water Supply Agreement and other related actions. CEQA: Statutorily Exempt, File No. PP10-067(a), CEQA Guidelines Section 15273 - Rates, Tolls, Fares, and Charges. Council Districts 2, 4, 7 and 8. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services Kerrie Romanow and Director of Finance Julia H. Cooper, dated December 3, 2012, recommending adoption of a resolution.

Action: Resolution No. 76514, entitled: "A Resolution of the Council of the City of San José Authorizing the Bay Area Water Supply and Conservation Agency to Make a Prepayment on the City's Behalf of Capital Obligations Owed to the city and County of San Francisco Pursuant to a 2009 Water Supply Management and other Related Matters", was adopted. (11-0.)

2.17 Authorize the City Manager to amend the existing Open Purchase Order 47565 with Trendtec Inc. to:

- (a) Increase the total compensation by \$210,055 for a revised total amount not to exceed \$291,055 for continued temporary employment services for five Assistant Environmental Inspectors.**
- (b) Extend the term of the Purchase Order through June 30, 2013.**

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

Documents Filed: (1) City Council Action Request from Director of Finance Julia H. Cooper, dated December 6, 2012, recommending authorization to the City Manager to amend the existing open purchase order 47565. (2) Supplemental letter from Chuck Reed, Chair, the Treatment Plant Advisory Committee, dated December 12, 2012, stating concurrence with the Staff recommendations.

Director of Finance Julia H. Cooper clarified that the recommendations for Item 2.17, stated above are correct, and that the action to be taken today will extend the term through June 30, 2013. Director Cooper also pointed out that the memorandum stated March 31, 2013 did not include the third part of the recommendation.

Public Comments: David Wall spoke in opposition to the Staff recommendations.

Action: Upon motion by Council Member Pyle, seconded by Vice Mayor Nguyen and carried unanimously, the City Manager was authorized to amend the existing Open Purchase Order 47565 with Trendtec Inc. to increase the total compensation by \$210,055 for a revised total amount not to exceed \$291,055 for continued temporary employment services for five Assistant Environmental Inspectors and to extend the term of the Purchase Order through June 30, 2013. (11-0.)

2.18 (a) Authorize the City Manager to amend the existing Open Purchase order 46929 with Essential Staffing (Walnut Creek, CA) to:

- (1) Amend the existing Open Purchase Order 46929 with Essential Staffing (Walnut Creek, CA) to encumber an additional \$370,256 for a revised total amount not-to-exceed \$751,000 for continued temporary employment services and extend the term for an additional six months, ending June 30, 2013.**
- (2) Amend the Purchase Order to provide for an option to extend the term for up to an additional twelve months through June 30, 2014, with total compensation not to exceed \$1,500,000 and subject to the appropriation of funds.**

(b) Adopt the following Appropriation Ordinance amendments in the General Fund:

- (1) Decrease the Human Resources Department's Personal Services appropriation by \$604,500.**
- (2) Increase the Human Resources Department's Non-Personal Services appropriation by \$604,500.**

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

2.18 (Cont'd.)

Documents Filed: Memorandum from Director of Finance Julia H. Cooper and Budget Director Jennifer A. Maguire, dated December 8, 2012, recommending authorization to the City Manager to amend the purchase order and adoption of appropriation ordinance amendments.

Public Comments: David Wall spoke in opposition to the Staff recommendations.

Action: The City Manager was authorized to amend the existing Open Purchase order with Essential Staffing to encumber an additional \$370,256 for a revised total amount not-to-exceed \$751,000 for continued temporary employment services and extend the term for an additional six months, ending June 30, 2013; to amend the Purchase Order to provide for an option to extend the term for up to an additional twelve months through June 30, 2014, with total compensation not to exceed \$1,500,000 and subject to the appropriation of funds and Ordinance No. 29194, entitled: "An Ordinance of the City of San José Amending Ordinance No. 29102 to Appropriate Monies in the General Fund – Human Resources for Non Personal/Equipment Services; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. (11-0.)

2.19 **Approval of the Fifth Amendment to the Agreement with Langham Consulting Services, Inc., to provide professional services related to the City's Integrated Billing System to increase the total compensation by \$110,000 to an amount not to exceed \$950,000, to extend the agreement term through December 31, 2014, and to amend the scope of services. CEQA: Not a Project, File No. PP10-066(e), services that involve no physical changes to the environment. (Finance/Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services Kerrie Romanow and Director of Finance Julia H. Cooper, dated November 26, 2012, recommending approval of the fifth amendment to the agreement. (2) Supplemental memorandum from Director of Environmental Services Kerrie Romanow, dated December 11, 2012, identifying an error in the language contained in the recommendation section of the report.

Public Comments: David Wall spoke in opposition to the Staff recommendations.

