



MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, APRIL 17, 2012

The Council of the City of San José convened in Regular Session at 9:36 a.m. in the Council Chambers at City Hall.

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

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

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

There was no Staff presentation.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:37 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (a) with respect to existing litigation: (1) McDonough, et al. v. City, et al. Names of Parties Involved: City of San José, Dennis Hawkins, in his capacity as City Clerk of the City of San José, Barry Garner, in his capacity as Registrar of Voters of the County of Santa Clara, Karen McDonough, Franco Vado, Roberti Sapien and Clifford G. Hubbard; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV220781; Amount of Money or Other Relief Sought: Petition for writ of mandate. (B) to confer to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (2) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (3) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries,

CLOSED SESSION (Cont'd.)

Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP. (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP. (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO. (6) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW. (8) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (9) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3. (10) San José Police Officers' Association (SJPOA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc. Web: <http://www.sanjoseca.gov/employeerelations/moa.asp>; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 11:25 a.m. and reconvened to Regular Session at 1:33 p.m. in the Council Chambers.

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

Absent: Council Members - Reed. (Excused)

INVOCATION

Reverend Ralph Su, Canaan Taiwanese Christian Church, Alviso, California, offered the Invocation. (District 4)

PLEDGE OF ALLEGIANCE

Vice Mayor Nguyen and the Students from Anderson Elementary School (District 1) led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, the Orders of the Day and the Amended Agenda were approved, Item 1.7 was dropped and Item 8.1 was heard. (10-0-1. Absent: Reed.)

CEREMONIAL ITEMS

1.1 Presentation of a proclamation recognizing April 22, 2012 as “Earth Day” in the City of San José. (Chu)

Vice Mayor Nguyen and Council Member Chu recognized April 22, 2012 as “Earth Day” in the City of San José.

1.3 Presentation of a proclamation declaring the month of April 2012 as “National Volunteer Month” in the City of San José. (Herrera)

Vice Mayor Nguyen and Council Member Herrera recognized the month of April 2012 as “National Volunteer Month” in the City of San José.

1.4 Presentation of a commendation to Cosme Fagundo for his dedication and support of local communities and organizations which work to keep San José safe and vibrant. (Nguyen)

Vice Mayor Nguyen recognized and commended Cosme Fagundo for his commitment and support to the community.

1.5 Presentation of commendations for Sally Ashton and Joe Miller for their work initiating and bringing to fruition Poetry on the Move during National Poetry Month. (Liccardo)

Vice Mayor Nguyen and Council Member Liccardo recognized and commended Sally Ashton and Joe Miller.

1.7 Presentation of a proclamation to recognize the month of April as “Child Abuse Prevention Month”. (Oliverio)

Action: Dropped per Orders of the Day.

CONSENT CALENDAR

Upon motion by Council Member Constant, seconded by Council Member Chu and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (10-0-1. Absent: Reed.)

2.1 Approval of Minutes.

There were none.

2.2 Final Adoption of Ordinances.

There were none.

2.3 Approval of Council Committee Reports.

There were none.

2.4 (a) Request for an excused absence for Council Member Constant from the Regular Meeting of the Neighborhood Services and Education Committee on March 8, 2012 due to Authorized City Business: Guest Speaker at American Leadership Forum – Silicon Valley. (Constant)

Documents Filed: Memorandum from Council Member Constant, dated April 6, 2012, requesting an excused absence due to authorized City business.

Action: The absence for Council Member Constant was excused. (10-0-1. Absent: Reed.)

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 Approve an agreement with the San Jose Sports Authority for the period July 1, 2011 to June 30, 2015, in the amount of \$ 338,073 in FY 2011-2012 and subject to City Council appropriation of funds thereafter. CEQA: Not a Project, File No. PP10-066(e), Agreements/Contracts. (Economic Development)

Documents Filed: Memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated March 26, 2012, recommending approval of an agreement.

2.7 (Cont'd.)

Action: An agreement with the San Jose Sports Authority for the period July 1, 2011 to June 30, 2015, in the amount of \$ 338,073 in FY 2011-2012 and subject to City Council appropriation of funds thereafter was approved. (10-0-1. Absent: Reed.)

