

## MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, APRIL 19, 2016

The Council of the City of San José convened in Regular Session at 9:06 a.m. in the Council Chamber at City Hall.

Present: Council Members - Carrasco, Herrera, Jones, Kalra, Khamis, M. Nguyen, T. Nguyen, Oliverio, Peralez, Rocha; Liccardo.

Absent: Council Members - All Present.

### STRATEGIC SUPPORT SERVICES

#### 3.2 Accept Labor Negotiations Update.

There was no report.

### CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:12 a.m. to a Closed Session in Room W133 (A) Public Employment/Public Employee Evaluation Pursuant to Government Code Section 54957: Title: City Manager; Name: Norberto Dueñas. (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9 subsection (c) with respect to anticipated litigation in three (3) matters. (C) to confer with Legal Counsel pursuant to Government Code Section 54956.9(d)(1) with respect to existing litigation: (1) San Francisco Baykeeper v. City, et al. Names of Parties Involved: San Francisco Baykeeper, City of San José, San José Department of Transportation, San José Public Works Department, San José Environmental Department; Court: United States District Court, Northern District, San José Division; Case No: 15-CV-00642-BLF; Amount of Money or Other Relief Sought: Declaratory Relief, Injunctive Relief. (2) 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-969-M. Amount of Money or Other Relief Sought: Damages According to Proof. (3) IFPTE Local 21 v. City of San José; Names of Parties Involved: International Federation of Professional and Technical Engineers Local 21, City of San José; Court: State of California Public Employment Relations Board; Case

## CLOSED SESSION (Cont'd.)

No: SF-CE-996-M; Amount of Money or Other Relief Sought: Damages according to proof. (4) American Federation of State, County and Municipal Employees, et al. v. City; Names of Parties Involved: American Federation of State, County and Municipal Employees, City of San José; Court: State of California Public Employment Relations Board; Case No: SF-CE-924-M; Amount of Money or Other Relief Sought: Damages According to Proof. (5) OE#3 v. City of San José; Names of Parties Involved: Operating Engineers Local Union No. 3, City of San José; Court: State of California Public Employment Relations Board; Case No: SF-CE-900-M. (6) ABMEI v. City, et al. Names of Parties Involved: Association of Building, Mechanical and Electrical Inspectors, City of San José; Court: State of CA Public Employment Relations Board; Case No: UPC SF 1358 M; Amount of Money or Other Relief Sought: Damages according to proof. (7) San José Retired Employees Association, et al. v. City, et al; Names of Parties Involved: San José Retired Employees Association, Howard E. Fleming, Donald S. Macrae, Frances J. Olson, Gary J. Richert and Rosalinda Navarro, City of San José Does 1 – 50, Board of Administration for the Federated City Employees Retirement System; Court: Superior Court of the State of California for County of Santa Clara, Sixth District Court of Appeal; Case No: 1-12-CV-233660, H040979, H042074; Amount of Money or Other Relief Sought: Declaratory Relief and Verified Petition for Writ of Mandate. (8) Sapien, et al. v. City of San José, et al; Names of Parties Involved: Robert Sapien, Marty Kathleen McCarthy, Thanh Ho, Randy Sekany, Ken Heredia, City of San José, Debra Figone in her official capacity as City Manager of the City of San José, Does 1-15, The Board of Administration for the 1961 San José Police and Fire Department Retirement Plan; Court: Superior Court of the State of California for County of Santa Clara, Sixth District Court of Appeal; Case No: 1-12-CV-225928, H040979, H042074; Amount of Money or Other Relief Sought: Challenge to Measure B. (9) Harris, et al. v. City of San José, et al; Names of Parties Involved: Teresa Harris, Jon Reger, Moses Serrano, Suzann Stauffer, City of San José, Debra Figone in her official capacity as City Manager of the City of San José, The Board of Administration for the 1975 Federated City Employees' Retirement Plan, Does 1-15; Court: Superior Court of the State of California for County of Santa Clara, Sixth District Court of Appeal; Case: 1-12-CV-226570, H040979, H042074; Amount of Money or Other Relief Sought: Challenge to Measure B. (10) Mukhar, et al. v. City of San José, et al; Names of Parties Involved: John Mukhar, Dale Dapp, James Atkins, William Buffington, Kirk Pennington, City of San José, Debra Figone in her official capacity as City Manager of the City of San José, The Board of Administration for the 1975 Federated City Employees' Retirement Plan, Does 1-15; Court: Superior Court of the State of California for County of Santa Clara, Sixth District Court of Appeal; Case: 1-12-CV-226574, H040979, H042074; Amount of Money or Other Relief Sought: Challenge to Measure B. (11) AFSCME, et al. v. City of San José, et al; Names of Parties Involved: American Federation of State, County and Municipal Employees, Local 101 on behalf of its members, City of San José, The Board of Administration for the Federated City Employees' Retirement Plan; Court: Superior Court of the State of California for County of Santa Clara, Sixth District Court of Appeal; Case: 1-12-CV-225928, H040979, H042074; Amount of Money or Other Relief Sought: Challenge to Measure B. (12) People of the State of California, et al. v. City of San José, et al. Names of Parties

