

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, SEPTEMBER 20, 2011

The Council of the City of San José convened in Regular Session at 9:02 a.m. in the Council Chambers at City Hall.

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

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

STRATEGIC SUPPORT SERVICES

3.2 (a) **Accept Labor Negotiations Update.**

Employee Relations Manager Gina Donnelly presented a brief Update on Labor Negotiations.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:03 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 existing litigation in two (2) matters. (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9 subsection (b) with respect to anticipated litigation of significant exposure: (1) Claimants: In re Claim of Ghenis; City Department: Parks, Recreation and Neighborhood Services; (2) Claimants: In re Claim of Head/Brummit/Berggren; City Department: Parks, Recreation and Neighborhood Services. (C) to confer with Legal Counsel pursuant to Government Code Section 54956.9 subsection (a) with respect to existing litigation: (1) California Redevelopment Association, et al. v. Matosantos, et al; Names of Parties Involved: California Redevelopment Association, League of California Cities, John F. Shirley, Ana Matosantos, John Chiang, Patrick O'Connell; Court: Supreme Court, State of California; Case No: S194861; Amount of Money or Other Relief Sought: Writ of Mandate; (2) Union Pacific Railroad Company v. City, et al; Names of Parties Involved: Union Pacific Railroad Company, City of San José, Does 1-10; Court: United States District Court, Northern District of California; Case No: C10-00210 RS; Amount of Money or Other

CLOSED SESSION (Cont'd.)

Relief Sought: Damages according to proof; (3) Elliott v. City; Names of Parties Involved: Greg Elliott, City of San José, Does 1-20; Court: Superior Court of California, County of Santa Clara; Amount of Money or Other Relief Sought: Damages according to proof; (4) Citizens Against Airport Pollution v. City, et al; Names of Parties Involved: Citizens Against Airport Pollution, an unincorporated associations and Does 1-5, City of San José, City Council of the City of San José, Does 6-10, Does 10-30, Real Parties in Interest; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV-177920; Amount of Money or Other Relief Sought: City to set aside and void approvals relating to 8th addendum to Airport Master Plan; (5) Beltran v. City; Names of Parties Involved: Consuela Beltran, City of San José; Does 1-50; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV170281; Amount of Money or Other Relief Sought: Damages according to proof; (6) Sky Chefs, Inc. v. City; Names of Parties Involved: Sky Chiefs, Inc., City of San José; Court: United States District Court, Northern District of California; Case No: C09-03735 RS; Amount of Money or Other Relief Sought: Declaratory and injunctive relief; (7) City v. International Association of Firefighters, et al; Names of Parties Involved: City of San José, International Association of Firefighters, Local 230; Court: Superior Court of California, County of Santa Clara; Case No: 1-06-CV-075858; Amount of Money or Other Relief Sought: Motion to compel arbitration; (8) City v. Association of Building, Mechanical and Building Inspectors; Names of Parties Involved: City of San José, Association of Building, Mechanical and Building Inspectors; Court: State of California Public Employment Relations Board; Case No: SF-CO-168-M; (9) Operating Engineers, Local 3 v. City, et al; Names of Parties Involved: Operating Engineers, Local 3, City of San José; Case No: ARB-10-0405; Amount of Money or Other Relief Sought: Damages according to proof; (10) International Association of Firefighters, Local 230 v. City, et al; Names of Parties Involved: International Association of Firefighters, Local 230, City of San José; Court: Superior Court of California, County of Santa Clara, Court of Appeal, Sixth Appellate District; Case No: 1-09-CV-13378, H035065; Amount of Money or Other Relief Sought: Arbitration of Firefighters Bill of Rights issue; (11) Great Oaks Water, Inc. v. City, et al; Names of Parties Involved: Great Oaks Water Company, Inc., John W.S. Roeder, Betty B. Roeder, Betty B. Roeder Trust A and William C. Miller, Jr. and Betty B. Roeder, Trustees of the Walter S. Roeder Trust B, the City of San José, the San José Redevelopment Agency, Southbay Water Recycling, Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-04-CV012008; Amount of Money or Other Relief Sought: Damages according to proof; (12) Murrel v. City; Names of Parties Involved: Dawn Murrel, City of San José, Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV172575; Amount of Money or Other Relief Sought: Damages according to proof; (13) City v. IAFF (Michael Baldwin); Names of Parties Involved: City of San José, International Association of Firefighter, Local 230, Michael Baldwin; Court: Superior Court of California, County of Santa Clara, Court of Appeal, Sixth Appellate District; Case No: 1-09-CV142109, H034726; (14) Konnick v. Kaiser, et al; Names of Parties Involved: Michi Konnick, by her Guardian Ad Litem, Mircea G. Dragomir, CLPF and George Konnick, Kaiser Foundation Health Plan, Inc., Kaiser Foundation Hospitals, The Permanente Medical Group, Inc., Chandu A. Karadi, Johnson D. Chan, American Medical Response, Inc., Bonnie McPherson, Carlos

CLOSED SESSION (Cont'd.)