2.8 **Adopt a resolution authorizing the City Manager or her designee to execute an agreement with the County of Santa Clara for the sublease of space in real property located at 1608 Las Plumas Avenue known as the San José Environmental Innovation Center for the purpose of operating a household hazardous waste (HHW) collection facility, resulting in rental revenue of approximately \$344,000 annually to the City. CEQA: Mitigated Negative Declaration for the San José Environmental Innovation Center, File No. PP09-138, adopted December 1, 2009. (Economic Development)**

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

Action: Resolution No. 76194, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager or Her Designee to Execute an Agreement with the County of Santa Clara for the Sublease of Space in Real Property Located at 1608 Las Plumas Avenue Known as the San José Environmental Innovation Center for the Purpose of Operating a Household Hazardous Waste Collection Facility, Resulting in Rental Revenue of Approximately \$344,000 Annually”, was adopted. (10-0-1. Absent: Reed.)

2.9 **Adopt a resolution authorizing the City Manager to execute the Agency Agreement with the County of Santa Clara for Countywide Household Hazardous Waste Collection Program for 2012—2015, at a cost of \$200,000 each year, subject to appropriation of funds, and the Agency Agreement with the County of Santa Clara for Countywide AB939 Implementation Fee for 2012—2015, contingent on and in conjunction with the execution of a Sublease between the City of San José and the County of Santa Clara for use of City property for the Household Hazardous Waste Collection Program. CEQA: Mitigated Negative Declaration for the San José Environmental Innovation Center, File No. PP09-138, adopted December 1, 2009. (Environmental Services)**

Documents Filed: Memorandum from Acting Director of Environmental Services Kerrie Romanow, dated March 26, 2012, recommending adoption of a resolution.

Action: Resolution No. 76195, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Execute an Agency Agreement with the County of Santa Clara for Countywide Household Hazardous Waste Collection Program for 2012-2015, At a Cost of \$200,000 Each Year, Subject to Appropriation of Funds; and the Agency Agreement with the County of Santa Clara for Countywide AB939 Implementation Fee for 2012-2015”, was adopted. (10-0-1. Absent: Reed.)

2.10 Accept this report update on the status of the South Bay Water Recycling program and strategic planning effort. CEQA: Not a Project, File No.PP10-069(a), Staff Reports. (Environmental Services)

Documents Filed: (1) Memorandum from Acting Director of Environmental Services Kerrie Romanow, dated March 26, 2012, recommending acceptance of the report. (2) Letter from Chuck Reed, Chairperson, the Treatment Plant Advisory Committee, dated April 12, 2012, stating concurrence with the Staff recommendation.

Action: The update on the status of the South Bay Water Recycling program and strategic planning effort was accepted. (10-0-1. Absent: Reed.)

2.11 (a) Amend the City of San José Pay Plan effective April 17, 2012 to create the following classification:

(1) Risk Manager (1265)

(b) Amend the City of San José Pay Plan effective April 17, 2012, to delete the following obsolete classes:

(1) Airport Noise Abatement Manager (5245)

(2) Airport Police Officer (2414)

(3) Custodian (3211)

(4) Deputy City Attorney U (2150)

(5) Deputy Redevelopment Manager U (1684)

(6) Equipment Operator (3341)

(7) Gerontology Supervisor FT/PT (7125/7129)

(8) Metal Fabrication Mechanic (3172)

(9) Redevelopment Manager U (1687)

(10) Senior Deputy City Attorney U (2153)

(11) Therapeutic Supervisor (7126)

(12) Transportation Planning Systems Manager (1386)

CEQA: Not a Project, File No. PP10-068(b), Municipal Code, Title 3. (Human Resources)

Documents Filed: Memorandum from Deputy City Manager Alex Gurza, dated March 26, 2012, recommending adoption of a resolution.

Action: Resolution No. 76196, entitled: “A Resolution of the Council of the City of San José Amending the City of San José Pay Plan for Various Job Classifications”, was adopted. (10-0-1. Absent: Reed.)

- 2.12 Approve a Third Amendment to the Cooperative Agreement with the Santa Clara Valley Transportation Authority for the Route 101 De La Cruz Boulevard/ Trimble Road interchange project extending the term of the agreement from April 30, 2012 to December 31, 2012, at no additional cost. CEQA: EIR Resolution 72768, adopted June 21, 2005. (Transportation)**

Documents Filed: City Council Action Request from Director of Transportation Hans Larsen, dated March 26, 2012, recommending approval of a third amendment to the cooperative agreement.