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

Involved: The People of the State of California ex rel, San José Police Officers' Association, City of San José, City Council of San José; Court: Superior Court of the State of California for the County of Santa Clara; Case No: 1-13-CV-245503; Amount of Money or Other Relief Sought: Verified Complaint in Quo Warranto. (13) San José Retired Employees Association, et al V. City of San José, et al. Names of Parties Involved: San José Retired Employees Association, Kirk Pennington, David Armstrong, Donna Jewett, Dorothy McGinley, City of San José, The Board of Administration for the Federated City Employees Retirement Plan; Court: Superior Court of California, County of Santa Clara; Case No: 1-14-CV-2680085; Amount of Money or Other Relief Sought: Change to City Medical Plan. (D) to confer with Real Property Designated Representatives pursuant to Government Code Section 54956.8: Property Street Address: 88 East San Fernando Street, San José; Negotiation Parties: Jim Ortbal and Laura Wells for the City of San José; Seller: None. The property is being sold to highest bidder by the Successor Agency; Under Negotiation: The direction will concern price and terms of payment to be offered as a bid on the Property. Likely Range of Value of Property: Bid price based on appraisal and comparable property values. (E) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Designee Jennifer Schembri; Director of Employee Relations; 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

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

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. (SJPOA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc. Web: <http://www.sanjoseca.gov/?nid=186>; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 11:07 a.m. and reconvened to Regular Session at 1:33 p.m. in the Council Chamber.

Present: Council Members - Carrasco, Herrera, Jones, Kalra, Khamis, M. Nguyen, T. Nguyen, Oliverio, Peralez, Rocha; Liccardo.

Absent: Council Members - All Present.

## **INVOCATION**

California South Bay Area School for Chinese Opera offered the Invocation. (District 4)

## **PLEDGE OF ALLEGIANCE**

Mayor Sam Liccardo led the Pledge of Allegiance.

## **ORDERS OF THE DAY**

Upon motion by Vice Mayor Rose Herrera, seconded by Council Member Tam Nguyen and carried unanimously, the Orders of the Day and the Amended Agenda were approved, and Item 11.2 was deferred to May 10, 2016, to be heard last in the afternoon. (10-0-1. Absent: Carrasco.)

## **CEREMONIAL ITEMS**

### **1.1 Presentation of a proclamation for "Earth Day" to demonstrate support for environmental protection and sustainability in the City of San José. (Kalra)**

Mayor Sam Liccardo and Council Member Ash Kalra recognized "Earth Day" in the City of San José. Mayor Sam Liccardo presented the commendation to Director of Environmental Services Kerrie Romanow.

## CONSENT CALENDAR

Upon motion by Vice Mayor Rose Herrera, seconded by Council Member Tam Nguyen and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (9-0-2. Absent: Carrasco, M. Nguyen.)

### 2.1 Approval of Minutes.

There were none.

### 2.2 Final adoption of ordinances.

There were none.

### 2.3 Approval of Council Committee Minutes.

(a) **Rules and Open Government Committee Minutes of March 23, 2016.**  
(Mayor)

(b) **Community and Economic Development Committee Minutes of March 28, 2016. (Khamis)**

**CEQA: Not a Project, File No. PP10-069(e), City Administrative Activities.**

Documents Filed: (1) The Rules and Open Government Committee Minutes dated March 23, 2016. (2) The Community and Economic Development Committee Minutes dated March 28, 2016.

Action: The Council Minutes were approved. (9-0-2. Absent: Carrasco, M. Nguyen.)

### 2.4 Mayor and Council Excused Absence Requests.

There were none.

### 2.5 City Council Travel Reports.

There was no report.

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

There was no report.

### 2.7 Approve the proposed deaccession of items in the City's collections in accordance with the History San José Collections Management Policy. Historic Landmarks Commission recommends approval (7-0-0). CEQA: Exempt, Section 15061(b)(3) No potential for causing a significant effect on the environment, File No. PP16-039. (Economic Development)

**2.7 (Cont'd.)**

Documents Filed: (1) Memorandum from Deputy City Manager/Director of Economic Development Kim Welsh, dated April 7, 2016, recommending approval of the proposed deaccession of items in the City's collections. (2) Supplemental memorandum from Director of Planning, Building and Code Enforcement Harry Freitas, dated April 8, 2016, summarizing the Historic Landmarks Commissions' discussion and recommendations.

Action: The proposed deaccession of items in the City's collections in accordance with the History San José Collections Management Policy was approved. (9-0-2. Absent: Carrasco, M. Nguyen.)

**2.8 Accept travel payments and authorize travel for Mayor's staff, Ingrid Holguin, Policy Advisor for Strategic Partnerships, to Phoenix, AZ, from May 4, 2016 to May 6, 2016 for the National League of Cities, Mayor's Education Policy Advisors Network (EPAN) Annual Convening. Source of Funds: National League of Cities. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (Mayor)**

Documents Filed: Memorandum from Mayor Sam Liccardo, dated April 1, 2016, requesting acceptance of travel payments and approval of travel for the Mayor's Staff member.

Action: Travel payments were accepted and travel for Mayor's staff, Ingrid Holguin, Policy Advisor for Strategic Partnerships, to Phoenix, AZ, from May 4, 2016 to May 6, 2016 for the National League of Cities, Mayor's Education Policy Advisors Network (EPAN) Annual Convening was approved. (9-0-2. Absent: Carrasco, M. Nguyen.)

**2.9 Accept travel payments and authorize travel for Mayor's staff, Khanh Russo, Director of Strategic Partnerships, to San Diego, CA, from May 9, 2016 to May 11, 2016 to attend the MetroLab Spring Conference. Source of Funds: MetroLab Network. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (Mayor)**

Documents Filed: Memorandum from Mayor Sam Liccardo, dated March 28, 2016, requesting acceptance of travel payments and approval of travel for the Mayor's Staff member.

Action: Travel payments were accepted and travel for Mayor's staff, Khanh Russo, Director of Strategic Partnerships, to San Diego, CA, from May 9, 2016 to May 11, 2016 to attend the MetroLab Spring Conference was approved. (9-0-2. Absent: Carrasco, M. Nguyen.)