Action: The Fifth Amendment to the Agreement with Langham Consulting Services, Inc., to provide professional services related to the City's Integrated Billing System to increase the total compensation by \$110,000 to an amount not to exceed \$950,000, to extend the agreement term through December 31, 2014, and to amend the scope of services was approved. (11-0.)

2.20 Adopt a resolution authorizing the City Manager to execute a Deed of Trust with the U.S. Department of Housing and Urban Development to be recorded against the Convention Center expansion site and the Fairmont Parking Garage as collateral for a Section 108 Loan. (Housing)

Documents Filed: Memorandum from Director of Housing Leslye Corsiglia and Managing Director Richard A. Keit, dated December 7, 2012, recommending adoption of a resolution.

Action: Resolution No. 76516, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Execute a Deed of Trust with the U.S. Department of Housing and Urban Development to be Recorded Against the Convention center Expansion Site and the Fairmont Parking Garage as Collateral for a Section 108 Loan”, was adopted. (11-0.)

2.21 Approve an amendment to extend the term of an agreement with Mitchell Corporation to provide workers’ compensation cost containment services and increase compensation at a cost not to exceed \$975,000 during the period July 1, 2012 to March 31, 2013, subject to annual appropriation of funds by the City Council. CEQA: Not a project. File No. PP10-066(e), Services that involve no physical changes to the environment. (Human Resources)

Documents Filed: Memorandum from Deputy City Manager Alex Gurza, dated November 26, 2012, recommending approval of an amendment to the agreement.

Public Comments: David Wall spoke in opposition to the Staff recommendations.

Action: An amendment to extend the term of an agreement with Mitchell Corporation to provide workers’ compensation cost containment services and increase compensation at a cost not to exceed \$975,000 during the period July 1, 2012 to March 31, 2013, subject to annual appropriation of funds by the City Council, was approved. (11-0.)

2.22 Adopt a resolution summarily vacating a portion of a 20-foot wide accessory easement for sanitary sewer repair purposes lying on a property located at 1460 North Fourth Street. CEQA: Exempt, File No. PP12-101. Council District 3. (Public Works)

Documents Filed: Memorandum from Director of Public Works David Sykes, dated November 26, 2012, recommending adoption of a resolution.

Action: Resolution No. 76517, entitled: “A Resolution of the Council of the City of San José Summarily Vacating a Portion of a 20 Foot Wide Accessory Easement for Sanitary Sewer Repair Purposes Located at 1640 North Fourth Street”, was adopted. (11-0.)

- 2.23 Approve the second amendment to the master agreement with Denise Duffy & Associates, extending the term from December 31, 2012 to December 31, 2014 for a continuation of ongoing environmental consultant services supporting various City projects, at no additional cost to the City. CEQA: Not a Project, File No. PP10-066(d), Consultant Services. (Public Works)**

Documents Filed: City Council Action Request from Director of Public Works David Sykes, dated December 6, 2012, recommending approval of the second amendment to the master agreement.

Public Comments: David Wall spoke in opposition to the Staff recommendations.

Action: The second amendment to the master agreement with Denise Duffy & Associates, extending the term from December 31, 2012 to December 31, 2014 for a continuation of ongoing environmental consultant services supporting various City projects, at no additional cost to the City, was approved. (11-0.)

- 2.24 Approve the Second Amendment to the Consultant Agreement with AECOM USA, Inc. for the 60-Inch Brick Interceptor Phase VI-A Project by extending the term of the Agreement from December 31, 2012 to December 31, 2015 and increasing the amount of compensation by \$226,363, for a total agreement amount not to exceed \$3,437,741, and adding a provision allowing the Director of Public Works to extend the term for another six (6) months. CEQA: Exempt, File No PP09-078. Council Districts 3 and 4. (Public Works)**

Documents Filed: Memorandum from Director of Public Works David Sykes, dated November 26, 2012, recommending approval of the second amendment to the agreement.

Action: The Second Amendment to the Consultant Agreement with AECOM USA, Inc. for the 60-Inch Brick Interceptor Phase VI-A Project by extending the term of the Agreement from December 31, 2012 to December 31, 2015 and increasing the amount of compensation by \$226,363, for a total agreement amount not to exceed \$3,437,741, and adding a provision allowing the Director of Public Works to extend the term for another six (6) months, was approved. (11-0.)

- 2.25 (a) Increase the contingency for the Echo Valley Drive and Cahalan Avenue Sanitary Sewer Replacement Project by \$70,000 for a total contingency amount of \$164,900.**
(b) Approve Contract Change Order No. 2 with Ranger Pipelines, Inc. for the Echo Valley Drive and Cahalan Avenue Sanitary Sewer Replacement Project in the amount of \$80,211.82, for a total contract amount of \$1,110,103.97.
CEQA: Exempt, File No. PP11-029. (Public Works)

Documents Filed: City Council Action Request from Assistant Director of Public Works Harry Freitas, dated December 6, 2012, recommending increasing the contingency and approval of the change order.

