



MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, APRIL 24, 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, Herrera, Nguyen, Pyle, Rocha Oliverio.

Absent: Council Members - Kalra, Liccardo; Reed. (Excused)

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

There was no Staff presentation.

Public Comments: Brian Doyle and Vera Todorov, President, Association of Legal Professionals of San José (ALP) stated that ALP has requested to meet and confer over the upcoming contract a month ago but has not yet received communication from the Office of Employee Relations.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:40 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (c) with respect to anticipated litigation in one (1) matter; (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:

CLOSED SESSION (Cont'd.)

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

By unanimous consent, Council recessed from the Closed Session at 11:30 a.m. and reconvened to Regular Session at 1:31 p.m. in the Council Chambers.

Present: Council Members - Campos, Chu, Constant (1:56 p.m.), Herrera, Kalra, Liccardo, Nguyen, Oliverio (1:42 p.m.), Pyle, Rocha, Reed.

Absent: Council Members - All Present.

INVOCATION

Independence High School Glee Club performed "Send It On" for the Invocation. (District 4)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance, accompanied by Third Graders from Payne Elementary School.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the Orders of the Day and the Amended Agenda were approved with Item 4.8 heard after Item 3.1 and Item 7.2 was deferred to May 15, 2012. (9-0-2. Absent: Constant, Oliverio.)

CEREMONIAL ITEMS

1.1 Presentation of a commendation to Terry Christensen for his retirement from San José State University. (Campos)

Mayor Reed and Council Members Campos, Liccardo and Kalra recognized and commended Terry Christensen upon his retirement from San José State University.

1.2 Presentation of a proclamation honoring HOPE Services for its 60 years of providing services to people with developmental disabilities in the community. (Pyle)

Mayor Reed and Council Member Pyle recognized and commended HOPE Services for its 60 years of dedication to the community.

1.3 Presentation of a commendation to the Santa Clara Valley Chapter of the California Native Plant Society for its environmental stewardship and alignment with the City of San José's Green Vision goals. (Liccardo)

Mayor Reed and Council Member Liccardo recognized and commended the Santa Clara Valley Chapter of the California Native Plant Society for its achievements.

1.4 Presentation of a commendation to DeAndre Brackensick in recognition of his stellar representation of San José while performing on American Idol. (Kalra)

Mayor Reed and Council Member Kalra recognized and commended DeAndre Brackensick for his outstanding achievements.

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

- (a) **Regular Minutes of December 13, 2011**
- (b) **Regular Minutes of January 10, 2012**
- (c) **Regular Minutes of January 24, 2012**
- (d) **Regular Minutes of January 31, 2012**

Documents Filed: The Regular Minutes dated December 13, 2011, January 10, 2012, January 24, 2012 and January 31, 2012.

Action: The Minutes were approved. (11-0.)

2.2 Final Adoption of Ordinances.

- (a) **ORD. NO. 29053 – Amending Chapter 9.44 of Title 9 of the San José Municipal Code to regulate outdoor smoking.**

Documents Filed: Proof of publication of the Title of Ordinance No. 29053 executed on April 13, 2012, submitted by the City Clerk.

Action: Ordinance No. 29053 was adopted. (11-0.)

- (b) **ORD. NO. 29057 – 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(PD) Planned Development Zoning District. PDC11-023**

Documents Filed: Proof of publication of the Title of Ordinance No. 29057 executed on April 20, 2012, submitted by the City Clerk.

Action: Ordinance No. 29057 was adopted. (11-0.)

2.3 Approval of Council Committee Reports.

There was no report.

Public Comments: David Wall presented comments on South Bay Water Recycling and the Sewer Service and Use Charges.

2.4 Mayor and Council Excused Absence Requests.

There was no report.

2.5 City Council Travel Reports.

Mayor Reed reported highlights of his trip to Washington, D.C.

2.6 Report from the Council Liaison to the Retirement Boards.

There was no report.

2.7 Approve a Third Amendment to Lease of Airport Premises with Menzies Aviation (USA), Inc. for space located at 1277 Airport Boulevard, from May 1, 2012 through June 30, 2017, with annual revenue to the City of approximately \$46,590. CEQA: Not a Project, File No. PP10-066(f), Lease of existing space for same use. (Airport)

Documents Filed: Memorandum from Director of Aviation William F. Sherry, A.A.E., dated April 2, 2012, recommending approval of a third amendment to the lease.

Action: The Third Amendment to Lease of Airport Premises with Menzies Aviation (USA), Inc. for space located at 1277 Airport Boulevard, from May 1, 2012 through June 30, 2017, with annual revenue to the City of approximately \$46,590 was approved. (11-0.)