- 2.10 Authorize Independent Police Auditor (IPA) Walter Katz's travel to New York, New York on April 21-22, 2016, to attend an event hosted by the Office of the Inspector General for the New York Police Department which will bring together the heads of oversight agencies and other leaders in civilian oversight to discuss emergent themes in the field of police oversight. Source of Funds: IPA Travel Funds. CEQA: Not a Project, File No PP10-069(c), City Administrative Activities. (Independent Police Auditor)**

Documents Filed: Memorandum from Independent Police Auditor Walter W. Katz, dated April 13, 2016, requesting approval of travel.

Action: The travel request for Independent Police Auditor Walter W. Katz was approved. (9-0-2. Absent: Carrasco, M. Nguyen.)

## **END OF CONSENT CALENDAR**

### **STRATEGIC SUPPORT SERVICES**

- 3.3 (a) Adopt a resolution:**
- (1) Amending the current prevailing wage enforcement mechanism for late submission of certified payroll records on City's Housing projects to assess liquidated damages in the amount of \$250.00 per day provided that the liquidated damages assessed do not exceed the total contract amount of the developer's, general contractor's or subcontractor's contract who failed to submit timely certified payroll records, and provided further there was no actual wage violation discovered in the late records and the late records were submitted to the City within one year from when they were due.**
  - (2) Applying the amended prevailing wage enforcement mechanism for late submission of certified payroll records to all City's Housing project contracts entered into on or after January 1, 2013.**
  - (3) Authorizing City staff to refund, subject to the appropriation of funds, the difference in the amount of liquidated damages between the prior enforcement mechanism without a cap and the amended enforcement mechanism with a cap for all City's Housing project contracts entered into on or after January 1, 2013 where full payment of liquidated damages was made to the City within one year from when they were due.**
- (b) Adopt the following 2015-2016 Appropriation Ordinance amendments in the Low and Moderate Income Housing Asset Fund:**
- (1) Increase the appropriation to the Housing Department for Loan Management in the amount of \$100,680.**
  - (2) Decrease the Unrestricted Ending Fund Balance appropriation in the amount of \$100,680.**

**CEQA: Not a Project, File No. PP10-068(c), Municipal Code or Policy Change that involve no changes in the physical environment. (Public Works/Housing/City Manager)**

### 3.3 (Cont'd.)

Documents Filed: (1) Replacement memorandum from Director of Public Works Barry Ng, Director of Housing Jacky Morales-Ferrand and Senior Deputy City Manager/Budget Director Jennifer A. Maguire, dated April 7, 2016, providing additional discussion and information and recommending adoption of a resolution and appropriation ordinance amendments. (2) Staff presentation dated April 19, 2016 summarizing Liquidated Damages for Late Payroll Records on City's Housing Projects. (3) Letter from Joan R. Gallo, Hopkins & Carley, dated April 19, 2016, regarding the liquidated damages for late payroll records. (4) Letter from Karl Casolari, Carpenters Union, Local 405, dated April 18, 2016, regarding the liquidated damages for late payroll records.

Director of Public Works Barry Ng presented the report on Liquidated Damages for Late Payroll Records on City's Housing Projects.

Mayor Sam Liccardo opened the floor for public testimony.

Public Comments: Providing comments, suggestions and support regarding amending the current prevailing wage enforcement mechanism for late submission of certified payroll records on City's Housing projects were Karl Casolari, Carpenters Union, Local 405; Andrea Osgood, Eden Housing; Michael Lodoen, L&D Construction; Joan R. Gallo, Hopkins & Carley; Josue Garcia, Building Trades Council and Anne Rosenwerg.

Director of Public Works Barry Ng and Public Works Division Manager Nina Grayson responded to Council questions and concerns. Joan R. Gallo, Hopkins & Carley responded to Council questions.

Motion: Vice Mayor Rose Herrera moved approval of Option c from the replacement memorandum from Staff, dated April 7, 2016 and described below in "Action. Council Member Johnny Khamis seconded the motion.

Council discussion ensued.

Vice Mayor Rose Herrera requested to amend the motion to request Staff to return to Council in two years with a status update. Council Member Johnny Khamis accepted the amendment.

Action: On a call for the question, the motion carried unanimously, Resolution No. 77715, entitled: "A Resolution of the Council of the City of San José Relating to Prevailing Wage Enforcement on City of San José's Housing Projects", was adopted, as amended: Option (c) from the Staff replacement memorandum, dated April 7, 2016, was approved: Assess a flat penalty of \$500 for each week that payroll records are late provided there was no wage violation discovered in the late records. The penalty would be applied per week and not per payroll record. Staff was directed to return to Council in two years with a status update. Ordinance No. 29720, entitled: "An Ordinance of the City of San José Amending Ordinance No. 29589 to Appropriate Monies in the Low and Moderate Income Housing Asset Fund for Loan Management; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. (11-0.)



## NEIGHBORHOOD SERVICES

- 5.1 (a) **Accept the Council memorandum dated December 18, 2015, including the award of the project at the Airport West Site to Robert A. Bothman Construction as follows:**
- (1) **Report on bids and award of contract for the 7882 – Coleman Soccer Field Complex to the low bidder, Robert A. Bothman, for the base bid of \$13,910,300 and approval of a ten percent contingency in the amount of \$1,391,030.**
  - (2) **Adopt the following 2015-2016 Appropriation Ordinance Amendments in the Parks and Recreation Bond Project Fund:**
    - (a) **Increase the Coleman Soccer Fields Appropriation to the Parks, Recreation and Neighborhood Services Department in the amount of \$5,818,000.**
    - (b) **Decrease the Parks and Recreation Bond Projects Contingency Reserve by \$5,818,000.**
- (b) **Deny the award and request that staff continue discussions with Capitol Airport Partners and the Guadalupe River Park Conservancy to potentially place a larger soccer complex within the Guadalupe Gardens.**