Garcia, Thomas Cooper, the City of San José dba San José Fire and Rocco Francisco and Does 1-200; Court: Superior Court of California, County of Santa Clara; Case No: 1-11-CV-200068; Amount of Money or Other Relief Sought: Damages according to proof; (15) California Building Industry Association v. City, et al; Names of Parties Involved: California Building Industry Association, a California nonprofit Corporation, City of San José, a California municipal corporation, City Council and Mayor of the City of San José, Does 1-200; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV-1667289; Amount of Money or Other Relief Sought: Declaratory and Injunctive Relief; (16) Bernal, et al. v. City, et al; Names of Parties Involved: Mike C. Bernal, Susan R. Bernal, Nanetta Bernal, Lilian Bernal Auvinen, Katherine Lira, Diana Bernal-Tuyor, Mike A. Bernal, Gary James Bernal, Domenico Loverde, Tomas J. Martinez, Authur Paul Lira, Jr, Jerimiah Lira, Sommer Kai Espinosa, Lucia A. Bernal, Guillermo Espinosa, City of San José and Does 1-25; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-116141; Amount of Money or Other Relief Sought: Damages according to proof; (17) Berg & Berg Enterprises; Names of Parties Involved: Berg & Berg Enterprises, LLC, City of San José, San José City Council and Does 1-50; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV-091955; Amount of Money or Other Relief Sought: Damages according to proof; (18) Cicala, et al v. City, et al; Names of Parties Involved: Paul Cicala, Enrico Sagullo, Erick Sanchez, City of San José, Robert Davis, Officers Ordaz, Higgins, Marfia, Kyono and Siegel and Does; Court: United States District Court, Northern District of California; Case No: C08-04032 PVT; Amount of Money or Other Relief Sought: Damages according to proof; (19) Contreras v. City, et al; Names of Parties Involved: Emily Contreras and Jose Lua, Sr., individually and as Administrators of the Estate of Richard A. Lua, City of San José, Chief Robert Davis, Officer Eric Bachmann, Officer Patrick Lynch, Genevieve Black and Does 1-10; Court: United States District Court, Northern District of California; Case No: C-10-00953-RMW; Amount of Money or Other Relief Sought: Damages according to proof; (20) Gomez v. City, et al; Names of Parties Involved: Cristela Gomez & Jesus Gomez, City of San José, San José Police Department, Officer Fukuma, Officer Santos, Officer Krauss & Sergeant Marfia and Does 1-60; Court: United States District Court, Northern District of California; Case No: CV-10-04820 LHK; Amount of Money or Other Relief Sought: Damages according to proof; (21) Guerrero v. City, et al; Names of Parties Involved: Mayra Guerrero, Yesenia Guerrero, Gesel Guerrero, Juan Quezada, city of San José, a municipal corporation, San José Police Department, a municipal corporation, Chris Moore in his capacity as Chief of Police for San José Police Department, Does 1-50, inclusive, individually and in their capacities as Police Officers for the City of San José; Court: United States District Court, Northern District of California; Case No: C11-02017 HRL; Amount of Money or Other Relief Sought: Damages according to proof; (22) Harper v. City, et al; Names of Parties Involved: Glenn Harper, City of San José, San José Police Department, Robert Davis, individually and in his official capacity as Chief of the San José Police Department; Court: United States District Court, Northern District of California; Case No: C09-05758 EJD; Amount of Money or Other Relief Sought: Damages according to proof; (23) Ho v. City, et al; Names of Parties Involved: Phuong Quang Ho, City of San José, Chief Robert Davis, Sergeant Jeffrey Martin, Officer Steven Payne, Jr., Officer Gabriel Reyes, Officer Kenneth Siegel, Officer Jerome

CLOSED SESSION (Cont'd.)