2.8 Adopt a resolution:

- (a) Authorizing an alternative competitive process for the sale of the property at 20399 Almaden Road, APN 583-13-013.**
- (b) Approving an agreement between the City and Carrie Griffin Portillo, for sale of the property in the amount of \$207,000.**
- (c) Authorizing the City Manager or designee to execute the sale agreement, and the deed and all other documents necessary to complete the transaction, and ratifying any disclosures or certifications made by the City Manager or designee regarding the property as required by law.**

CEQA: Exempt File No. PP 00-02-023. Council District 10. (Economic Development)

Documents Filed: Memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated April 2, 2012, recommending adoption of a resolution.

Action: Resolution No. 76200, entitled: "A Resolution of the Council of the City of San José Authorizing an Alternative Competitive Process for the Sale of Real Property at 20399 Almaden Road, Approving an Agreement to Sell and Authorizing the City Manager to Execute All Documents Necessary to Complete the Transaction", was adopted. (11-0.)

2.9 Adopt a resolution:

- (a) Declaring the .958 acre of City-owned property near Story Road and Roberts Avenue surplus to the needs of the City.**
- (b) Approving an agreement between the City and Loanie Lam and Lisa Lam, owners of the adjoining property, for the sale of the property in the amount of \$42,000.**
- (c) Approving the Grant of Easements to City for the maintenance and operation of monitoring wells and associated ingress and egress to the sale property.**
- (d) Authorizing the City Manager to execute the sale agreement, and the deed, Grant of Easements, and all other documents necessary to complete the transaction.**

CEQA: Exempt File No. PP10-009. Council District 7. (Economic Development)

Action: Deferred to May 08, 2012 per Administration.

2.10 Approval of the first amendment to the master agreement with RMC Water and Environment extending the duration from June 30, 2012 to June 30, 2015 for a continuation of ongoing engineering consultant services supporting various City projects, at no additional cost to the City. CEQA: Exempt, File No. PP06-0195. (Public Works)

Documents Filed: City Council Action Request from Director of Public Works David Sykes, dated April 2, 2012, recommending approval of the first amendment to the master agreement.

Action: The first amendment to the master agreement with RMC Water and Environment extending the duration from June 30, 2012 to June 30, 2015 for a continuation of ongoing engineering consultant services supporting various City projects, at no additional cost to the City was approved. (11-0.)

2.11 Adopt a resolution summarily vacating a portion of a Public Service Easement, an Anchor Easement, a portion of a Wire Clearance Easement, and a portion of a Building Set Back Line Easement, within properties located at the southeast corner of North First and Rosemary Streets. CEQA: Resolution No. 72768 and addendum thereto, File No. PDC07-101. Council District 3. (Public Works)

Documents Filed: Memorandum from Director of Public Works David Sykes, dated April 2, 2012, recommending adoption of a resolution.

Action: Resolution No. 76201, entitled: "A Resolution of the Council of the City of San José Summarily Vacating a Portion of Public Service Easement, an Anchor Easement, a Portion of a Wire Clearance Easement and a Portion of a Building Set Back Line Easement Within the Properties Located at the Southeast Corner of North First and Rosemary Street", was adopted. (11-0.)

2.12 Adopt 2011-2012 Appropriation Ordinance and Funding Sources Resolution amendments in the funds as detailed in Attachment A of the staff memorandum to reflect the issuance of City of San José Airport Revenue Bonds Series 2011A and 2011B and the change in customer facility charge from \$10.00 per contract to \$6.00 per day. CEQA: Not a Project, PP10-067(b), Appropriation Ordinance. (Airport/City Manager’s Office)

Note: Item 2.12 was renumbered from Item 6.1.

Documents Filed: Memorandum from Director of Aviation William F. Sherry, A.A.E. and Budget Director Jennifer Maguire, dated April 2, 2012, recommending adoption of appropriation ordinance and funding sources resolution amendments.

Action: Ordinance No. 29058, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the Airport Customer Facilities and Transportation Fee Fund for the Airport Department for Non-Personal/Equipment, For the Airport Fiscal Agent Fund, and for the Reserve for Debt Service Coverage; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption”; Ordinance No. 29058.1, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the Airport Surplus Revenue Fund for the Airport Department for Commercial Paper Principal and Interest; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption”, Ordinance No. 29058.2, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the Airport Fiscal Agent Fund for the Airport Department for Other Payments, For the Principal and Interest Payments, For the Transfer to the Airport Customer Facility and Transportation Fee Fund, For the Transfer to the Airport Surplus Revenue Fund, for the Reserve for Debt Service; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption”; Ordinance No. 29058.3, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the Airport Revenue Fund for the Reserve – Per Master Trust Agreement; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption”; Ordinance No. 29058.4, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the Airport Passenger Facility Charge Fund for the Transfer to the Airport Fiscal Agent Fund; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption”; Resolution No. 76202, 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 Airport Customer Facilities and Transportation Fee Fund”; Resolution No. 76202.1, 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 Airport Surplus Revenue Fund” and Resolution No. 76202.2, 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 Airport Fiscal Agent Fund”, were adopted. (11-0.)