**CEQA: Coleman Soccer Fields Mitigated Negative Declaration, File No. PP10-155. (Public Works/Parks, Recreation and Neighborhood Services/City Manager) (Deferred from 1/12/16 - Item 5.1; 2/9/16 - Item 5.1; et al; and 3/15/16 – Item 5.1)**

Documents Filed: (1) Memorandum from Mayor Sam Liccardo, dated April 19, 2016, recommending approval of the award to Robert A. Bothman on April 22, 2016, unless the City Manager can timely determine the terms to acquire the 26.7 acre site at Guadalupe Gardens, utilizing none other than the potential sources of funds identified in Attachment F of the Staff Report dated April 19, 2016 with further conditions as described in “Action” on Page 10. (2) Information memorandum from City Manager Norberto Dueñas, dated April 22, 2016, providing an update on the status of the proposed development of a soccer complex in Guadalupe Gardens: the City Manager determined that sufficient progress has been wide with various partners to continue down the path of creating a new and larger soccer complex in Guadalupe Gardens. To this end, the contractor has been informed that we are not awarding the bid for the construction of the smaller complex at the Airport West site. (3) Supplemental memorandum from Deputy City Manager/ Director of Economic Development Kim Welsh, Director of Parks, Recreation and Neighborhood Services Angel Rios, Jr., Director of Public Works Barry Ng and Director of Aviation Services Kimberly J. Becker, dated March 10, 2016, providing an update on the status on discussions. (4) Supplemental memorandum from Deputy City Manager/Director of Economic Development Kim Welsh and Director of Parks, Recreation and Neighborhood Services Angel Rios, Jr., dated April 15, 2016, proving an update on the status of discussions between Staff and the Federal Aviation Administration (FAA). (5) Supplemental memorandum from Deputy City Manager/ Director of Economic Development Kim Welsh, Director of Parks, Recreation and Neighborhood Services Angel Rios, Jr., Director of Public Works Barry Ng and Director of Aviation Services Kimberly J. Becker, dated April 19, 2016, providing an update on discussions. (6) Four letters from the public all dated April 19, 2016 regarding the Soccer Field Complex.

## 5.1 (Cont'd.)

Assistant City Manager David Sykes provided introductory remarks.

Assistant Director of Economic Development Nanci J. Klein and Assistant Director of Parks, Recreation and Neighborhood Services Matt Cano presented the report. Director of Public Works Barry Ng, Director of Aviation Services Kimberly J. Becker were available for questions.

Mayor Sam Liccardo opened the floor for public testimony.

Public Comments: Expressing support to the Soccer Complex at Guadalupe Gardens and other comments were Nathan Scott, Kevin James, Nour Zahzah, Tim Dickert, Dave Javal, Daniel Sanchez, Rory Birse, San José Earthquakes; Nancy Smith, Sutter Health; Jeff Lawson, Leslee Hamilton, Guadalupe River Park Conservancy; Matthew Olivieri, Elizabeth Young, Kidz Love Soccer; Debra Taylor, Andy Steen, Avaya; Barry Gray, Jay Polkinghorn, Don Gagliardi, Soccer Silicon Valley; Robert Aquirre, Ray Perez, Mike Nichols, Hope Services and Suzy Brooks.

Mayor Sam Liccardo provided background information about the Soccer Field Complex Project.

Motion: Council Member Raul Peralez moved approval of the memorandum from Mayor Sam Liccardo, dated April 19, 2016, as described below in "Action on Page 10". Council Member Ash Kalra seconded the motion.

Mayor Sam Liccardo requested to amend the motion to add a \$3 Million cap for the next 72 hours. The amendment was accepted by Council Member Raul Peralez and Council Member Ash Kalra.

Mayor Sam Liccardo requested to amend the motion to add the following: that this will not interfere with the completion of the Arcadia Project. The amendment was accepted by Council Member Raul Peralez and Council Member Ash Kalra.

Action: On a call for the question, the motion carried unanimously, the revised memorandum from Mayor Sam Liccardo, dated April 19, 2016, was approved, accepting the award of the bond-funded soccer complex at the Airport West Site to Robert A. Bothman on April 22, 2016, *unless* the City Manager can timely determine the terms to acquire the 26.7 acre site at the Guadalupe Gardens, utilizing none other than the potential sources of funds identified in Attachment F of the Staff Report dated April 19, 2016, with the conditions that: (1) No entity other than the Airport or another City department may receive City dollars for the land purchase. (2) No new General Fund dollars (*\$3 Million cap for the next 72 hours*) may be expended in the land purchase that would not otherwise have been expended on the Airport, or as proposed previously on the fields at Airport West. (3) No Parkland Dedication Ordinance fees may be expended in the land purchase. (4) To the extent possible, the transaction shall minimize the expenditure of any park restricted Construction and Conveyance Tax dollars for the land purchase. (5) *This will not interfere with the completion of the Arcadia Project.* (11-0.)

## TRANSPORTATION & AVIATION SERVICES

- 6.1 (a) Conduct a Public Hearing pursuant to California Government Code Section 53083 regarding economic development subsidies to be provided to Air China pursuant to the City's Air Service Support Program.
- (b) Adopt a resolution authorizing the City Manager or his designee to provide the following economic development subsidies pursuant to the City's Air Service Support Program:
- Air China:**
- (1) Waive landing fees at 100% for 18 months after the initial operation and 50% for the next 12 months at an approximate value of \$263,830.
  - (2) Waive ticket counter fees at 100% for 18 months after the initial operation and 50% for the next 12 months at an approximate value of \$329,472.
  - (3) Waive gate fees at 100% for 18 months after the initial operation and 50% for the next 12 months at an approximate value of \$172,224.
  - (4) City will provide marketing funds of up to \$600,000.