Smith; Court: United States District Court, Northern District of California; Case No: CV-10-01825 HRL. Amount of Money or Other Relief Sought: \$11 Million; (24) Kerkeles v. City, et al; Names of Parties Involved: Michael Kerkeles, aka Michael Kerk, City of San José, Matthew Christian and Does 1-25; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV103523; Amount of Money or Other Relief Sought: Damages according to proof; (25) Moscoso v. City et al; Names of Parties Involved: Aleyda Maritza Moscoso, Personal Representative of the Estate of Jorge Luis Truillo, Robert L. Davis, City of San José, John Does 1-25; Court: United States District Court, Northern District of California; Case No: C07 02998 JF; Amount of Money or Other Relief Sought: Damages according to proof; (26) Naymark, et al. v. City, et al; Names of Parties Involved: Janice Naymark, Ronald Naymark, City of San José, San José Police Department, Robert Davis, City of Campbell, Campbell Police Department, David Gullo, Town of Los Gatos, City of Monte Sereno, Los Gatos/Monte Sereno Police Department, Scott Seaman, City of Palo Alto, Lynn Johnson, City of Santa Clara, Santa Clara Police Department, Stephen D. Lodge, State of California, California Highway Patrol, Michael L. Brown, County of Santa Clara, Office of the Santa Clara County Sheriff, Laurie Smith and Does 1-25; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV08008; Amount of Money or Other Relief Sought: Injunctive Relief; (27) Pham/Do v. City, et al; Names of Parties Involved: Vinh Huu Pham and Lan Thi Do, City of San José, a municipality of the State of California, Officer Brian Jeffrey, #3926, individually and in his official capacity as a police officer, Officer Matthew Blackerby, #3999, individually and in his official capacity as a police officer, Does 1-100; Court: United States District Court, Northern District of California; Case No: CV11-01526 EJD; Amount of Money or Other Relief Sought: Damages according to proof; (28) Pugh v. City, et al; Names of Parties Involved: Dwayne Pugh, City of San José, Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV189429; Amount of Money or Other Relief Sought: Damages according to proof; (29) Noreen Salinas v. City, et al; Names of Parties Involved: Noreen Salinas, City of San José, Chief Robert Davis, Taser International, Inc, Does 1-10; Court: United States District Court, Northern District of California; Case No: C08-02625 RS (Consolidated with C09-04410RS) Amount of Money or Other Relief Sought: Damages according to proof; (30) Swayzer v. City; Names of Parties Involved: Prince Swayzer II and Deborah Porter as individuals, Jill Scott as Guardian Ad Litem for J.O.S., a minor and as Administrator of the Estate of Prince Swayzer III, deceased, City of San José, Taser International Inc. and Does 1-100; Court: United States District Court, Northern District of California; Case No: C10-03119 HRL; Amount of Money or Other Relief Sought: Damages according to proof; (31) Valdez, et al. v. City, et al; Names of Parties Involved: Francisco Valdez, Ricardo Vasquez, Daniel Martinez, Jamil Stubbs, City of San José, San José Police Chief Robert Davis, Officer R. Agaman, #4041, Officer Martin, #3894, Officer Rickert, #3734, Officer Wallace, #3922, Officer Orlando, Does 1-2500; Court: United States District Court, Northern District of California; Case No: C09 00176 RMW; Amount of Money or Other Relief Sought: Damages according to proof; (32) Vasquez v. City, et al; Names of Parties Involved: Ramon Jose Vasquez, Brian Ferrante, individually and as an Officer of the San José Police Department and Tom Morales, individually and as an Officer of the San José Police Department, Does 1-50; Court: United States District Court, Northern

CLOSED SESSION (Cont'd.)

District of California; Case No: CV10-00948 LKH; Amount of Money or Other Relief Sought: Damages according to proof; (33) Watson-Stalker, et al. v. City, et al; Names of Parties Involved: Tracy Watson, Renee Stalker, Olivia Stalker, Shafer Watson, Riley Watson, County of Santa Clara, County of Santa Clara Department of Family and Children Services, County of Santa Clara Department of County Counsel, County of Santa Clara District Attorney's Office, Santa Clara Valley Medical Center, Evergreen School District, City of San José, San José Police Department, Norma Sparks, Yazmina Letona, Sharon Burgan, Jewels Ramiez, Vu Tran, Ann Miller Ravel, Rima Singh, Aaron West, George Kennedy, Clifton Black, Rose Real, Robert Pruitt, Cheryl Harms, Claudia Blodgett, Gary Kishimoto, John Hamilton, Anita Noble, Janet Kahle, Mary Ritter, David Kearns, Rajul Kazi, Robert Davis, William Hoyt, Craig Blank; Court: United States District Court, Northern District of California; Case No: C06-04029 RMW; Amount of Money or Other Relief Sought: Damages according to proof; (34) Thielmann v. Deichler, et al; Names of Parties Involved: Zachary John Thielman, a minor, by and through his Guardian Ad Litem, Dave Thielmann, Dennis Wayne Deichler dba 7-Eleven Stores #14292C, Deichler Corporation, Desmond Johnson, Senter Plaza Associates, City of San José and Does; Court: Superior Court of California, County of Santa Clara; Case No: 1-09-CV-157904; Amount of Money or Other Relief Sought: Damages according to proof; (35) City v. Western Roofing; Names of Parties Involved: City of San José, Western Roofing; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV123029; Amount of Money or Other Relief Sought: Damages according to proof; (36) Carrasco v. City, et al; Names of Parties Involved: Arthur Carrasco, Hector Solorio, Virginia Solrio, Louisa Maldonado, City of San José, Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV-165390; Amount of Money or Other Relief Sought: Damages according to proof; (37) Elemen v. State of California, et al; Names of Parties Involved: Dorothy Elemen, State of California, City of San José, Minggen Zhang and Does 1-50; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV-183757; Amount of Money or Other Relief Sought: Damages according to proof; (38) Toan Nguyen v. City; Names of Parties Involved: Toan Thanh Nguyen, Ann Thuy Nguyen, City of San José Department of Transportation, City of San José Department of Public Works; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-115637; Amount of Money or Other Relief Sought: Damages according to proof; (39) Ortiz v. City, et al; Names of Parties Involved: Esmeralda Galan and Jose Ortiz, Husband and Wife, Individually and as Parents and Successors in Interest of their deceased minor son Mateo Ortiz, City of San José, a Charter City, David Alvernaz, Alycia Saaveda-Alvernaz and Does 1-20; Court: Superior Court of California, County of Santa Clara; Case No: 1-11-CV199150; Amount of Money or Other Relief Sought: Damages according to proof; (40) Simmons v. City, et al; Names of Parties Involved: Hugh Patrick Simmons, Michelle Simmons, San José Electrical Contractor, Inc., Pacific Dream Homebuilders, Dream Homebuilders, Royal Cabinetry & Designs, Inc., Thomas F. Sramek, Acevedo Trucking, Rodolfo Acevedo, Suzanne Sramek, City of San José, Does 2-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-09-CV148054; Amount of Money or Other Relief Sought: Damages according to proof; (41) Smith v. City, et al; Names of Parties Involved: Ted Smith, City of San José, San José Elections Commission and Does 1-20; Court: Superior Court of California,