2.13 As recommended by the Transportation and Environment Committee on April 2, 2012:

- (a) Accept the Environmentally Preferable Procurement Policy Report for 2010-2011.**
- (b) Adopt a resolution approving modifications to Council Policy 4-6, “Environmentally Preferable Procurement Policy” to prohibit the purchase of food service ware made from expanded polystyrene in City facilities, programs, or at events at City venues.**

CEQA: Exempt, File No. PP12-019. (City Manager’s Office/Environmental Services)

[Transportation and Environment Committee referral 4/2/12 – Item D(1)]

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, CMC, dated April 10, 2012, transmitting the recommendations of the Transportation and Environment Committee.

Action: Resolution No. 76203, entitled: “A Resolution of the Council of the City of San José Approving an Amendment to City Council Policy No. 4-6 Regarding Environmentally Preferable Procurement”, was adopted. (11-0.)

- 2.14 (a) Authorize Mayor Reed’s travel to the Silicon Valley Leadership Group’s annual Washington, DC Advocacy Trip as one of the City’s designated representatives. Source of Funds: Mayor & Council Travel Fund.**
- (b) Authorize excused absences for the regular City Council meeting of Tuesday, April 17, 2012, and the regular meeting of the Rules and Open Government Committee on Wednesday, April 18, 2012, due to official City Business. (Mayor)**
- (Rules Committee referral 4/18/12)**

Documents Filed: Memorandum from Mayor Reed, dated April 17, 2012, requesting approval for travel and excused absences due to City business.

Action: The travel for Mayor Reed was approved and the absences were excused. (11-0.)

- 2.15 (a) Authorize Council Member Constant’s travel to Boston, MA on November 27-December 1, 2012 to attend, and preside as Vice Chair of, the Nation League of Cities’ Public Safety and Crime Prevention Committee at the 2012 National League of Cities and Exposition. Source of Funds: Mayor & Council Travel Fund.**
- (b) Authorize excused absences for the regular City Council meeting of Tuesday, November 27, 2012, and the regular meeting of the Rules and Open Government Committee on Wednesday, November 28, 2012, due to official City Business. (Constant)**
- (Rules Committee referral 4/18/12)**

Documents Filed: Memoranda from Council Member Constant, both dated April 17, 2012, requesting approval for travel and excused absences due to City business.

2.15 (Cont'd.)

Action: The travel for Council Member Constant was approved and the absences were approved. (11-0.)

- 2.16 (a) Approve the District 5 Community Summit as a City-sponsored Special Event.**
(b) Approve and accept donations from various individuals, businesses or community groups to support the event.
CEQA: Not a Project. (City Clerk)

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, CMC, dated January 25, 2012, requesting approval of the District 5 sponsored Special Event and approval to accept donations.

Action: The District 5 Community Summit as a City-sponsored Special Event was approved and donations from various individuals, businesses or community groups to support the event were authorized to be accepted. (11-0.)

- 2.17 As recommended by the Rules and Open Government Committee on April 18, 2012, approve a support position for ACA 23 (Perea) Local Government Transportation Projects Special Taxes: Voter Approval. (City Manager's Office)**

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, CMC, dated April 19, 2012, transmitting the recommendations of the Rules and Open Government Committee.

Action: A support position for ACA 23 (Perea) Local Government Transportation Projects Special Taxes: Voter Approval, was approved. (10-1. Noes: Constant.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone reported on the achievements of the Water Pollution Control Plant employees and their efforts to protect the safety of the community and City employees.

City Manager Figone informed the Council of a forthcoming information memorandum regarding the Library Funding Initiative Petition, which is currently circulating in the community. City Manager Debra Figone also noted that the Proposed Budget will be released on May 1, 2012.

COMMUNITY & ECONOMIC DEVELOPMENT

4.8 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)

Documents Filed: (1) Memorandum from Mayor Reed, Vice Mayor Nguyen, Council Members Herrera and Liccardo, dated April 20, 2012, recommending acceptance of the Staff report with direction as described in "Action". (2) Memorandum from Council Members Constant, Herrera and Liccardo, dated March 23, 2012, recommending further actions. (3) Memorandum from City Clerk Dennis Hawkins, CMC, dated April 5, 2012, November 21, 2011, transmitting the recommendation of the Community and Economic Development Committee.