**CEQA: Determination of Consistency with the San José International Airport Master Plan Update (Resolutions Nos. 67380 and 71451), File No. PP09-192. (Airport)**

Documents Filed: Memorandum from Director of Aviation Services Kimberly J. Becker, dated April 6, 2016, recommending conducting a public hearing and adoption of a resolution.

Mayor Sam Liccardo opened the Public Hearing.

Public Comments: There was no public testimony from the floor. Mayor Sam Liccardo closed the Public Hearing.

Action: Upon motion by Council Member Johnny Khamis, seconded by Vice Mayor Rose Herrera and carried unanimously, Resolution No. 77716, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Provide Economic Development Subsidies to Air China, Pursuant to the New Air Service Support Program at the Norman Y. Mineta San José International Airport", was adopted. (11-0.)

## ADJOURNMENT

Mayor Sam Liccardo adjourned the afternoon session at 6:35 p.m.

## RECESS/RECONVENE

The City Council recessed at 6:35 p.m. from the afternoon Council Session and reconvened at 7:00 p.m. in the Council Chamber, City Hall.

Present: Council Members - Carrasco, Herrera, Jones, Kalra, Khamis, M. Nguyen, T. Nguyen, Oliverio, Peralez, Rocha; Liccardo.

Absent: Council Members - All Present.

City Clerk Toni J. Taber, CMC read the requests for continuance of the applications. Upon motion by Vice Mayor Rose Herrera, seconded by Council Member Johnny Khamis and carried unanimously, the below noted continuances and actions were taken as indicated. (11-0.)

## CEREMONIAL ITEMS

- 1.2 **Presentation of a commendation to Latha Krishnamurthi for her dedication and commitment to Evergreen's Annual Earth, People, International, Culture (E.P.I.C.) Festival. (Herrera)**

Mayor Sam Liccardo and Vice Mayor Rose Herrera recognized Latha Krishnamurthi for her dedication and commitment.

## PUBLIC HEARINGS ON CONSENT CALENDAR.

Upon motion by Council Member Pierluigi Oliverio, seconded by Vice Mayor Rose Herrera and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (8-0-3. Absent: Carrasco, T. Nguyen, Rocha.)

- 11.1 (a) **Recommendation: Consideration of an ordinance rezoning the real property located at 439 South 4<sup>th</sup> Street from the CG Commercial General Zoning District to the DC Downtown Primary Commercial Zoning District to allow for mixed uses on a 0.5 gross acre site (439 S. 4<sup>th</sup> St. LLC, Owner). Planning Commission recommends approval (6-0-1, Yesney abstained). CEQA: Determination of Consistency to the Envision San José 2040 General Plan Final Program EIR (Resolution No. 76041) and Supplemental EIR (Resolution No. 77617). (Planning, Building and Code Enforcement)**  
**C15-026 – Council District 3**

Documents Filed: (1) Memorandum from Planning Commission Secretary Harry Freitas, dated March 28, 2016, transmitting the Planning Commission recommendation. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C15-026 dated February 17, 2016. (3) Proof of Publication of Notice of Public Hearing, executed on February 5, 2016, submitted by the City Clerk.

11.1 (a) (Cont'd)

Mayor Sam Liccardo opened the Public Hearing.

Public Comments: There was no public testimony from the floor. Mayor Sam Liccardo closed the Public Hearing.

Action: Ordinance No. 29721, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property of Approximately 0.5 Acre on the West Side of 4<sup>th</sup> Street, Approximately 170 Feet Southerly of East San Salvador Street (439 and 451 South 4<sup>th</sup> Street) From the CG Commercial General Zoning District to the DC Downtown Primary Commercial Zoning District", was passed for publication. (8-0-3. Absent: Carrasco, T. Nguyen, Rocha.)

- (b) **Consideration of an ordinance rezoning the real property located at 21 North 21<sup>st</sup> Street, on the west side of North 21<sup>st</sup> Street, approximately 250 feet north of East Santa Clara Street from the R-2 Two-Family Residence Zoning District to the CP Commercial Pedestrian Zoning District on a 0.48-gross acre site (AVG, LLC, Owner). Planning Commission recommends approval (5-0-2, Pham and Bit-Badal absent). CEQA: Determination of Consistency to the Envision San José 2040 General Plan Final Program EIR (Resolution No. 76041) and Supplemental EIR (Resolution No. 77617). (Planning, Building and Code Enforcement)  
C15-053 – Council District 3**

Documents Filed: (1) Memorandum from Planning Commission Secretary Harry Freitas, dated March 28, 2016, transmitting the Planning Commission recommendation. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C15-053 dated February 24, 2016. (3) Proof of Publication of Notice of Public Hearing, executed on February 19, 2016, submitted by the City Clerk.

Mayor Sam Liccardo opened the Public Hearing.

Public Comments: There was no public testimony from the floor. Mayor Sam Liccardo closed the Public Hearing.

Action: Ordinance No. 29722, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property of Approximately 0.48 Acre Situated on the West Side of North 21st Street, Approximately 250 Feet North of East Santa Clara Street (21 North 21st Street) from the R-2 Two Family Residence Zoning District to the CP Commercial Pedestrian Zoning District", was passed for publication. (8-0-3. Absent: Carrasco, T. Nguyen, Rocha.)