2.25 (Cont'd.)

Action: The increase of the contingency for the Echo Valley Drive and Cahalan Avenue Sanitary Sewer Replacement Project by \$70,000 for a total contingency amount of \$164,900 and the Contract Change Order No. 2 with Ranger Pipelines, Inc. for the Echo Valley Drive and Cahalan Avenue Sanitary Sewer Replacement Project in the amount of \$80,211.82, for a total contract amount of \$1,110,103.97, were approved. (11-0.)

2.26 Approval of the Second Amendment to the Route 87 Freeway Project Right of Way Cooperative Agreement between the State of California and the City of San José, extending the termination date of the agreement to December 31, 2014. CEQA: Route 87 Freeway Project EIR, Resolution No. 65071. Council Districts 3 and 4. (Transportation)

Documents Filed: City Council Action Request from Director of Transportation Hans F. Larsen, dated November 30, 2012, recommending approval of the second amendment to the agreement.

Action: The Second Amendment to the Route 87 Freeway Project Right of Way Cooperative Agreement between the State of California and the City of San José, extending the termination date of the agreement to December 31, 2014, was approved. (11-0.)

2.27 Approval of the Third Amendment to the Guadalupe Corridor Right of Way Cooperative Agreement between the State of California, the County of Santa Clara, the Santa Clara Valley Transportation Authority and the City of San José, extending the termination date of the agreement to December 31, 2013. CEQA: Exempt, File No. PP07-129. Guadalupe Corridor EIR, December 1981. Council Districts 2, 6, 7, 10. (Transportation)

Documents Filed: City Council Action Request from Director of Transportation Hans F. Larsen, dated November 30, 2012, recommending approval of the third amendment to the agreement.

Action: The Third Amendment to the Guadalupe Corridor Right of Way Cooperative Agreement between the State of California, the County of Santa Clara, the Santa Clara Valley Transportation Authority and the City of San José, extending the termination date of the agreement to December 31, 2013, was approved. (11-0.)

**2.28 As recommended by the Rules and Open Government Committee on December 5, 2012, adopt a resolution approving the compensation package for Judge LaDoris Cordell for services as Independent Police Auditor for a term beginning January 1, 2013 and ending December 31, 2016. (Mayor)
[Rules Committee referral 12/5/12 – Item G(3)]**

2.28 (Cont'd.)

Documents Filed: (1) Memorandum from Council Member Constant, dated December 17, 2012, recommending adoption of a resolution as described in his memorandum. (2) Memorandum from City Clerk Dennis D. Hawkins, CMC, dated December 5, 2012, transmitting the recommendations of the Rules and Open Government Committee.

Mayor Reed presented introductory comments about his memorandum dated November 27, 2012 regarding compensation for the Independent Police Auditor.

Motion: Council Member Liccardo moved approval of the recommendations from the Rules and Open Government Committee regarding the Independent Police Auditor Compensation Package. Council Member Pyle seconded the motion.

Council Member Constant expressed opposition to the motion on the floor, citing that there was not a system in place in order to treat all employees fairly.

Substitute Motion: Council Member Constant moved approval of his memorandum dated December 17, 2012, recommending approving compensation for the Independent Police Auditor with the starting bi-weekly salary no greater than the current salary being received and other compensation. Council Member Oliverio seconded the motion.

Council discussion ensued.

On a call for the question, the substitute motion failed. (2-9. Noes: Campos, Chu, Herrera, Kalra, Liccardo, Nguyen, Pyle, Rocha; Reed.)

Public Comments: Ross Signorino stated this does not seem like the right time to agree to a raise to the Independent Police Auditor. David Wall spoke in opposition to the Staff recommendations.

Action: On a call for the question, the original motion carried, Resolution No. 76518, entitled: "A Resolution of the Council of the City of San José Approving the Terms of Compensation for the Independent Police Auditor Judge LaDoris H. Cordell (Ret.) for a Term Beginning January 1, 2013 and Ending December 31, 2016", was adopted. (9-2. Noes: Constant, Oliverio.)

2.29 **Adopt a resolution amending the Conflict of Interest Code for the City of San Jose.** **(City Clerk)** **(Rules Committee referral 12/12/12)**

Documents Filed: Memorandum from Acting City Clerk Toni Taber, CMC, dated December 14, 2012, recommending adoption of a resolution.

Council Member Constant pulled Item 2.29 from the consent calendar for clarification. City Attorney Richard Doyle responded to questions from Council Member Constant.

2.29 (Cont'd.)

Motion: Council Member Constant moved approval of the Staff recommendations, including direction to the City Attorney to review Page 1 of Appendix 1 and update the Classification Scheme if required. Council Member Liccardo seconded the motion.