Director of Economic Development/Chief Strategist Kim Walesh and Senior Planner Lee Butler presented the Economic Strategy Work Plan Update. Director of Planning, Building and Code Enforcement Joseph Horwedel provided comments and closing remarks.

Motion: Council Member Herrera moved approval of the memorandum from Mayor Reed, Vice Mayor Nguyen, Council Members Herrera and Liccardo, dated April 20, 2012, recommending acceptance of the Staff report with direction as described in "Action". Council Member Liccardo seconded the motion.

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

Council Member Rocha requested to amend the motion to include the recommendations outlined in the memorandum co-authored by Council Members Constant, Herrera and Liccardo, dated March 23, 2012, or to return to Community and Economic Development Committee in June 2012 with a meaningful alternative proposal to achieve continuous improvements in Development Services, including ways to expeditiously facilitate our small business permitting process. The amendment was accepted by Council Members Herrera and Liccardo.

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

Action: On a call for the question, the motion carried unanimously, the memorandum from Mayor Reed, Vice Mayor Nguyen and Council Members Herrera and Liccardo, dated April 20, 2012, was approved: (1) The Staff report on the progress implementing the Top Five highest work plan priorities for the Economic Strategy was accepted, with Staff directed to: (2) Keep a strong focus on implementing the same Top Five highest work plan priorities in FY 2012-13. (3) Update the Community and Economic Development Committee (CED) with bi-annual progress reports of accomplishments

4.8 (Action Cont'd.)

associated with implementing the Top Five work plan priorities. (4) Update the CED Committee in May 2012 on the status of recruiting additional Development Services staff positions that were approved by Council in January 2012 to address our ability to work at the speed of business. (5) Implement the recommendations outlined in the memorandum co-authored by Council Members Constant, Herrera and Liccardo, dated March 23, 2012, or return to CED Committee in June 2012 with a meaningful alternative proposal to achieve continuous improvements in Development Services, including ways to expeditiously facilitate our small business permitting process. (11-0.)

STRATEGIC SUPPORT SERVICES

- 3.3 (a) **Approve an ordinance amending Section 3.36.580 of Part 4 of Chapter 3.36 of Title 3 of the San José Municipal Code to continue to suspend the supplemental retiree benefit reserve distribution from the Police and Fire Department Retirement Plan for fiscal year 2011-2012, and provide that there shall be no supplemental retiree benefit reserve distribution from the Police and Fire Department Retirement Plan during Fiscal Year 2012-2013, upon a finding that is needed to adopt the ordinance within a time period which does not allow for a sixty day review period by the Board of Administration of the Police and Fire Department Retirement Plan under San José Municipal Code Section 3.36.485.A.; and refer the ordinance to the Board for study and consideration pursuant to San José Municipal Code Section 3.36.485.B.**
- (b) **Direct staff to forward for review by the Board of Administration of the Federated City Employees Retirement Plan a draft resolution amending and restating Resolution No. 75635 to continue to suspend the supplemental retiree benefit reserve distribution from the Federated City Employees' Retirement Plan for Fiscal Year 2011-2012 and provide that there shall be no supplemental retiree benefit reserve distribution from the Federated City Employees' Retirement Plan during fiscal year 2012-2013.**

CEQA: Not a Project, File No. PP10-068(b), Municipal Code or Policy, new or revised. (City Manager's Office)

Documents Filed: (1) Memorandum from City Manager Debra Figone, dated April 9, 2012, recommending approval of an ordinance and direction to Staff. (2) Letter from the Association of Retired San José Police Officers and Firefighters, dated April 24, 2012, expressing objection to the proposed suspension of Supplemental Retirement benefits. (3) Email from George Jaeger, dated April 24, 2012, expressing opposition to the proposed suspension of Supplement Retirement benefits.

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

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

3.3 (Cont'd.)

City Attorney Richard Doyle, Deputy City Manager Alex Gurza and City Manager Debra Figone responded to Council questions and concerns.

Extensive Council discussion ensued.

Council Members Chu, Campos and Kalra expressed objections to eliminating the Supplemental Retiree Benefit Reserve. Council Member Campos pointed out that there should be a way to support the people that are in the low income bracket and without the necessities of life.