- 11.1 (c) **Adopt a resolution for street renaming of an approximately 1,450 foot long portion of Matrix Boulevard between North 1<sup>st</sup> Street and North 4<sup>th</sup> Street, to Technology Place, located on the southeasterly corner of Matrix Boulevard and North 1<sup>st</sup> Street. CEQA: Exempt, Section 15301 Existing Facilities. (Planning, Building and Code Enforcement)  
ST15-004 – Council District 3**

Documents Filed: (1) City Council Action Request from Director of Planning, Building and Code Enforcement Harry Freitas, dated March 28, 2016, recommending adoption of a resolution. (2) Two Proofs of Publications of Notices of Public Hearings, both executed on April 1, 2016, submitted by the City Clerk.

Mayor Sam Liccardo opened the Public Hearing.

Public Comments: There was no public testimony from the floor. Mayor Sam Liccardo closed the Public Hearing.

Action: Resolution No. 77717, entitled: “A Resolution of the Council of the City of San José Renaming an Approximately 1,450 Foot Long Portion of Matrix Boulevard, Between North 1<sup>st</sup> Street and North 4<sup>th</sup> Street, To Technology Place”, was adopted. (8-0-3. Absent: Carrasco, T. Nguyen, Rocha.)

- (d) **Consideration of an ordinance rezoning the real property located at the northwest corner of Monterey Road and Cottage Grove Avenue (1499 Monterey Road) from the A Agricultural Zoning District to the CN Commercial Neighborhood Zoning District on a 0.29 gross acre site (The Glen Loma Group, Owner). Director of Planning, Building and Code Enforcement recommends approval of the Conforming Rezoning. CEQA: Exempt, Sections 15303(c) New Construction or Conversion of Small Structures. (Planning, Building and Code Enforcement)  
C16-005– Council District 7**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C16-005 dated April 4, 2016. (2) Two Amended Proofs of Publications of Notices of Public Hearings, both executed on April 8, 2016, submitted by the City Clerk.

Mayor Sam Liccardo opened the Public Hearing.

Public Comments: There was no public testimony from the floor. Mayor Sam Liccardo closed the Public Hearing.

11.1 (d) (Cont'd.)

Action: Ordinance No. 29723, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property of Approximately 0.29 Gross Acre Situated at the Northwest Corner of Monterey Road and Cottage Grove Avenue (1499 Monterey Road) from the A Agricultural Zoning District to the CN Commercial Neighborhood Zoning District", was passed for publication. (8-0-3. Absent: Carrasco, T. Nguyen, Rocha.)

**END OF PUBLIC HEARINGS ON CONSENT CALENDAR**

**PUBLIC HEARINGS**

- 11.2 **Consideration of an ordinance for a Planned Development Conforming Rezoning to redistribute the locations of the residential and public park land uses and eliminate the school land use on the northern portion of the previously approve Land Use Map (File No. PDC09-006), located on an approximately 9.0 gross acre site, on the North side of Berryessa Road on the northern portion of the parcel just west of Union Pacific Railroad tracks (Flea Market, Owner). Director of Planning, Building and Code Enforcement recommends approval of the Conforming Rezoning as proposed with the condition requiring the property owner to rezone the south side of Berryessa Road to include a minimum of 315,022 square feet and up to a maximum of 2.2 million square feet of commercial/retail/industrial space if no significant improvements have been constructed under the existing entitlements by November 1, 2016 consistent with the San José 2040 General Plan. CEQA: Determination of Consistency with the Flea Market Final EIR (Resolution No. 73956). (Planning, Building and Code Enforcement)**  
**PDC16-001 – Council District 4**

Action: Deferred to May 10, 2016 last in the Afternoon per Orders of the Day.

**COMMUNITY & ECONOMIC DEVELOPMENT**

*Note: Item 4.1 was heard at 4:49 p.m. at the Afternoon Council Session and was continued to the Evening Session at 7:00 p.m.*

- 4.1 (a) **Accept staff's report and general recommendations.**

Documents Filed: (1) Memorandum from Council Member Chappie Jones, dated April 8, 2016, recommending direction to Staff. (2) Memorandum from Vice Mayor Rose Herrera, Council Member Johnny Khamis and Council Member Manh Nguyen, dated April 14, 2016, recommending direction to Staff. (3) Memorandum from Council Member Donald Rocha, dated April 14, 2016, recommending direction to Staff. (4) Memorandum from Council Member Tam Nguyen, dated April 18, 2016, recommending

#### 4.1 (Cont'd.)

Documents Filed: (Cont'd.) declaring a housing shortage emergency, direction to Staff and to schedule a study session. (5) Memorandum from Council Member Manh Nguyen, dated April 19, 2016, recommending direction to Staff. (6) Memorandum from Director of Housing Jacky Morales-Ferrand, dated April 8, 2016, recommending acceptance of the Staff Report, general recommendations and direction to Staff (7) Supplemental memorandum from Director of Housing Jacky Morales-Ferrand, dated April 18, 2016, providing information on the input received from the Housing and Community Development Commission on proposed amendments to the recommended modifications to the City's Apartment Rent Ordinance which was heard by the Commission on April 14, 2016. (8) Approximately fifteen hundred correspondence from the public, all dated April 19, 2016 expressing comments regarding the City's Apartment Rent Ordinance.

City Manager Norberto Dueñas presented introductory remarks.

Director of Housing Jacky Morales-Ferrand and Acting Division Manager Wayne Chen offered the Staff Report.

Mayor Sam Liccardo opened the floor for public testimony.