CLOSED SESSION (Cont'd.)

County of Santa Clara; Case No: 1-07-CV-089167; Amount of Money or Other Relief Sought: Damages according to proof; (42) Vietnamese-American Community of Northern California v. City, et al; Names of Parties Involved: Vietnamese-American Community of Northern California, City of San José, City Council of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-107082; Amount of Money or Other Relief Sought: For declaratory and injunctive relief according to proof. (D) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (2) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (3) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP. (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP. (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO. (6) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW. (8) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (9) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3. (10) San José Police Officers' Association (SJPOA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc. Web: <http://www.sanjoseca.gov/employeerelations/moa.asp>; Telephone for Employee Relations: 408-535-8150.

CLOSED SESSION (Cont'd.)

By unanimous consent, Council recessed from the Closed Session at 11:40 a.m. and reconvened to Regular Session at 1:31 p.m. in the Council Chambers.

Present: Council Members - Campos, Chu, Constant, Herrera, Kalra, Liccardo, Nguyen (2:38 p.m.), Oliverio, Pyle, Rocha; Reed.

Absent: Council Members - All Present.

INVOCATION

Evergreen Singers singing "Peace on Earth" presented the Invocation. (District 8)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (8-0-3. Absent: Kalra, Nguyen, Oliverio.)

CEREMONIAL ITEMS

- 1.1 Presentation of a commendation to Rolanda Pierre-Dixon for her 30 years of service in the Santa Clara County District Attorney's Office working to end domestic violence and her role as a founding member of the City's Family/Domestic Violence Advisory Board. (Constant/Pyle)**

Mayor Reed and Council Members Constant, Pyle and Liccardo recognized and commended Rolanda Pierre-Dixon for her 30 years of service in the Santa Clara County District Attorney's Office

- 1.2 Presentation of a proclamation declaring the week of September 18-24, 2011 as "Geek Week" in the City of San José. (Herrera)**

Mayor Reed and Council Member Herrera recognized the week of September 18 through 24, 2011 as "Geek Week" in the City of San José.

1.3 Presentation of a proclamation declaring the month of September 2011 as “World Alzheimer’s Month” in the City of San José. (Herrera/Constant)

Mayor Reed and Council Members Herrera and Constant recognized the month of September 2011 as “World Alzheimer’s Month” in the City of San José.

CONSENT CALENDAR

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

2.1 Approval of Minutes.

Action: There were none.

2.2 Final adoption of ordinances.

Action: There were none.

2.3 Approval of Council Committee Reports.

- (a) **Rules and Open Government Committee Report of September 7, 2011. (Mayor)**
- (c) **The Rules and Open Government Committee Report of August 17, 2011. (Mayor)**
- (d) **The Public Safety, Finance and Strategic Support Committee Report of August 18, 2011. (Constant)**
- (e) **The Rules and Open Government Committee Report of August 10, 2011. (Mayor)**

Documents Filed: (1) The Rules and Open Government Committee Reports dated August 10, 2011, August 17, 2011 and September 7, 2011. (2) The Public Safety, Finance and Strategic Support Committee Report dated August 18, 2011.

Public Comments: David Wall presented comments about the Council Committee Reports.

Action: Upon motion by Council Member Constant, seconded by Council Member Liccardo and carried unanimously, the Council Committee Reports were approved. (10-0-1. Absent: Nguyen.)

- (b) **Neighborhood Services and Education Committee Report of September 8, 2011. (Pyle)**

Action: Deferred to September 27, 2011 per City Clerk.

2.4 Mayor and Council Excused Absence Requests.

Action: There were none.

2.5 City Council Travel Reports.

Council Member Constant reported on the 2011 Annual California Association of Local Agency Formation Commissions (CALAFCO) Conference in Napa, California that he attended recently.