Action: On a call for the question, the motion carried unanimously, Resolution No. 76519, entitled: “A Resolution of the Council of the City of San José Amending the Conflict of Interest Code for the City of San José”, was adopted, as amended: The Office of the City Attorney was directed to review Page 1 of Appendix 1 and update the Classification Scheme if required. (11-0.)

2.30 Adopt a resolution approving a waiver of the Revolving Door Restriction under Municipal Code Section 12.10.070 to allow Lee Price, MMC, former City Clerk, to provide consulting services to assist the Office of the City Clerk. (City Clerk) (Rules Committee referral 12/12/12)

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, CMC, dated December 10, 2012, recommending adoption of a resolution.

Public Comments: Ross Signorino spoke in support to the Staff recommendations.

Action: Resolution No. 76520, entitled: “A Resolution of the Council of the City of San José Approving a Waiver of the Revolving Door Restriction Under Municipal Code Section 12.10.070 To Allow Lee Price To Provide Consulting Services to the Office of the City Clerk”, was adopted. (11-0.)

2.31 As recommended by the Rules and Open Government Committee on December 12, 2012, adopt a resolution approving compensation for Acting City Clerk Toni Taber. (Mayor) [Rules Committee referral 12/12/12 – Item G(2)]

Documents Filed: Memorandum from Mayor Reed, dated December 13, 2012, recommending adoption of a resolution.

Public Comments: David Wall and Mark Trout provided comments.

Action: Resolution No. 76521, entitled: “A Resolution of the Council of the City of San José Approving the Terms of Compensation for the Acting City Clerk, Toni Taber”, was adopted. (11-0.)

- 2.32 Approve travel by Council Member Campos to San Diego, CA on January 18 – 20, 2013 to attend the League of California Cities, Latino Caucus Board Retreat. Source of Funds: Mayor/Council Travel Fund. (Campos)
[Rules Committee referral 12/12/12 – Item G(3)]**

Documents Filed: Memorandum from Council Member Campos, dated November 30, 2012, requesting approval of travel.

Action: The travel request for Council Member Campos was approved. (11-0.)

- 2.33 As recommended by the Rules and Open Government Committee on December 12, 2012, approve Council Appointments for 2013-2014. (Mayor)
[Rules Committee referral 12/12/12 – Item G(5)]**

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, CMC, dated December 13, 2012, transmitting the recommendations of the Rules and Open Government Committee.

Mayor Reed presented amendments to his recommendations as indicated below in “Action”.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the Council Appointments for 2013 – 2014 were approved, as amended: (1) San José Beautiful is no longer in operation. (2) Caltrans Joint Powers Board: Council Member Kalra appointed as Member. (3) Santa Clara County Local Agency Formation: Council Member Constant appointed as Member; Council Member Elect Khamis appointed as Alternate. (4) Santa Clara Valley Transportation Authority Board: Council Member Rocha appointed as Member; Council Member Elect Khamis appointed as Alternate. (11-0.)

- 2.34 Approve travel by Mayor Reed to New York City, NY on December 6-7, 2012 to speak at a Pension Reform Forum co-sponsored by the TIAA-CREF Institute and SUNY Rockefeller Institute of Government, and to meet with local and state officials on a variety of issues significant to San José. Source of Funds: TIAA-CREF is paying for the round-trip flight, lodging, and ground transportation to/from the airport. Incidental expenses will be paid from the Mayor’s Office Fund. (Mayor)
(Orders of the Day)**

Documents Filed: Memorandum from Mayor Reed, dated December 4, 2012, requesting approval of travel.

Public Comments: David Wall spoke in opposition to the Staff recommendations.

Action: The travel for Mayor Reed was approved. (11-0.)

END OF CONSENT CALENDAR

COMMUNITY & ECONOMIC DEVELOPMENT

4.6 Approve an Exclusive Due Diligence Agreement with Hopkins Real Estate Group for the potential development of the Singleton Landfill for use as a retail development and a sports complex. CEQA: Statutorily Exempt, State CEQA Guidelines Section 15262, Feasibility and Planning Studies. (Economic Development)

Documents Filed: (1) Memorandum from Mayor Reed, Vice Mayor Nguyen and Council Member Rocha, dated December 14, 2012, recommending approval of the Staff recommendations, with additional direction as indicated in “Action”. (2) Memorandum from Director of Economic Development/Chief Strategist Kim Walesh and Acting Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares, dated December 5, 2012, recommending approval of the agreement.

Item 4.6 was renumbered from Item. 2.11.

Assistant Director of Economic Development Nanci Klein, Acting Director of Parks and Recreation and Neighborhood Services Julie Edmonds-Mares presented the report and responded to Council questions and concerns.

Rick Odekirk, Big League Dreams provided comments about his company.