Action: On a call for the question, the motion carried, Ordinance No. 29059, entitled: "An Ordinance of the City of San José Amending Section 3.36.580 of Park 4 of Chapter 3.36 of Title 3 of the San José Municipal Code to Continue Suspension of the Distribution of Funds from the Police and Fire Department Retirement Plan Supplemental Retiree Benefit Reserve Through Fiscal Year 2012-2013", was passed for publication and Resolution No. 76204, entitled: "A Resolution of the Council of the City of San José Amending and Restating Resolution No. 75635 Regarding the Supplemental Retiree Benefit Reserve of the Federated City Employees Retirement Fund, To Suspend the Distribution of Funds from the Reserve Through Fiscal Year 2012-2013", was adopted. (8-3. Noes: Campos, Chu, Kalra.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.1 **Adopt a resolution modifying the City's Homebuyer Loan Investment Program to authorize the Director of Housing to:**

- (a) **Accept reduced repayment amounts as full payment of homebuyer loans funded by Low- and Moderate Income (20% Funds) Housing Funds in short sale situations consistent with Department guidelines as a means of preventing foreclosure, and rescind affordability restrictions recorded as a condition of the loans.**
- (b) **Accept reduced repayment amounts as full payment of developer discount notes or homebuyer loans funded through the City's Inclusionary Housing Program in short sale situations consistent with Department guidelines as a means of preventing foreclosure, and rescind recorded affordability restrictions associated with the notes.**

CEQA: Not a Project, File No. PP10-068(b), Municipal Code or Policy. (Housing)

Documents Filed: (1) Memorandum from Director of Housing Leslye Corsiglia, dated April 4, 2012, recommending adoption of a resolution. (2) Email from George Black, Intero Real Estate Services, dated April 24, 2012, expressing support to the Staff recommendations.

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

4.1 (Cont'd.)

Public Comments: David Wall expressed opposition to the Staff recommendations.

Council Member Constant disagreed with the motion on the floor.

Action: On a call for the question, the motion carried, Resolution No. 76205, entitled: “A Resolution of the Council of the City of San José Approving Modifications to the Homebuyer Loan Investment Program to Allow Short Sales of Properties in Cases of Financial Hardship”, was adopted. (10-1. Noes: Constant.)

- 4.2 (a) **Accept the Annual Status Report on the Citywide Capital Improvement Program.**
(b) **Accept the Annual Status Report on the Safe Neighborhood Parks and Recreation Bond Projects for FY 2010-2011.**
(c) **Accept the Annual Status Report on the Branch Library Bond Projects for FY 2010-2011.**
(d) **Accept the Annual Status Report on the Public Safety Bond Program for FY 2010-2011.**

CEQA: Not a Project, File No. PP10-069(a), Annual Reports. (Public Works)

Documents Filed: (1) Memorandum from Director of Public Works David Sykes, dated April 2, 2012, recommending acceptance of the Annual Status Report on the Citywide Capital Improvement Program. (2) Supplemental memorandum from Director of Public Works David Sykes, dated April 19, 2012, providing the Annual Status Reports provided by the Citizen’s Oversight Committee.

Director of Public Works David Sykes presented the report and responded to Council questions.

Motion: Council Member Rocha moved approval of Items (a)-(d) of the Staff Report, with direction to Staff to present a status update on the sports field issue to the Neighborhood Services and Education Committee. Council Member Pyle seconded the motion.

Public Comments: David Wall expressed comments to the Staff recommendations.

Action: On a call for the question, the motion carried unanimously, the Staff reports were accepted, and Staff was directed to present a status update on the sports field issue to the Neighborhood Services and Education Committee. (10-0-1. Absent: Constant.)

4.3 As recommended by the Transportation and Environment Committee on April 2, 2012, accept the status report on the City's Deferred Maintenance and Infrastructure Backlog. CEQA: Not a Project. (Public Works)

Documents Filed: (1) Memorandum from City Clerk Dennis Hawkins, CMC, dated April 10, 2012, transmitting the Transportation and Environment Committee. (2) Supplemental memorandum dated Assistant City Manager Edward K. Shikada, dated April 19, 2012, providing additional information on efforts related to a potential General Obligation bond measure for certain infrastructure assets.

Director of Public Works David Sykes and Assistant to the City Manager Ashwini Kantak presented the report. Director of Transportation Hans Larsen and Deputy Director of Parks, Recreation and Neighborhood Services Matt Cano were present.

Council discussion ensued.

Public Comments: David Wall commented on the Water Pollution Control Plant and its maintenance.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the status report on the City's Deferred Maintenance and Infrastructure Backlog was accepted. (11-0.)