2.6 Report from the Council Liaison to the Retirement Boards.

Action: There were none.

- 2.7 (a) **Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District #7 (Fund 385):**
- (1) **Increase the Beginning Fund Balance by \$291,000.**
 - (2) **Increase the Strategic Capital Replacement and Maintenance Needs appropriation to the Parks, Recreation, and Neighborhood Services Department by \$291,000.**
- (b) **Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District #9 (Fund 388):**
- (1) **Increase the Beginning Fund Balance by \$237,000.**
 - (2) **Increase the Paul Moore Park Playground Renovation appropriation to the Parks, Recreation, and Neighborhood Services Department by \$237,000.**
- (c) **Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District #6 (Fund 384):**
- (1) **Increase the Beginning Fund Balance by \$200,000.**
 - (2) **Increase the Bascom Community Center–Multi-Service appropriation to the Parks, Recreation, and Neighborhood Services Department by \$200,000.**
- (d) **Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Parks and Recreation Bond Projects Fund (Fund 471):**
- (1) **Increase the Beginning Fund Balance by \$160,000.**
 - (2) **Increase the Bascom Community Center–Multi-Service appropriation to the Parks, Recreation, and Neighborhood Services Department by \$160,000.**
- (e) **Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Construction Tax and Property Conveyance Tax Fund: City-Wide Parks Purposes (Fund 391):**
- (1) **Increase the Beginning Fund Balance by \$122,000.**

- 2.7 (e) (2) **Increase the Japanese Friendship Garden Koi Fish Filtration System appropriation to the Parks, Recreation, and Neighborhood Services Department by \$122,000.**
- (f) **Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Subdivision Park Trust Fund (Fund 375):**
- (1) **Increase the Beginning Fund Balance by \$99,000.**
- (2) **Increase the Seven Trees Community Center–Multi-Service appropriation to the Parks, Recreation, and Neighborhood Services Department by \$99,000.**
- (g) **Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Branch Libraries Bond Projects Fund (Fund 472):**
- (1) **Increase the Beginning Fund Balance by \$55,000.**
- (2) **Increase the Seven Trees Branch appropriation to the Library Department by \$55,000.**

CEQA: Not a Project, File No. PP10-067(a), appropriation ordinance. (City Manager’s Office)

Documents Filed: Memorandum from Budget Director Jennifer A. Maguire, dated August 29, 2011, recommending appropriation ordinance and funding sources resolution amendments.

City Attorney Richard Doyle responded to questions from Council Member Liccardo.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, Ordinance No. 28961, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District No. 7 for the Strategic Capital Replacement and Maintenance Needs; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”; Resolution No. 75989, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 75872 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2011-2012 to Adjust Revenues in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District No. 7”; Ordinance No. 28962, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District No. 9 for the Paul Moore Park Playground Renovation Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption” Resolution No. 75990, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 75872 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2011-2012 to Adjust Revenues in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District No. 9”; Ordinance No. 28963, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District No. 6 for the Bascom Community Center-Multi Service Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”; Resolution No. 75991, entitled: “A Resolution of the Council of the City of

2.7 (Action Cont'd.)

San José Amending Resolution No. 75872 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2011-2012 to Adjust Revenues in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District No. 6”; Ordinance No. 28964, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the Parks and Recreation Bond Projects Fund for the Bascom Community Center-Multi Service Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”; Resolution No. 75992, 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 Parks and Recreation Bond Projects Fund”; Ordinance No. 28965, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund: Citywide Parks Purposes for the Japanese Friendship Garden Koi Fish Filtration System Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”; Resolution No. 75993, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 75872 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2011-2012 to Adjust Revenues in the Construction Tax and Property Conveyance Tax Fund: Citywide Parks Purposes”; Ordinance No. 28966, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the Subdivision Park Trust Fund for the Seven Trees Community Center-Multi Service Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”; Resolution No. 75994, 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 Subdivision Park Trust Fund”; Ordinance No. 28967, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the Branch Libraries Bond Projects for the Seven Trees Library Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption” and Resolution No. 75995, 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 Branch Libraries Bond Projects Fund”, were adopted. (10-0-1. Absent: Nguyen.)

2.8 **Approve a Joint Use Agreement with the Santa Clara Valley Water District for operation and maintenance of recreational facilities at Almaden Lake Park for a term of 25 years. CEQA: Not a Project, File No. PP10-066(g), memorandum of understanding. Council District 10. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Acting Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares, dated August 29, 2011, recommending approval of the agreement.

Action: The Joint Use Agreement with the Santa Clara Valley Water District for operation and maintenance of recreational facilities at Almaden Lake Park for a term of 25 years was approved. (10-0-1. Absent: Nguyen.)

2.9 As referred by the Neighborhood Services and Education Committee on September 8, 2011, accept the report on the status of the City's Anti-Graffiti and Litter Program (AGLP). (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, dated September 15, 2011, transmitting the recommendations of the Neighborhood Services and Education Committee.