Action: A Third Amendment to the Cooperative Agreement with the Santa Clara Valley Transportation Authority for the Route 101 De La Cruz Boulevard/ Trimble Road interchange project extending the term of the agreement from April 30, 2012 to December 31, 2012, at no additional cost, was approved. (10-0-1. Absent: Reed.)

- 2.13 (a) Approve travel by Vice Mayor Nguyen to Washington, D.C. on May 7 – 9, 2012 to attend the National Leadership Academy for Elected and Appointed Officials as the City’s designated representative. Source of Funds: Mayor & Council Travel Fund/Asian Pacific American Municipal Officials.**
- (b) Request for an excused absence for Vice Mayor Nguyen from the Closed and Regular Sessions of the City Council on May 8, 2012 and the Regular Meeting of the Rules and Open Government Committee on May 9, 2012.**

(Nguyen)

[Rules Committee referral 4/11/12 – Item A(1)(a)(1)]

Documents Filed: Memoranda from Vice Mayor Nguyen, both dated April 3, 2012, requesting approval of travel and excused absences due to authorized City business.

Action: Approved. (10-0-1. Absent: Reed.)

END OF CONSENT CALENDAR

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 As recommended by the Community and Economic Development Committee on March 26, 2012, accept the staff report on the progress implementing the Top 5 highest work plan priorities for the Economic Strategy. CEQA: Not a Project, File No. PP10-066(a), Staff Reports. (City Manager’s Office)**

Action: Deferred to April 24, 2012 per Administration.

4.2 As recommended by the Community and Economic Development Committee on March 26, 2012:

- (a) Accept staff's progress report on the implementation of Council direction to control City cost escalation for outdoor special events and support event revenue generation; transition of Christmas in the Park to a community-based model; and Council prioritized changes to the City's special events ordinances;**
- (b) Direct staff to extend the suspension of the collection of gate fees for ticketed events effective July 1, 2012 through Fiscal Year 2013-2014.**

(City Manager's Office)

[Community and Economic Development Committee referral 3/26/12 – Item D(3)]

Action: Deferred to April 24, 2012 per Administration.

4.3 Conduct a public hearing and consider an ordinance amending Section 20.100.500 of Chapter 20.100 (Administration and Permits) of Title 20 of the San José Municipal Code (the Zoning Code) to extend the period for the Director of Planning to reactivate certain expired Development Permits and to extend certain Development Permits for a discrete period of time and make other related clarifying changes. CEQA: Exempt. (Planning, Building and Code Enforcement)

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated March 12, 2012, transmitting the Staff Report. (2) Memorandum from the Planning Commission Secretary Joseph Horwedel, dated April 12, 2012, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing, executed on March 9, 2012, submitted by the City Clerk.

Vice Mayor Nguyen opened the public hearing.

Public Comments: There was no public testimony from the floor. Vice Mayor Nguyen closed the public hearing.

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

Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti provided one clarification to extend permits.

Action: On a call for the question, the motion carried unanimously, Ordinance No. 29054, entitled: "An Ordinance of the City of San José Amending Section 20.100.500 of Chapter 20.100 of Title 20 of the San José Municipal Code to Modify Provisions Regarding the Issuance of Adjustments To Extend the Term of Previously-Approved Development Permits, To Reactivate Certain Previously-Expired Development Permits, and To Make Other Nonsubstantive Language Clarifications", was passed for publication. (10-0-1. Absent: Reed.)

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 (a) Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with the Bay Area Clean Water Agencies to accept grant funding under State Proposition 84 Bay Area Integrated Regional Water Management Program in an amount up to \$2,485,000, for South Bay Water Recycling facility improvements, including a Bay Area recycled water outreach program component.
- (b) Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with the Santa Clara Valley Water District for the District to conduct the regional outreach program covered by the Proposition 84 grant at cost to the District of up to \$300,000, with a potential for reimbursement to the District of 45.2% of eligible project costs, up to a maximum amount of \$136,000 from the Proposition 84 grant funds District; and for the District to contribute funding up to \$400,000 for the South Bay Water Recycling Master Planning effort, with a reimbursement from the City of San José of up to \$200,000.
- (c) Adopt a resolution authorizing the City Manager to negotiate and execute the Ninth Amendment to the San José/Santa Clara Construction Services Agreement to revise the approved project list specified in the agreement, and extend the term of agreement by twenty-four months to December 31, 2014.
- (d) Adopt a resolution approving the Mitigated Negative Declaration and adopting the mitigation monitoring and reporting program prepared for the South Bay Water Recycling Northern Regional Connector Pipeline Project (File No. PP12-015) as having been completed in compliance with the California Environmental Quality Act and reflecting the City's independent judgment and analysis.