Public Comments: The following speakers provided suggestions, comments, support and opposition concerning the City's Apartment Rent Ordinance. Diana Salazar, Lia Hernandez, Eunice Hernandez, Rosa Leon, Sacred Heart Community Service; Enoc Lira, Shu Liu, Erik Larsen, David Emmanuel Zamora, Rowan Fairgrove, People Acting in Community Together; Gabriel Cardonas, Anil Babbar, Bruce Roberts, Jim Claus, Katie Martin, Victor Lecha III, South Bay Tenants; Mike Sodergren, Dan Pan, Eva Fetteshauer, Jemy Zhao, Quan He, John Eudy, Essex Property Trust; Flavio Pando, Maria Noel Fernandez, Silicon Valley Rising; Wei Lin, Li Wang, Allen Wong, Lily Li, Mary Shao, Andrew Lui, John Messina, Citizens for Fair Housing Laws; Trisher Matter, Ben O'Hara, Steve Ellenberg, Shirley Staeger, Karl Lee, Roger Grossenbacher, Adriana Vasquez, Omar Vasquez, LUNA; Eileen Cheng, Maureen Ellenberg, James Reilly, Frank Mandarino, Milt Krantz, Maria Padilla, Leigh Curtis, Tim Gildersleeve, Marc Boyd, Boyd Properties; Gary Driedger, Mary Driedger, Kirk McKenzie, Ron Johnson, Jill Borders, Sergio Ruelas Kien, Moise Nahouraii, Rick Smith, R. Pennington, David Wong, Gloria Chun Hoo, League of Women's Voters; Gracie Vasquez, Jaime Gonzalez, Andrea G. Caldwell, Gustavo Gonzalez, Javier Vega, Sam Saiu, Mario Wijtman, Sheila Kay, Stephanie Jorgl, Ray Lubow, Kyra Kazantzis, Law Foundation of Silicon Valley; Greg Miller, California Alliance for Retired Americans; Nina Gomez, Jamila Van Buren, Roberta Moore, John Olson, Eileen Hunter, Sandy Perry, Affordable Housing Network; Tom Scott, California Apartment Association; Sandy Adams, Rental Housing Network; Evelina Nava, Tenants Together; Vincent Rocha, Neil Collins, The Santa Clara County Association of Realtors; Steve Hanleigh, Andy Gonzalez, Daniel Valencia, Michael Pierce, Thao Le, Salma Vizcaya, De Anza Renter's Rights; Charles Padilla,



#### 4.1 (Cont'd.)

Public Comments: (Cont'd.) Mary Esquerra, James Michl, Vicente Alvarez, Silvina Gonzalez, Tuan Dinh, Shelly Miny, Cal-Western Property Management; Daniel Lee, Malcolm Lee, Anthony Charvet, Nevil Batliwala, Matthew Zarate, Renters' Rights Coalition of Silicon Valley; Bob Brownstein, Christopher Welsh, James Welsh, Owen Zitu, Acorn Hills Property; Michael Fitzgerald, Tina West, Vivana De Anda, Moria Merriweather, Sagrado Corazon, Gloria Sanchez, Mathew Reed, Peg Fitzgerald, James Hsu, Dave Walsh, David Down, Bridget McKay, Vin Gomez, Bonnie Liu, Jimmy Feng, Robert Fambrini, Most Holy Trinity Church, Susan Price, Salvador Bustamante, Latinos United for a New America; Andrew Wang, Wei Wang, Andrew Bigelow, Silicon Valley De-Bug; Shawn Wong, Blanca Carbajul, Chris Shupp, Hadie Lane, Li Xia, Vidi Reyes, Camille Llanes-Fantanilla, Jessica Paz Cedillos, Somos Mayfair; Cayce Hill, Amelia Post, Anne Rosenzweig, Lucy Moran, Diana Castillo, Jaire Vieira Filao, Shelley Leiser, Unitarian Church of San José; Kellyanne Tino, Just Case Evictions and Rent Control; John Hyjer, Equity Residential; Omar Torres, David Yam, Melissa Morris, Law Foundation of Silicon Valley; Phillip Vu, Meira Young, Hoi Leung, Gloria Leung, Ann Black, Keith Suddjian, Robert Benscoter, Jeff Zell, Christine Griffin, Robert Benscoter, Jose Medeiros, Juritzi Torres, Gabriel Rodarte, Christian Ollano, Peter Morris, Shires Memorial; Robert Chen, Jack Spica, San José State University; Laura Munguia, Nubia Ramirez, Aurora Solis, Dean Daicy, Jamie Chen, Haley Bayuga, Jaime Alvarado, Luis Alberto Espinoza, Chunchi Ma, Adeles Fan, Brandie Love, Shaunn Cartwright, Gina Gates and Lily Tang.

First Motion: Council Member Johnny Khamis moved approval of the memorandum dated April 14, 2016, he cosigned with Vice Mayor Rose Herrera and Council Member Manh Nguyen. Vice Mayor Rose Herrera seconded the motion. On a call for the question, the motion failed. (4-7. Noes: Carrasco, Jones, Kalra, T. Nguyen, Peralez, Rocha; Liccardo.)

Second Motion: Council Member Tam Nguyen moved approval of his memorandum dated April 18, 2016. There was no second. The motion failed.

Following extensive Council discussion, including several failed motions, the following actions were approved.

- (b) **Direct staff to return with an ordinance amending the City's Apartment Rent Ordinance (ARO), including the following changes:**
  - (1) **Replace the annual 8% allowable rent increase with an annual allowable rent increase of 100% of the San Francisco-Oakland-San José Consumer Price Index for All Urban Consumers (CPI-U), with a 2% floor and 8% ceiling for annual increases, and allowing banking.**

**4.1(b)(1) Cont'd.)**

Action: Upon motion by Council Member Chappie Jones, seconded by Vice Mayor Rose Herrera and carried, Staff was directed to incorporate: 5% Fixed Rate annual allowable rent increase with banking capped at 10%, an annual maximum of 8% rent increase cap (including any banking and allowed capital improvement pass through), provide tenant notification of banking and eliminate the adjustment for historically low rents. (6-5. Noes: Carrasco, Kalra, Oliverio, Peralez, Rocha.)