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

Motion: Council Member Campos moved approval of the Staff report with Staff directed to return to the Neighborhood Services and Education Committee on December 8, 2011 with a mid year status report. Council Member Liccardo seconded the motion.

Discussion ensued.

Public Comments: David Wall and Aurelia Sanchez expressed deep concerns about the graffiti issues in San José.

Action: On a call for the question, the motion carried unanimously, the status of the City's Anti-Graffiti and Litter Program was accepted, and Staff was directed to return to the Neighborhood Services and Education Committee on December 8, 2011 with a mid year status report. (9-0-2. Absent: Nguyen, Pyle.)

2.10 As referred by the Neighborhood Services and Education Committee on September 8, 2011, accept the report concerning pending State legislation in the Neighborhood Services City Service Area. (City Manager's Office)

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, dated September 15, 2011, transmitting the recommendations of the Neighborhood Services and Education Committee.

Action: The report concerning pending State legislation in the Neighborhood Services City Service Area was accepted. (10-0-1. Absent: Nguyen.)

**2.11 (a) Approve the Youth Job Fair as a City Council sponsored Special Event.
(b) Approve and accept in-kind donations from businesses to support the event.
CEQA: Not a Project. (City Clerk)
(Rules Committee referral 9/14/11)**

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, CMC, dated September 2, 2011, recommending as described above in Item 2.11

Action: The Youth Job Fair as a City Council sponsored Special Event was approved and in-kind donations from businesses to support the event were authorized. (10-0-1. Absent: Nguyen.)

- 2.12 Adopt a resolution, joining with the Santa Clara Cities Association and other local cities, calling for consistent federal and state regulation of medicinal marijuana, including re-classifying the drug within the schedule set forth in § 812 of the Federal Controlled Substances Act.
(Rules Committee referral 9/14/11)**

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, dated September 15, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Council Member Liccardo pointed out that he hoped Washington D.C. will take notice and dispense medical marijuana through pharmacies in lieu of dispensaries.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Constant and carried unanimously, Resolution No. 75996, entitled: A Resolution of the Council of the City of San José Joining the Santa Clara County Cities Association and Other Local Cities Calling For Consistent Federal and State Regulation of Medical Marijuana, Including Reclassifying the Drug Within the Schedule Set Forth in Section 812 of the Federal Controlled Substances Act”, was adopted. (9-0-2. Absent: Nguyen, Pyle.)

- 2.13 As recommended by the Rules and Open Government Committee on September 14, 2011, approve the recommended City positions for six resolutions to be considered at the Annual League of California Cities Conference to be held in San Francisco on September 21-23, 2011. (City Manager’s Office)**

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, dated September 15, 2011, transmitting the recommendations of the Rules and Open Government Committee.

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

City Attorney Richard Doyle responded to Council questions.

Action: On a call for the question, the motion carried, the recommended City positions for six resolutions to be considered at the Annual League of California Cities Conference to be held in San Francisco on September 21-23, 2011, were approved. (9-1-1. Noes: Kalra. Absent: Nguyen.)

- 2.14 As recommended by the Rules and Open Government Committee on September 14, 2011:**

- (a) Approve the District 3 Saint James Park Movie Night as a City Council 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)

2.14 (Cont'd.)

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, dated September 15, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Public Comments: David Wall complained about issues in St. James Park.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the District 3 Saint James Park Movie Night as a City Council sponsored Special Event was approved and donations from various individuals, businesses or community groups to support the event were authorized. (10-0-1. Absent: Nguyen.)

Vice Mayor Nguyen arrived to the meeting at 2:38 p.m.

END OF CONSENT CALDENDAR

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone presented highlights on the 97th International City Managers' Association (ICMA) and commended Chief of Police Christopher Moore and the San José Police Department Team for their outstanding efforts this past weekend.

3.3 Adopt a resolution authorizing the City Manager to negotiate and execute an agreement between the City and Magellan Health Services of California, Inc. Employer Services for the period of January 1, 2012, through December 31, 2016, for Employee Assistance Program, Critical Incident Stress Management and Substance Abuse Treatment for a total cost that will not exceed \$3,251,140 for the period of January 1, 2012 to December 31, 2016. CEQA: Not a Project, File PP10-066(e), services that involve no physical changes to the environment. (Human Resources)

Action: Deferred to September 27, 2011 per Administration.

3.4 (a) Discussion and consideration of declaration of a Fiscal and Service Level Emergency. CEQA: Not a Project, File No. PP10-068(b), General Procedure and Policy Making, Municipal Code Title 3.

Action: Deferred until after October 31, 2011.

3.4 (b) Status Report on the 2012-2013 General Fund budget, fiscal condition, projected increases in pension costs, and impacts on service delivery.