CEREMONIAL ITEM

1.5 Presentation of a commendation to Hon. James Emerson (Ret.) for his volunteer service to the IPA-SJPD Mediation Program. (Mayor)

Mayor Reed, Council Member Kalra and Independent Police Auditor Judge LaDoris Cordell (Ret.) recognized and commended Honorable James Emerson (Ret.) for his volunteer service to the Independent Police Auditor – San José Police Department Mediation Program.

PUBLIC SAFETY SERVICES

8.1 Accept the 2011 Independent Police Auditor Year End Report. (Independent Police Auditor)

Note: Items 8.1 and 8.2 were heard together.

Documents Filed: The 2001 Independent Police Auditor Year End Report dated April 2012 from the Office of the Independent Police Auditor.

8.1 (Cont'd.)

Independent Police Auditor Judge LaDoris H. Cordell (Retired) and Assistant Independent Police Auditor Shivaun Nurre presented the Independent Police Auditor Year End Report.

Chief of Police Christopher M. Moore presented introductory comments. Lieutenant Michael Knox, Internal Affairs Commander, presented the 2011 San José Police Department Internal Affairs Department Initiated Investigations Report.

Council discussion followed.

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

Action: Upon motion by Council Member Herrera, seconded by Council Member Pyle and carried unanimously, the 2011 Independent Police Auditor Year End Report, was accepted. (11-0.)

8.2 **Accept the San José Police Department's Internal Affairs Unit report on Department Initiated Investigations for CY 2011. CEQA: Not a Project, File No. PP10-069(a), Annual Reports. (Police)**

Documents Filed: Memorandum from Chief of Police Christopher M. Moore, dated April 2, 2012, recommending acceptance of the report.

Action: Upon motion by Council Member Herrera, seconded by Council Member Pyle and carried unanimously, the San José Police Department's Internal Affairs Unit report on Department Initiated Investigations for CY 2011, was accepted. (11-0.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.4 **Report on bids and award of contract for the Lower Guadalupe River Trail (Reaches A-E) to the low bidder, Wattis Construction Co., Inc., in the amount of \$3,223,032, and approval of a contingency in the amount of \$322,303. CEQA: Mitigated Negative Declaration, File No. PP04-323. Council Districts 3 and 4. (Public Works)**

Documents Filed: Memorandum from Director of Public Works David Sykes, dated April 2, 2012, recommending award of the contract to the low bidder.

Motion: Council Member Chu moved approval of the Staff recommendations. Council Member Oliverio seconded the motion.

Deputy Director of Parks, Recreation and Neighborhood Services Matt Cano responded to Council questions.

4.4 Cont'd.)

Vice Mayor Nguyen left the Council Meeting at approximately 5:40 p.m.

Action: The report on bids and award of contract for the Lower Guadalupe River Trail (Reaches A-E) to the low bidder, Wattis Construction Co., Inc., in the amount of \$3,223,032, with related contingency, was approved. (10-0-1. Absent: Nguyen.)

4.5 **Consideration of an ordinance rezoning the real property located on the west side of Meridian Avenue, approximately 200 feet northerly of W. San Carlos Street (265 Meridian Avenue), from CO Commercial Office and R-2 Residential Zoning District to CP Commercial Pedestrian Zoning District on a 0.66 gross acres site (Hooman Sotoodeh, Owner). SNI: Burbank/Del Monte. CEQA: Envision San José 2040 EIR, Resolution No. 76041, File No. PP09-011.** **C12-004 – District 6**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C12-004, dated March 29, 2012. (2) Proof of Publication of Notice of Public Hearing, executed on March 30, 2012, submitted by the City Clerk.

Mayor Reed opened the public hearing.

Public Comments: David Wall provided comments on the proposed rezoning.

Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Constant and carried unanimously, Ordinance No. 29060, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the West Side of Meridian Avenue on a 0.66 Gross Acre Site, Approximately 200 Feet Northerly of West San Carlos Street (265 Meridian Avenue) to the CP Commercial Pedestrian Zoning District”, was passed for publication. (10-0-1. Absent: Nguyen.)

4.6 **Consideration of an ordinance rezoning the real property located on the east side of Meridian Avenue, approximately 170 feet southerly of Minnesota Avenue (1414 Meridian Avenue), from R-1-8 Residential Zoning District to CP Commercial Pedestrian Zoning District on a 0.17 gross acres site (Todd and Jennifer Harman, Owner). CEQA: Envision San José 2040 EIR, Resolution No. 76041, File No. PP09-011.** **C12-005 – District 6**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C12-005, dated March 29, 2012. (2) Proof of Publication of Notice of Public Hearing, executed on March 30, 2012, submitted by the City Clerk.

4.6 (Cont'd.)