Motion: Council Member Rocha moved approval of the memorandum dated December 14, 2012, he cosigned with Mayor Reed and Vice Mayor Nguyen, approving the Staff recommendations with additional direction as described below in “Action”. Vice Mayor Nguyen seconded the motion.

Council Member Herrera requested to amend the motion to include direction to Staff to continue to explore the other sites including, Shady Oaks, Arcadia, Columbus and Alviso and return with a full packet for the Council to consider. Council Member Rocha and Vice Mayor Nguyen accepted the amendment.

Public Comments: Ross Signorino suggested establishing baseball field with the neighborhoods in lieu of traveling to this sports complex. David Wall voiced concerns about the methane gases.

Action: On a call for the question, the motion carried unanimously, the memorandum from Mayor Reed, Vice Mayor Nguyen and Council Member Rocha, dated December 14, 2012, was approved and the Exclusive Due Diligence Agreement with Hopkins Real Estate Group for the potential development of the Singleton Landfill for use as a retail development and a sports complex, was approved with the following additional direction to Staff: (1) Analyze the Singleton Landfill site for developing a softball complex exclusively. (2) Estimate the cost associated with the development and operation of the facility should the City choose to be the operator. (3) Direct the City Manager’s Office to

4.6 (Action Cont'd.)

initiate communication with Santa Clara County staff regarding the Santa Clara County Fairgrounds and undertake a parallel analysis of the Fairgrounds as a potential site for a softball complex using Measure P funds should the County be a willing participant in the analysis. (4) Create a timeline for developing the Singleton site and Fairgrounds sites. (5) Staff was further directed to continue to explore the other sites including, Shady Oaks, Arcadia, Columbus and Alviso and return with a full packet for the Council to consider. (11-0.)

STRATEGIC SUPPORT SERVICES

3.3 **As recommended by the Rules and Open Government Committee on December 12, 2012, accept the 2013 Legislative Guiding Principles as edited by the Council Committees, and the Legislative Priorities and Advocacy Issues for the first year of the two-year Legislative Session in Sacramento and the 113th Congress. (City Manager's Office)**

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, CMC, dated December 13, 2012, transmitting the recommendations of the Rules and Open Government Committee.

Director of Intergovernmental Relations Betsy Shotwell and State Legislative Representative Roxanne L. Miller presented the report and responded to Council questions and concerns.

Public Comments: David Wall presented comments.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the 2013 Legislative Guiding Principles as edited by the Council Committees, and the Legislative Priorities and Advocacy Issues for the first year of the two-year Legislative Session in Sacramento and the 113th Congress were accepted. (10-0-1. Absent: Kalra.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.1 **Adopt a resolution:**

- (a) **Declaring 28,990 square feet of vacated street on Emory Street, surplus to the needs of the City;**
- (b) **Approving an agreement between the City of San José and Bellarmine College Preparatory (Bellarmine) for sale of the property in the amount of \$325,000; 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: Mitigated Negative Declaration, File No. PDC07-072. (Economic Development)

4.1 (Cont'd.)

Documents Filed: Memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated November 13, 2012, recommending adoption of a resolution.

Public Comments: Thomas Gorndt, Bellarmine College Preparatory, spoke in support to the Staff recommendations. David Wall and Jeff Bedolla spoke in opposition to the Staff recommendations.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Constant and carried unanimously, Resolution No. 76522, entitled: "A Resolution of the Council of the City of San José Declaring Certain City Owned Property Located on Emory Street as Surplus to the Needs of the City, Approving an Agreement with Bellarmine College Preparatory for Sale of the Property in the Amount of \$325,000, and Authorizing the City Manager or Her Designee to Execute Certain Documents Necessary to Complete the Transaction", was adopted. (10-0-1. Absent: Kalra.)

4.2 **Conduct an Administrative Hearing on and consider a Planned Development Permit and Determination of Public Convenience or Necessity to allow demolition of an existing restaurant structure (Chevy's) and construction of a new 7,453 square foot restaurant with outdoor patio (BJ's) that includes the on-sale and off-sale of alcoholic beverages in the A(PD) Planned Development Zoning District on a .96 gross acre site located on the southwest corner of Coleman Avenue and Autumn Street. (511 Coleman Avenue)(CLPF San José Retail, Inc., Owner). CEQA: Exempt. Planning commission recommends approval (7-0). PD12-041/ABC12-011 – District 3. (Planning, Building and Code Enforcement)**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated December 6, 2012, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PD12-041 and ABC12-011, dated December 6, 2012. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated December 14, 2012, transmitting the Planning Commission recommendation of approval. (3) Proof of Publication of Notice of Public Hearing, executed on November 23, 2012, submitted by the City Clerk.

Director of Planning, Building and Code Enforcement Joseph Horwedel presented comments.