Documents Filed: (1) Memorandum from City Manager Debra Figone, dated September 9, 2011, recommending accepting the verbal status report and affirming the City Administration's intention to immediately explore all viable budget balancing strategies to minimize the significant service level reductions that will again be necessary to balance the 2012-2013 General Fund Budget. (2) Staff presentation dated September 20, 2011 summarizing the General Fund Budget Status Overview.

Mayor Reed and City Manager Debra Figone presented introductory comments.

Budget Director Jennifer Maguire presented the report. City Manager Debra Figone pointed out that the City is in a Fiscal and Service Level Emergency and provided action steps for the 2012-2013 Budget.

Council discussion ensued.

Public Comments: David Wall and Roland LeBrun offered suggestions to reduce costs.

The Status Report on the 2012-2013 General Fund budget, fiscal condition, projected increases in pension costs, and impacts on service delivery was received. There was no Council action.

COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Approve an ordinance to amend Title 18 (Local Planning) of the San Jose Municipal Code to add a new Chapter 18.02 to codify existing regulations of the City pertaining to the consideration of development agreements. CEQA: Not a Project, File No. PP10-068(c), Municipal Code changes involving no changes to the physical environment. Citywide. (City Attorney's Office)

Action: Upon motion by Council Member Oliverio, seconded by Council Member Constant and carried unanimously, Item 4.1 was deferred to October 18, 2011. (11-0.)

4.2 (a) Hold a public hearing regarding the approval of the FY 2010-2011 Consolidated Annual Performance Evaluation Report.

(b) Approve the FY 2010-2011 Consolidated Annual Performance Evaluation Report, as amended.

CEQA: Not a Project, File No. PP10-069, Annual Report. (Housing)

4.2 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Housing Leslye Corsiglia, dated August 30, 2011, recommending holding a public hearing and approval of the report. (2) Supplemental memorandum from Director of Housing Leslye Corsiglia, dated September 16, 2011, providing comments received on the report during the 15 day public comment period from August 30, 2011 to September 14, 2011 and on revisions to the draft document made in response to public comments. (3) Proof of Publication of Notice of Public Hearing, executed on August 26, 2011, submitted by the City Clerk.

Mayor Reed opened the public hearing.

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

Assistant Director of Housing Jacky Morales-Ferrand responded to Council questions and comments.

Public Comments: James Zahradka, Law Foundation of Silicon Valley, suggested more analysis of the ordinance was needed.

Action: On a call for the question, the motion carried unanimously, the FY 2010-2011 Consolidated Annual Performance Evaluation Report, as amended, was approved. (10-0-1. Absent: Oliverio.)

4.4 **Hold a public hearing; conduct a special election; and take the following actions related to the formation of Community Facilities District No. 14 (Raleigh-Charlotte):**

(a) Adopt a resolution for each of the following items to:

- (1) Establish Community Facilities District No. 14 and authorize the levy of a special tax.**
- (2) Declare the results of the special election; and if approved, direct the recording of the notice of the special tax lien for Community Facilities District No. 14.**

If approved by voters:

- (b) Adopt an ordinance imposing the levy of special taxes for Community Facilities District No. 14 (Raleigh-Charlotte).**
- (c) Establish a new fund for Community Facilities District No. 14 (Raleigh-Charlotte).**
- (d) Adopt the following Appropriation Ordinance and Funding Source Resolution amendments in the Community Facilities District No. 14 (Raleigh-Charlotte) Fund:**
 - (1) Establish an estimate for Earned Revenue in the amount of \$476,365.**
 - (2) Establish a Personal Services appropriation for the Department of Parks, Recreation and Neighborhood Services in the amount of \$15,476.**

- 4.4 (d) (3) **Establish a Non-Personal/Equipment appropriation for the Department of Parks, Recreation and Neighborhood Services in the amount of \$192,234.**
- (4) **Establish a Personal Services appropriation for the Department of Transportation in the amount of \$9,191.**
- (5) **Establish a Non-Personal/Equipment appropriation for the Department of Transportation in the amount of \$67,581.**
- (6) **Establish an overhead appropriation to the Department of Finance in the amount of \$6,770.**
- (7) **Establish an Ending Fund Balance in the amount of \$185,113.**

CEQA: Resolution No. 72772, Hitachi Mixed Use Project Fund EIR. Council District 2. (Public Works/City Manager's Office)

Documents Filed: (1) Memorandum from Acting Director of Public Works David Sykes and Budget Director Jennifer A. Maguire, dated August 29, 2011, recommending actions as indicated above. (2) Proof of Publication of Notice of Public Hearing, executed on August 9, 2011, submitted by the City Clerk.

Mayor Reed opened the public hearing.