CEQA: Relevant environmental clearance completed by City of San José: Resolution No. 64667, Environmental Impact Report for the San José Nonpotable Reclamation Project, now known as the South Bay Water Recycling Program dated June 15, 1993; Resolution No. 67380 Reuse of the Airport Master Plan EIR/SEIR, PP08-071 dated June 17, 2008; Mitigated Negative Declaration for Potable Backup Supply, PP11-054; Mitigated Negative Declaration (pending) for Northern Regional Connector, PP12-015; and Relevant environmental clearance completed by City of Santa Clara: Santa Clara Industrial 3B: CEQ2010-01113. (Environmental Services) (Deferred from 3/13/12 – Item 7.2)

Documents Filed: Memorandum from Acting Director of Environmental Services Kerrie Romanow, dated February 14, 2012, recommending adoption of resolutions.

Action: Item 7.12 was dropped.

PUBLIC SAFETY SERVICES

- 8.1 As recommended by the Public Safety, Finance and Strategic Support Committee on March 15, 2012, accept the Audit of Police Department Secondary Employment. (City Auditor)
[Public Safety, Finance and Strategic Support referral 3/15/12 – Item D(5)]
(Deferred from 4/3/12 – Item 8.1 and 4/10/12 – Item 8.1)**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, CMC, dated March 20, 2012, transmitting the recommendation of the Transportation and Environment Committee.

Motion: Council Member Constant moved approval to defer acceptance of the Audit of the Police Department Secondary Employment to May 1, 2012. On a call for the question, the motion failed and Council heard the item. (5-5-1. Noes: Campos, Kalra, Pyle, Rocha. Absent: Reed.)

City Auditor Sharon W. Erickson presented the report.

Chief of Police M. Christopher Moore presented introductory comments. Lieutenant David Tindall presented the Response to the Audit of Secondary Employment Audit.

Extensive Council discussion followed.

Action: Upon motion by Council Member Herrera, seconded by Council Member Liccardo and carried unanimously, the Report from the Auditor was accepted, the Police Chief was directed to implement the Secondary Employment Policy. The Police Department Staff was directed to: (1) Return to Council in six months to provide status on the policy and audit recommendations. (2) Provide copies of the Secondary Employment Policy to Council. (3) Include Secondary Employee Coordinators in the biannual Conflict of Interest code review. (10-0-1. Absent: Reed.)

- 8.2 (a) Adopt a resolution authorizing the City Manager to accept the Federal Emergency Management Agency's 2011 Assistance to Firefighters Grant Program award of \$1,246,538 to replace the Fire Department's Cardiac Monitor/Defibrillator inventory.**
- (b) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund for 2011-2012:**
- (1) Increase the city-wide appropriation to the Fire Department for Cardiac Monitors/Defibrillators in the amount of \$1,246,538; and**
 - (2) Increase the Estimate for Earned Revenue from the Federal Government in the amount of \$1,246,538.**

CEQA: Not a Project, PP10-066(a), Purchase of supplies and equipments with no changes in the physical environment. (Fire/City Manager's Office)

8.2 (Cont'd.)

Documents Filed: Memorandum from Fire Chief William L. McDonald and Budget Director Jennifer Maguire, dated March 23, 2012, recommending adoption of a resolution and appropriation ordinance and funding sources resolution amendments.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Campos and carried unanimously, Resolution No. 76197, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Accept the Federal Emergency Management Agency's 2011 Assistance to Firefighters Grant for Funding to Replace the Fire Department's Cardiac Monitor/Defibrillator Inventory and To Execute All Related Documents"; Ordinance No. 29055, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the General Fund for the Cardiac Monitors/Defibrillators Project; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption" and Resolution No. 76198, 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 General Fund", were adopted. (10-0-1. Absent: Reed.)

REDEVELOPMENT – SUCCESSOR AGENCY

9.1 It is recommended that the City Council, the City Council acting as the Successor Agency to the Redevelopment Agency take the following actions:

- (a) Adopt 2011-2012 Appropriation Ordinance and Funding Sources Resolution amendments of the City Council, in its capacity as the Successor Agency, in the Redevelopment Obligation Retirement Fund as outlined in Attachment A, subject to the pending Successor Agency Oversight Board approval of the 2011-2012 Successor Agency to the Redevelopment Agency budget to be reviewed April 12th.**
- (b) Adopt 2011-2012 Appropriation Ordinance and Funding Sources Resolution amendments of the City Council in the Low and Moderate Income Housing Fund as outlined in Attachment B.**

**(Successor Agency to the Redevelopment Agency)
(Deferred from 4/10/12 – Item 9.1)**

Action: Item 9.1 was dropped.