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

Mayor Reed opened the public hearing.

Public Comments: David Wall expressed opposition to the Staff recommendations.

Mayor Reed closed the public hearing.

Action: On a call for the question, the motion carried unanimously, Ordinance No. 29061, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the East Side of Meridian Avenue on a 0.17 Gross Acre Site, Approximately 170 Feet Southerly of Minnesota Avenue (1414 Meridian Avenue) to the CP Commercial Pedestrian Zoning District", was passed for publication. (10-0-1. Absent: Nguyen.)

4.7 **Consideration of an ordinance rezoning the real property located at/on the northeast corner of South Bascom Avenue and Fruitdale Avenue (898 South Bascom Avenue) from the CP Commercial Pedestrian Zoning District to the CN Commercial Neighborhood Zoning District (Jones Tonnie J Et Al, Owner). Council District 6. SNI: Burbank/Del Monte. CEQA: Envision San José 2040 EIR, Resolution No. 76041, File No. PP09-011. C12-002 – District 6**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C12-002, dated April 11, 2012. (2) Proof of Publication of Notice of Public Hearing, executed on April 13, 2012, submitted by the City Clerk. (3) Email from Edgar Vasquez, dated April 22, 2012, expressing concern and opposition to the rezoning.

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

Mayor Reed opened the public hearing.

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

Council Member Liccardo expressed his objections to the motion on the floor.

Public Comments: David Wall expressed opposition to the Staff recommendations.

Mayor Reed closed the public hearing.

4.7 (Cont'd.)

Action: On a call for the question, the motion carried, Ordinance No. 29062, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated On An Approximately 0.72 Acre Site on the Northeast Corner of South Bascom Avenue and Fruitdale Avenue (898 South Bascom Avenue) to the CN Commercial Neighborhood Zoning District”, was passed for publication. (9-1-1. Noes: Liccardo. Absent: Nguyen.)

4.9 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)

Documents Filed: (1) Memorandum from Council Member Liccardo, dated April 23, 2012, approving the Staff recommendations, with additions as described below in “Action”. (2) Memorandum from City Clerk Dennis Hawkins, CMC, dated April 5, 2012, transmitting the recommendation of the Community and Economic Development Committee.

Motion: Council Member Liccardo moved approval of the memorandum dated April 23, 2012, approving the Staff recommendations, with additions as described below in “Action”. Council Member Herrera seconded the motion.

Action: On a call for the question, the motion carried unanimously, the memorandum from Council Member Liccardo, dated April 23, 2012, approving the Staff recommendations with the following additions, which largely reiterate the same recommendations made unanimously by the Community and Economic Development Committee in its March 26, 2012 meeting: (1) Assess the feasibility of eliminating the private property permit fee for commercially zoned parking facilities in the downtown and return to Council with a recommendation during our annual consideration of Fees and Charges. (2) Continue efforts to make San Pedro Square and SoFA District cost effective, “turn-key” downtown event “venues”. (3) Identify any potential event locations in the downtown core where street closures can safely be implemented by an event producer with the use of traffic equipment rather than Parking Traffic and Control Officers (PTCO) or secondary employment Police Officers. (4) Report back to Community and Economic Development Committee within six months with a recommended policy and any fees changes. (10-0-1. Absent: Nguyen.)

NEIGHBORHOOD SERVICES

- 5.1 Accept this report regarding the on-going administration of graffiti eradication activities. CEQA: Not a Project, File No. PP10-069, Staff Report. (Parks, Recreation and Neighborhood Services)**

Action: Deferred to May 01, 2012 per Administration.

TRANSPORTATION & AVIATION SERVICES

- 6.1 Adopt 2011-2012 Appropriation Ordinance and Funding Sources Resolution amendments in the funds as detailed in Attachment A of the staff memorandum to reflect the issuance of City of San José Airport Revenue Bonds Series 2011A and 2011B and the change in customer facility charge from \$10.00 per contract to \$6.00 per day. CEQA: Not a Project, PP10-067(b), Appropriation Ordinance. (Airport/City Manager's Office)**

Action: Renumbered to Item 2.12. See Item 2.12 for Action.

- 6.2 Adopt a resolution:**

(a) Authorizing the Director of Public Works to determine the lowest responsive and responsible bidder for the Taxiway W Extension G-J Project at the Norman Y. Mineta San José International Airport and to either: (i) award the contract to the lowest responsive and responsible bidder in an amount not to exceed \$13,070,000, contingent upon award and execution of an Airport Improvement Program Grant from the Federal Aviation Administration; or (ii) reject all bids and re-bid the Project.