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

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, Resolution No. 75997, entitled: A Resolution of the Council of the City of San José of Formation of Community Facilities District No. 14 (Raleigh-Charlotte), Authorizing the Levy of a Special Tax Therein, Preliminarily Establishing an Appropriations Limit Therefore and Submitting Levy of the Special Tax and the Establishment of the Appropriations Limit to the Qualified Electors Thereof"; Resolution No. 75998, entitled: A Resolution of the Council of the City of San José Declaring Results of Special Election and Directing Recording of Notice of Special Tax Lien for Community Facilities District No. 14 (Raleigh-Charlotte); Ordinance No. 28968, entitled: "An Ordinance of the City of San José Levying Special Taxes Within Community Facilities District No. 14 (Raleigh-Charlotte); Ordinance No. 28969, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the Community Facilities District No. 14 (Raleigh-Charlotte) Fund for the Personal Services and Non-Personal/Equipment Appropriation for the Department of Parks, Recreation and Neighborhood Services; For the Personal Services and Non-Personal/Equipment Appropriation for the Department of Transportation; and for the Overhead Appropriation for the Department of Finance; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption" and Resolution No. 75999, 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 Community Facilities District No. 14 (Raleigh-Charlotte) Fund", were adopted. (11-0.)

- 4.3 (a) Discuss refinements to the draft Habitat Conservation Plan and alignment to the June 2011 Budget Message.**
(b) Refer questions and concerns to staff for response.
(c) Continue the discussion to September 27, 2011 for action.
CEQA: Not a Project, File No. PP10-069. (Planning, Building and Code Enforcement)

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

Public Comments: David Wall spoke in opposition to the draft Habitat Conservation Plan.

Council discussion ensued.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, Item 4.3 was continued to September 27, 2011, with Staff directed to return with project examples. (10-0-1. Absent: Constant.)

OPEN FORUM

- (1) David Wall suggested various ways for revenue enhancement, including changing the image change of San José to the Valley of Hearts Delight and growing food locally.
- (2) Mark Granda requested that the Council keep Lake Cunningham Skate Park minimally staffed or to provide a volunteer program to help keep the park clean.

ADJOURNMENT

The Council of the City of San José was adjourned at 5:55 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis D. Hawkins, CMC
City Clerk

/smd 09-20-11 MIN

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

JOINT/ SAN JOSÉ FINANCING AUTHORITY

2. (a) **It is recommended that the City Council take the following actions:**
 - (1) **Accept the report on the Request for Proposals for a Power Purchase Agreement for Solar Energy Installations on City Facilities and Lands.**
 - (2) **Adopt a resolution approving a form Power Purchase Agreement and authorizing the City Manager or the Director of Finance to execute Power Purchase Agreements in such form and all related documents with SolarCity Corporation by December 31, 2012, for the following City facilities and subject to the limitations outlined in the staff memorandum to the Council.**
 - (a) **Almaden Community Center and Library**
 - (b) **Alum Rock Library**
 - (c) **Bascom Community Center/Library**
 - (d) **Berryessa Community Center**
 - (e) **Berryessa Library**
 - (f) **Cambrian Library**
 - (g) **Camden Community Center**
 - (h) **East San Jose Carnegie Library**
 - (i) **Edenvale Community Center**
 - (j) **Edenvale Library**
 - (k) **Evergreen Library**
 - (l) **Evergreen Community Center**
 - (m) **Hillview Library**
 - (n) **Joyce Ellington Library**
 - (o) **Kelley Park (Senter Road Lot)**
 - (p) **Mayfair Community Center**
 - (q) **Municipal Water Office**
 - (r) **Pal Sports Centre**
 - (s) **Pearl Library**
 - (t) **Prusch Park**
 - (u) **Roosevelt Community Center**
 - (v) **Santa Teresa Library**
 - (w) **Seven Trees Community Center/ Library**
 - (x) **South Service Yard**
 - (y) **Tully Library**
 - (z) **Vineland Library**
 - (aa) **Willow Glen Community Center**
 - (bb) **Willow Glen Library**
- (b) **Adopt a resolution authorizing the Director of Finance or designee to negotiate and execute, by June 30, 2013, additional Power Purchase Agreements with SolarCity Corporation at alternative or additional City facilities in the form approved by Council and subject to the limitations (cash flow positive, private activity analysis, financing and landlord consent, parkland and CEQA clearance) outlined in this staff memorandum to Council.**

2. (c) **It is recommended that the City of San José Financing Authority Board take the following actions:**

- (1) **Adopt a resolution to authorize the Executive Director or the Executive Director's authorized designee to consent to the license or sublicense of Evergreen Library, Edenvale Library and Vineland Library and other City facilities that are pledged assets of outstanding City of San José Financing Authority lease revenue bonds or commercial paper program to SolarCity Corporation for the installation of solar photovoltaic systems and to execute a letter acknowledging SolarCity Corporation's ownership and financing interests in the solar photovoltaic systems, subject to the requirements of the applicable governing documents.**

CEQA: Exempt, Files No. PP11-064, PP11-065, PP11-066, PP11-067, PP11-068, PP11-069, PP11-070, PP11-071, PP11-072, PP11-073, PP11-074, PP11-075, and PP11-079. (Environmental Services/Finance)

Action: Deferred to September 27, 2011 per Administration.