OPEN FORUM

Tom Sawyer requested clarification about whether the City co-signs or lends its credit to revenue bonds for soccer and/or stadium construction.

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 4:10 p.m.

RECESS/RECONVENE

The City Council recessed at 4:10 p.m. from the afternoon Council Session and reconvened at 7:01 p.m. in the Council Chambers, City Hall.

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

Absent: Council Members - Reed. (Excused)

City Clerk Dennis D. Hawkins read the requests for continuance of the applications. Upon motion by Council Member Liccardo, seconded by Council Member Herrera, and carried unanimously, the below noted continuances and actions were taken as indicated. (10-0-1. Absent: Reed.)

CEREMONIAL ITEMS

- 1.2 Presentation of a commendation to the Junior Sharks Girls 12AA and 16AA Teams for capturing the USA Hockey's Pacific District Championships Titles, held March 27-April 1, 2012, in Irving, Texas and the Junior Sharks Girls 10U Team for being the first ever all girls team to play in the Northern California Junior Hockey Association Championships, held March 23-25, 2012, in Oakland, California. (Chu)**

Vice Mayor Nguyen and Council Member Chu recognized and commended the exemplary efforts of the Junior Sharks Girls 12AA and 16AA Teams for capturing the USA Hockey's Pacific District Championships Titles and the Junior Sharks Girls 10U Team for being the first all girls team to play in Northern California Championships.

- 1.6 Presentation of commendations to the 2012 Outstanding Contributors to Early Childhood Education. (Pyle)**

Vice Mayor Nguyen and Council Members Pyle, Liccardo, Chu and Kalra recognized and commended the 2012 Outstanding Contributors to Early Childhood Education.

PUBLIC HEARINGS

- 11.2 Consideration of an ordinance rezoning the real property located at the southwest corner of Miller Street and Asbury Street from the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District to 1) add 100 units to the already approved 400 unit development for a total of 500 multi-family attached residential units, and 2) increase in building height from 150 to 200 feet on the 2.80 gross acre site (Green Valley Corporation, Owner; Barry Swenson Builder, Developer). CEQA: Mitigated Negative Declaration. The Director of Planning and Planning Commission (6-0-1, Commissioner Cahan absent) recommend approval. PDC05-101 – District 3**

11.2 (Cont'd.)

Documents Filed: (1) Memorandum from Council Member Liccardo, dated April 16, 2012, recommending approval of the Staff recommendations with modifications as described in "Action". (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC05-101, dated February 9, 2012, recommending approval of the subject rezoning. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated February 23, 2012, transmitting the Planning Commission recommendation of approval. (4) Proof of Publication of Notice of Public Hearing, executed on January 27, 2012, submitted by the City Clerk.

Motion: Council Member Liccardo moved approval of his memorandum dated April 16, 2012, recommending approval of the Staff recommendations with modifications as described below in "Action". Council Member Herrera seconded the motion.

City Attorney Richard Doyle asked if the Applicant was in agreement with the modifications as described in the memorandum from Council Member Liccardo. Christy Mabry, Senior Developer Manager, Barry Swenson Builder stated that the Applicant accepted and agreed with the memorandum from Council Member Liccardo.

Vice Mayor Nguyen opened the public hearing.

Public Comment: Rudy Ortega requested that Council consider speed bumps on Georgia Street. Tina Morrill spoke in support to the memorandum from Council Member Liccardo.

Vice Mayor Nguyen closed the public hearing.