(b) Approving a contingency equal to fifteen percent of the award amount. CEQA: Resolution Nos. 67380 and 71451, PP 12-025. (Public Works/Airport)

Documents Filed: Memorandum from Director of Public Works David Sykes and Director of Aviation William F. Sherry, A.A.E., dated April 2, 2012, recommended adoption of a resolution.

Action: Upon motion by Council Member Chu, seconded by Council Member Herrera and carried unanimously, Resolution No. 76206, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Public Works to Award a Construction Contract for the Norman Y. Mineta San José International Airport Taxiway W Extension G-J Project to the Lowest Responsive Bidder In An Amount Not To Exceed \$13.07 Million, Plus a Contingency Equal to 15% of the Award Amount, Contingent Upon Award and Execution of an Airport Improvement Grant From the Federal Aviation Administration", was adopted. (10-0-1. Absent: Nguyen.)

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 Accept the Annual Status Report on cooperative efforts in 2011 between the City of San José and the Santa Clara Valley Water District relating to flood protection, water supply, watershed protection, and policy priorities. CEQA: Not a Project, File No. PP10-067 (a), Increase or Adjustment to Fees, Rates & Fares. (Environmental Services/City Manager's Office)**

Documents Filed: Memorandum from City Manager Debra Figone and Santa Clara Valley Water District Chief Executive Officer Beau Goldie, dated April 2, 2012, recommending acceptance of the report.

Motion: Council Member Herrera moved approval of the Staff recommendations. Council Member Pyle seconded the motion.

Public Comments: David Wall stated that there should be more reports on the South Bay Water Recycling.

A short discussion followed.

Action: On a call for the question, the motion carried unanimously, the Annual Status Report on cooperative efforts in 2011 between the City of San José and the Santa Clara Valley Water District relating to flood protection, water supply, watershed protection, and policy priorities was accepted. (10-0-1. Absent: Nguyen.)

- 7.2 (a) Approve an ordinance to amend Chapter 9.10 of Title 9 of the San José Municipal Code to amend Section 9.10.1435 to require the exclusive solid waste franchisee to pay a Source Reduction and Recycling Fee (AB939 Fee).**
- (b) Adopt a resolution to amend the Schedule of Fees and Charges (Resolution No. 72737 as amended) to revise the Source Reduction and Recycling Fee (AB939 Fee) for commercial solid waste collected city-wide for two exclusive franchise districts at \$4,200,000 per fiscal year to be paid by the exclusive franchisee.**
- (c) Adopt a resolution fixing and determining Maximum Commercial Solid Waste Services Rates in the City of San José pursuant to the Commercial Solid Waste and Recyclable Materials Collection Franchise Agreements between the City of San José and Allied Waste Services of North America, LLC dba Allied Waste Services of Santa Clara County, including the total processing costs for organic processing services.**

CEQA: Not a Project, File No. PP10-067 (a), Increase or Adjustment to Fees, Rates & Fares. (Environmental Services/City Manager's Office)

Action: Deferred to May 15, 2012 per Orders of the Day.

7.3 As recommended by the Transportation and Environment Committee on April 2, 2012:

- (a) Accept the Environmentally Preferable Procurement Policy Report for 2010-2011.**
- (b) Adopt a resolution approving modifications to Council Policy 4-6, “Environmentally Preferable Procurement Policy” to prohibit the purchase of food service ware made from expanded polystyrene in City facilities, programs, or at events at City venues.**

CEQA: Exempt, File No. PP12-019. (City Manager’s Office/Environmental Services)

[Transportation and Environment Committee referral 4/2/12 – Item D(1)]

Action: Renumbered to Item 2.13. See Item 2.13 for Action.

OPEN FORUM

Documents Filed: Letter from Mike Glazzy, dated April 24, 2012, regarding the Korean War Veterans.

- (1) David Wall expressed concerns about the failure of the Water Pollution Control Plant.
- (2) Mike Glazzy, representing Department of California, Korean War Veterans Association, expressed his desire for the City of San José to commemorate the sacrifices displayed by the Korean War veterans. Mayor Reed referred Mr. Glazzy to the Offices of the Mayor and Council Member Constant.
- (3) Mr. Carpentier reported a concern related to opening a business in San José. Mayor Reed referred Mr. Carpentier to Assistant City Manager Edward K. Shikada.

ADJOURNMENT

The Council of the City of San José was adjourned at 6:00 p.m. in memory of Mary Mendez, who managed the St. Joseph Day Worker Center and helped day workers find jobs for more than 18 years. (Mayor)

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis D. Hawkins, CMC
City Clerk

/smd 04-24-12 MIN

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