Public Comments: David Wall spoke in opposition to the Staff recommendations.

4.2 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, Resolution No. 76523, entitled: “A Resolution of the Council of the City of San José Approving a Planned Development Permit and Granting a Determination of Public Convenience or Necessity Request to Allow the Demolition of an Existing 6,662 Square Foot Restaurant (Chevy’s); Construction of a New 7,453 Square Foot Restaurant (BJ’s) with a 920 Square Foot Outdoor Patio; and Off-Sale (Beer Only) of Alcoholic Beverages with a Late Night Use on a 0.95 Gross Acre Site Located on the Southwest Corner of Coleman Avenue and Autumn Street (511 Coleman Avenue)”, was adopted. (10-0-1. Absent: Kalra.)

4.3 (a) Adopt a resolution amending the North San José Area Development Policy to:

(1) **Allow reallocation of up to 174 of the remaining affordable housing units in Phase 1 as market-rate housing units to enable a shovel-ready market-rate housing project to proceed in Phase 1 if such project developer ensures by written agreement with the City a substantial benefit to the City towards the provision of high rise, high-density residential development in North San José and new affordable housing to balance the reduction of affordable housing allocation in Phase 1; and**

(2) **Shift the number of reallocated affordable housing units originally reserved for Phase 1 to Phase 2, and correspondingly decrease the number of market-rate housing units in Phase 2, to ensure the vision of a mixed-income community.**

(b) **Direct the Administration to negotiate and bring back for Council consideration a written agreement with Mill Creek Residential Trust LLC that meets the criteria set forth in subsection (a) of the staff memorandum.**

CEQA: Resolution No.72768, Addendum to the North San José Policy Update EIR. Council Districts 3 and 4. (Planning, Building and Code Enforcement/Housing)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel and Director of Housing Leslye Corsiglia, dated December 5, 2012, recommending adoption of a resolution and direction to Administration.

Director of Planning, Building and Code Enforcement Joseph Horwedel presented comments and responded to Council questions and concerns. Assistant Director of Housing Jacky Morales-Ferrand was present.

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

Public Comments: David Wall spoke in opposition to the Staff recommendations.

4.3 (Cont'd.)

Council Member Oliverio stated that he preferred distribution of discretionary monies to traffic, development or paving the roads.

Mayor Reed, Vice Mayor Nguyen and Council Members Campos, Liccardo, Constant and Pyle provided meeting disclosures.

Action: On a call for the question, the motion carried, Resolution No. 76524, entitled: “A Resolution of the Council of the City of San José Amending the North San José Area Development Policy to Allow Reallocation of up to 174 Affordable Housing Units in Phase 1 as Market Rate Housing Units and to Shift the Number of Reallocated Affordable Housing Units Originally Reserved for Phase 1 to Phase 2 of the Policy”, was adopted. Administration was directed to negotiate and bring back for Council consideration a written agreement with Mill Creek Residential Trust LLC that meets the criteria set forth in subsection (a) of the Staff memorandum. (9-1-1. Noes: Oliverio. Absent: Kalra.)

4.4 **Conduct a public hearing and adopt a resolution to vacate Chabolla Alley between North San Pedro Street and Terraine Street. CEQA: Exempt, File No. PP12-090. Council District 3. (Public Works)**

Documents Filed: Memorandum from Director of Public Works David Sykes, dated November 26, 2012, recommending conducting a public hearing and adoption of a resolution.

Assistant Director of Public Works Harry Freitas responded to Council questions and concerns.

Mayor Reed opened the public hearing.

Public Comments: David Wall spoke in opposition to the Staff recommendations.

Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, Resolution No. 76525, entitled: “A Resolution of the Council of the City of San José Vacating Chabolla Alley Between North San Pedro Street and Terraine Street”, was adopted. (10-0-1. Absent: Kalra.)

- 4.5 (a) **Approve an ordinance of the City of San José amending Chapter 13.32 of Title 13 of the San José Municipal Code, and amending Sections 20.100.140 and 20.100.220 of Chapter 20.100 of Title 20, to modify the tree removal requirements for single-family residences in order to streamline permitting processes and further implement the Community Forest Goal and Policies set forth within the Envision San José 2040 General Plan, to modify permit recordation requirements for tree removal and certain other permits, and to make other technical, non-substantive, or formatting changes within those chapters and sections of Title 13 and Title 20.**
- (b) **Adopt a Resolution setting forth the tree species to be placed on the unsuitable tree list as eligible for the modified tree removal requirements for single-family residences.**

CEQA: Final Program EIR for Envision San José 2040 General Plan, EIR Resolution No. 76041, File No. PP12-098.

Citywide

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 28, 2012, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PP12-098. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated December 6, 2012, transmitting the Planning Commission recommendation of approval. (3) Proof of Publication of Notice of Public Hearing, executed on November 16, 2012, submitted by the City Clerk.