Action: On a call for the question, the motion carried unanimously, the amended memorandum from Council Member Liccardo, dated April 16, 2012, was approved, approving the Staff recommendations, including modifications that the Applicant and City agreed upon: (1) The Applicant shall increase the total amount of the remaining "traffic improvement contributions" by \$125,000 (representing the proportionate increase of 100 units to the 400 unit project) for a total of \$425,000 to be disbursed as follows: (a) \$250,000 to be paid upon 50% occupancy of the building constructed during Phase 2. (b) \$175,000 to be paid upon 50% occupancy of the building constructed during Phase 4. (2) The Applicant has committed to offer deeply discounted Eco Passes (or their functional equivalent) to up to two residents of each unit of Phase 2 for a period of 40 years; and as to the remaining phases, per Council direction on May 7, 2002, "require the Developer to utilize VTA's Eco Pass Program as part of the transit demand management program associated with the proposal. (3) The Department of Transportation (DOT) will commit to two on-street "car share" spaces directly adjacent to the development, additionally: (a) The City shall be responsible for the selection, procurement and monitoring of any car sharing service at that location and the service will be available to any member of the public who wishes to subscribe. (b) Up to \$75,000 of the traffic improvement contributions in Phase II can be used to off-set any subscription revenue shortfall to

11.2 (Action Cont'd.)

incentivize the provision of car sharing services by a private or non-profit vendor at that site *for a period of up to three years. Any unused amount to be returned to base amount of traffic improvement contribution pool.* (4)The DOT Staff shall work with the surrounding community to identify appropriate pedestrian safety and traffic improvements for each phase, such that: (a) DOT will minimize expenditures required for studies and surveys, to the extent possible, to maximize resources devoted to streetscape improvements. (b) DOT will identify at least four pedestrian improvements/safety projects to be implemented during Phase 2, *such as:* additional traffic calming devices and LED lighting at relevant locations in the neighborhoods adjacent to the development. (c) Particular attention shall be paid to the increase in “cut-through” traffic from those seeking to avoid congestion on Taylor and First Street, to use streets through the Vendome neighborhood to reach the Market Center on Coleman. Ordinance No. 29056, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Northwest Corner of North First Street and East Taylor Street from the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District” was passed for publication. (10-0-1. Absent: Reed.)

11.3 **Consideration of an ordinance rezoning the real property located on the northwest side of East Gish Road, 500 feet southerly of Oakland Road (721 East Gish Road), from the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District or CIC(PD) Planned Development Zoning District to allow an increase in student enrollment by 160 student for a total of 935 students and approximately 7,500 square feet of additional classroom buildings and office space and conversion of a basement from storage space to office space for an existing private school (Challenger School) on a 7.23 gross-acre site (Emerald Isle LLC, Owner). CEQA: Mitigated Negative Declaration. PDC11-023 – District 3**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated April 3, 2012, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC05-101, dated February 9, 2012, recommending approval of the subject rezoning. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated April 12, 2012, transmitting the Planning Commission recommendation of approval. (3) Proof of Publication of Notice of Public Hearing, executed on March 23, 2012, submitted by the City Clerk.

Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti noted that Staff will provide a modified version of the Development Standards, which is attached to the Planning Commission memorandum to the City Council dated April 12, 2012: The zoning standard for the traffic mitigation measure describes the required payment of the Traffic Impact Fee consistent with the 101/Oakland/Mabury Transportation Development Policy without mentioning a specific dollar amount or other quantified information.

11.3 (Cont'd.)

Motion: Council Member Liccardo moved approval of the Staff recommendations, including the modified version of the Development Standards. Council Member Herrera seconded the motion.

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

Discussion ensued.

Action: On a call for the question, the motion carried unanimously, Ordinance No. 29057, “An Ordinance of the City of San José Rezoning Certain Real Property Situated on an Approximately 7.23 Gross Acre Site on the Northwest Side of East Gish Road, 500 Feet Southwesterly of Oakland Road (721 East Gish Road) To the CIC Combined Industrial Commercial Zoning District (PD) Planned Development Zoning District”, was passed for publication and CEQA Resolution No. 76199, entitled: “A Resolution of the Council of the City of San José Adopting the Challenger School Berryessa Campus Expansion (711 East Gish Road) Mitigated Negative Declaration, For Which an Initial Study Was Prepared, All in Accordance with the California Environmental Quality Act, As Amended, and Adopting a Related Mitigation Monitoring and Reporting Program”, was adopted. The additional Staff modification was approved: The zoning standard for the traffic mitigation measure describes the required payment of the Traffic Impact Fee consistent with the 101/Oakland/Mabury Transportation Development Policy without mentioning a specific dollar amount or other quantified information. This level of detail is more appropriate for the project’s Planned Development Permit. (10-0-1. Absent: Reed.)

ADJOURNMENT

The Council of the City of San José was adjourned at 7:34 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis D. Hawkins, CMC
City Clerk

/smd 04-17-12 MIN

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