**(b) (2) Eliminate the existing debt-service pass-through provision.**

Action: Upon motion by Council Member Magdalena Carrasco, seconded by Mayor Sam Liccardo and carried, the existing debt-service pass-through provision was eliminated. (7-4. Noes: Herrera, Khamis, M. Nguyen, Oliverio.)

**(b) (3) Replace the existing capital improvement pass-through provisions with a fair return petition process based on maintenance of net operating income fair return standard.**

Action: Upon motion by Council Member Chappie Jones, seconded by Vice Mayor Rose Herrera and carried, from the memorandum from Council Member Chappie Jones, dated April 8, 2016, the following was approved: Item 3. Capital Improvement Program: (a) Establish a new Capital Improvement Program that allows owners to recover reasonable costs associated with major improvements to the property. (1) Direct Staff to work with stakeholders to develop a comprehensive list of those improvements which would be allowed under the new Capital Improvement Program. (b) Create a simple and predictable process that allows owners to show receipts or other verifiable proof of payment associated with repairs/improvements and would not require a hearing, *unless a tenant files a petition.* (c) The total capital improvements through this program, combined with the annual allowable rent increase (5%) and any available banked amount, shall not exceed 8% total. (1) In years when the Capital Improvement Program is used, an owner cannot bank any portion of the annual allowable rent increase for that year. Staff directed to include a unique amortization process based on the repair or upgrade. (8-3. Noes: Oliverio, Peralez, Rocha.)

**(b) (4) Add a limited capital improvement incentive program.**

Action: Upon motion by Council Member Ash Kalra, seconded by Council Member Chappie Jones and carried, the Staff recommendations were approved. Staff was directed to incorporate limited capital improvements into the new Capital Improvement Program. (9-2. Noes: Oliverio, Rocha.)

**(b) (5) Include a provision to address historically low rents.**

Not Approved. (6-5. Noes: Carrasco, Kalra, Oliverio, Peralez, Rocha.)

4.1 (b) (6) **Add a rent registry to facilitate the monitoring and enforcement of the ARO.**

Action: Upon motion by Council Member Ash Kalra, seconded by Council Member Donald Rocha and carried, a rent registry to facilitate the monitoring and enforcement of the ARO was approved. (6-5. Noes: Herrera, Khamis, M. Nguyen, T. Nguyen, Oliverio.)

(c) **Direct staff to return with an Anti-Retaliation & Protection Ordinance:**  
(1) **Develop a voluntary mediation program to address landlord/tenant and tenant/tenant disputes.**

Action: Upon motion by Council Member Donald Rocha, seconded by Council Member Ash Kalra and carried unanimously, Staff was directed to return with an Anti-Retaliation & Protection Ordinance and to develop a voluntary mediation program to address landlord/tenant and tenant/tenant disputes. From the memorandum from Council Member Donald Rocha, dated April 14, 2016, the following was approved: (1)(d) Outreach: As part of implementation of the Anti-Retaliations and Protection Ordinance, direct Staff to conduct outreach in multiple languages to educate tenants about their rights under the ordinance, with particular attention to groups that may be most vulnerable to abuse, such as immigrant communities. (2) Direct Staff to return to Council in 18 months with an update on implementation of the Apartment Rent Ordinance. As part of this update, Staff should provide the Council with any data they may have collected on no-cause evictions through implementation of the Apartment Rent Ordinance and should assess whether the Rent Ordinance is effective in the absence of a good cause eviction ordinance. Staff was further directed to clarify that damage cannot be caused by the tenant. (10-0-1. Absent: Oliverio.)

(g) **Direct staff to return with an urgency ordinance that provides a temporary pause in annual rent increases for ARO apartments.**

Action: Upon motion by Council Member Ash Kalra, seconded by Council Member Donald Rocha and carried, Staff was directed to return with an urgency ordinance that provides a temporary pause in annual rent increases for ARO apartments. (7-3-1. Noes: Herrera, Jones, Khamis. Absent: Oliverio.)

- (d) **Direct staff to return with an Ellis Act ordinance to address the process to be followed for owners of ARO apartments subject to the ARO (ARO apartments) seeking to remove their building from the rental business.**
- (e) **Direct staff to review the City's demolition provisions in the zoning code and to coordinate with PBCE as needed regarding updating those provisions in order to address the demolition of ARO apartments.**
- (f) **Direct staff to review the City's condominium conversion provisions in Chapter 20.170 to and coordinate with PBCE as needed regarding updating those provisions in order to address the conversion of ARO apartments.**

- 4.1 (h) Direct staff to return with a plan to increase staffing to sufficiently administer, monitor, and enforce requirements of ARO.

**CEQA: Not a Project, File No. PP10-069(a), Staff Reports that involve no approvals of any City Actions and Not a Project, File No. PP10-068(d), Preliminary direction to staff when eventual actions requires Council approval. (Housing)**

Action: Upon motion by Vice Mayor Rose Herrera, seconded by Council Member Magdalena Carrasco and carried, Items 4.1(d), (e), (f) and (h) were continued to May 10, 2016. (8-2-1. Noes: Peralez, Rocha. Absent: Oliverio.)

Staff was directed to develop a Pilot Voluntary Mediation Program. (10-0-1. Absent: Oliverio.)

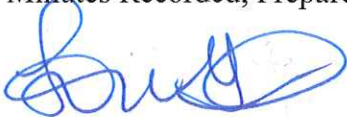
## OPEN FORUM

Blair Beekman opined about his concerns pertaining to the radio frequency identification system.

## ADJOURNMENT

The Council of the City of San José was adjourned at 2:00 a.m.

Minutes Recorded, Prepared and Respectfully Submitted by,



Toni J. Taber, CMC  
City Clerk

smd/04/19/16 MIN