Director of Planning, Building and Code Enforcement Joseph Horwedel presented comments.

Public Comments: David Wall spoke in opposition to the Staff recommendations.

Action: Upon motion by Council Member Pyle, seconded by Vice Mayor Nguyen and carried unanimously, Ordinance No. 29195, entitled: “An Ordinance of the City of San José Amending Chapter 13.32 of Title 13 of the San José Municipal Code to Amend Sections 13.32.020, 13.32.070, 13.32.100, 13.32.110 and 13.32.120 and Add Sections 13.32.041 and 13.32.095 and Amending Sections 20.100.140, 20.100.220 and 20.100.300 of Chapter 20.100 of Title 20, All to Modify the Tree Removal Requirements for Single Family Residences to Streamline the Permitting Process and To Modify the Permit Recordation Requirements for Tree Removal and Certain Other Permits”, was passed for publication and Resolution No. 76526, entitled: “A Resolution of the Council of the City of San José Placing Certain Tree Species on the List of Unsuitable Tree Species”, was adopted. (9-0-2. Absent: Constant, Kalra.)

4.7 Adopt a resolution:

- (a) **Declaring an approximate 3,400 square foot of land adjacent to APN 706-02-034 as surplus to the needs of the City.**
- (b) **Approving a quitclaim deed and agreement for transfer of such surplus property to Mission West Properties, L.P. II, the adjacent property owner, without consideration.**
- (c) **Authorizing the City Manager or designee to execute such deed and agreement and all other documents necessary to complete the transaction.**

**CEQA: EIR 08/1973, Council District: 2. (Economic Development)
(Rules Committee referral 12/12/12)**

Documents Filed: City Council Action Request from Director of Economic Development/Chief Strategist Kim Walesh, dated December 12, 2012, recommending adoption of a resolution.

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

Public Comments: David Wall spoke in opposition to the Staff recommendations.

City Attorney Richard Doyle and Assistant Director of Economic Development Klein responded to Council questions and concerns.

Action: On a call for the question, the motion carried, Resolution No. 76527, entitled: “A Resolution of the Council of the City of San José Declaring Certain City Owned Property Located on Via Del Oro as Surplus to the Needs of the City, Approving the Quitclaim Deed and Agreement for Transfer to Mission West Properties, L.P. II and Authorizing the City Manager to Execute All Documents Necessary to Complete the Transaction”, was adopted. (7-2-2. Noes: Herrera, Liccardo. Absent: Constant, Kalra.)

TRANSPORTATION & AVIATION SERVICES

- 6.1 (a) Approve the Downtown San José Property-Based Business Improvement District Annual Financial Report for Fiscal Year 2011-12.**
- (b) Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with the San José Downtown Property Owners’ Association and the San José Downtown Association to manage the Downtown Property-Based Business Improvement District (PBID) and provide baseline and enhanced services as specified in the approved PBID Management Plan and Engineer’s Report from January 1, 2013 to December 31, 2022, subject to annual reporting to and appropriation by the City Council.**

CEQA: Exempt. File No. PP12-053. Council District 3. (Transportation)

Documents Filed: Memorandum from Director of Transportation Hans F. Larsen, dated November 26, 2012, recommending approval of the report and adoption of a resolution.

6.1 (Cont'd.)

Public Comments: David Wall spoke in opposition to the Staff recommendations.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the Downtown San José Property-Based Business Improvement District Annual Financial Report for Fiscal Year 2011-12 was approved and Resolution No. 76528, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute An Agreement with the San José Downtown Property Owners Association and the San José Downtown Association to Manager the Downtown Property Business Improvement District (PBID) and Provide Baseline and Enhanced Services as Specified in the Approved PBID Engineer’s Report from January 1, 2013 to December 31, 2022, Subject to Annual Reporting To and Appropriation by the City Council”, was adopted. (9-0-2. Absent: Constant, Kalra.)

- 6.2 (a) **Approve an ordinance amending Chapter 6.64 of Title 6 of the San José Municipal Code to amend Section 6.64.130 and add a new Section 6.64.465 to create exceptions for out of town taxi businesses and taxi drivers whose principal place of business is outside of the City and who only do business in the City at the airport from obtaining an additional license under Title 6 if properly permitted under Title 25. CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Airport/Police)**
- (b) **Approve an ordinance amending Sections 6.64.440 and 6.64.620 of Chapter 6.44 of Title 6 of the San José Municipal Code regarding Police taxicab permits to remove outdated language and to clarify hearing requirements to ensure consistency with other permit provisions in the Code. CEQA: Not a Project, File No. PP10-068(c), Municipal Code or Policy. (City Attorney's Office)**

Action: Renumbered from Item 2.9. Deferred to January 29, 2013 per Administration.

REDEVELOPMENT – SUCCESSOR AGENCY

- 9.1 (a) **Approve an assignment *agreement* from the Successor Agency assigning its obligations regarding certain covenants for the benefit of the owner of the 50 West San Fernando Street building to the City.**
- (b) **Approve an assignment *agreement* by the City Council accepting an assignment *agreement* from the Successor Agency of such covenants.**
- (c) **That the City Council approve an amendment to the parking covenants to identify replacement parking for the building and clarify other terms of the parking covenant.**
- (Successor Agency)**

Documents Filed: Memorandum from City Manager/Executive Officer Debra Figone, dated December 7, 2012, recommending approval of assignment agreements and amendments.

9.1 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Vice Mayor Nguyen and carried unanimously, an assignment *agreement* from the Successor Agency assigning its obligations regarding certain covenants for the benefit of the owner of the 50 West San Fernando Street building to the City, an assignment *agreement* by the City Council accepting an assignment *agreement* from the Successor Agency of such covenants were approved and an amendment to the parking covenants was approved by Council to identify replacement parking for the building and clarify other terms of the parking covenant. (9-0-2. Absent: Constant, Kalra.)

9.2 Approve the Purchase and Sale Agreements for the following Successor Agency owned properties:

- (a) **193 East Santa Clara Street to Symphony Development for a purchase price in the amount of \$4,250,000.**
 - (b) **1171 Mesa Drive to Alok Damireddy for a purchase price in the amount of \$225,000.**
 - (c) **5647 Gallup Dive to Alok Damireddy for a purchase price in the amount of \$228,000.**
 - (d) **88 East San Fernando Street (Central Place Parking Garage) to Next Ventures, LLC for a purchase price in the amount of \$446,016.71.**
- (Successor Agency)

Action: Deferred to January 8, 2013 per Administration.

9.3 Adopt a resolution by the City Council, acting in its capacity as Successor Agency to the Redevelopment Agency, authorizing the Managing Director to negotiate and execute a lease between the Comedy Club of San José, LLC and the Successor Agency for the Jose Theater located at 62 South Second Street. (Successor Agency)

Documents Filed: (1) Memorandum from City Manager/Executive Officer Debra Figone, dated December 7, 2012, recommending authorization to the Managing Director to negotiate and execute a new lease. (2) Supplemental memorandum from Memorandum from City Manager/Executive Officer Debra Figone, dated December 14, 2012, transmitting the reports on the Jose Theatre Lease.

Public Comments: David Wall spoke in opposition to the Staff recommendations.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, Successor Agency Resolution No. 7017, entitled: “A Resolution of the Council of the City of San José Acting in Its Capacity as the Successor Agency of the City of San José Authorizing the Managing Director of the Successor Agency to Negotiate and Execute a New Lease with the Comedy Club of San José, LLC for the Jose Theatre Located at 62 South Second Street”, was adopted. (9-0-2. Absent: Constant, Kalra.)

NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS

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

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/ Units</u>	<u>Type</u>	<u>Proposed Decision</u>
9477	SW Corner of St. Elizabeth Dr and Fruitdale Ave	6	Southwest Expressway Investors, Ltd.	6 Lots / 502 Units	MFA	Approve

OPEN FORUM

- (1) David Wall expressed concern about Columbus Park which has become a shanty town of tents.
- (2) Keith Watt expressed his desire to present a gift to the City of San José: the “Le Petit Trianon” Theatre, which is located at 72 North 5th Street. Mayor Reed asked Mr. Watt to remain after the meeting to speak with the Council Member Liccardo and Chief Deputy City Manager Ed Shikada.
- (3) Ross Signorino commented about the Sandy Hook Elementary School tragedy in Connecticut, gun control and violence.
- (4) Mark Trout spoke about various societal issues.

ADJOURNMENT

The Council of the City of San José was adjourned at 5:33 p.m. in memory of Frank Lopez Sr., a decorated Vietnam Veteran who served two tours of duty and earned a Purple Heart medal and two bronze Stars, returning to San José and later helped co-found the Vietnam Veteran’s War Memorial currently being built at Confluence Point in Guadalupe River Park. Frank Lopez Sr. returned to teach and coach football at Mount Pleasant, Overfelt and James Lick High Schools. He passed away on November 24, 2012 after a lifetime of service to our Nation and to the residents of San José. (Liccardo)

Minutes Recorded, Prepared and Respectfully Submitted by,

Toni J. Taber, CMC
Acting City Clerk

smd/12-18-12 MIN

Access the video, the agenda and related reports for this meeting by visiting the City's website at <http://www.sanjoseca.gov/city> or <http://www.sanjoseca.gov/civiccentertv>. For information on any ordinance that is not hyperlinked to this document, please contact the Office of the City Clerk at (408) 535-1266.