

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, SEPTEMBER 27, 2011

The Council of the City of San José convened in Regular Session at 9:04 a.m. in the Council Chambers at City Hall.

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

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

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

Documents: AFSME MEF/CEO Joint Bargaining Contract Negotiations September 21, 2011.

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

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:06 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code Section 54956.9 subsection (b) with respect to anticipated litigation of significant exposure (Claim Filed): (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. (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9 subsection (b) with respect to anticipated litigation of significant exposure (Claim Not Filed) in one (1) matter. (C) to confer with Legal Counsel pursuant to Government Code Section 54956.9 subsection (c) with respect to initiation of litigation in one (1) matter. (D) 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,

CLOSED SESSION (Cont'd.)

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) Confidential Employees Organization, et al. v. City; Names of Parties Involved: Confidential Employees Organization, American Federation of State, County & Municipal Employees, Local 101, AFL-IO, City of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV-171991; Amount of Money or Other Relief Sought: Arbitration; (3) 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 Relief Sought: Damages according to proof; (4) 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; (5) 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; (6) 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; (7) 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; (8) 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; (9) 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; (10) 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; (11) Operating Engineers, Local 3 v. City, et al; Names of Parties Involved: Operating Engineers, Local 3, City of San José; Court: State of CA Public Employment Relations Board; Case No: SF-CE-744-M; Amount of Money or Other Relief Sought: Damages according to proof; (12) American Federal of State, County & Municipal Employees, et al. v. City; Names of Parties Involved: American Federal of State, County & Municipal Employees, City of San José; Court: State of CA Public Employment Relations Board; Case No: SF-CE-837-M; Amount of Money or Other Relief Sought: Damages according to proof; (13) 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:

CLOSED SESSION (Cont'd.)

Arbitration of Firefighters Bill of Rights issue; (14) 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; (15) 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; (16) County of Alameda, City and County of San Francisco, City of Los Angeles, Los Angeles Department of Water and Power, Los Angeles World Airports, City of Oakland, City of Richmond, Redwood City, East Bay Municipal Utility District, City of Sacramento, Sacramento Suburban Water District, Sacramento Municipal Utility District, City of San José, City of Stockton, The Redevelopment Agency of the City of Stockton, The Public Financing Authority of the City of Stockton, County of Tulare, The Regents of the University of California, The Redevelopment Agency of the City of San José, AMBAC Financial Group, Inc., AMBAC Assurance Corporation, MBIA, Inc., MBIA Insurance Corporation, MBIA Insurance Corp. of Illinois, aka National Public Finance Guarantee Corporation, Syncora Guarantee, Inc., fka ZL Capital Assurance, Inc., Financial Guaranty Insurance Company, Financial Security Assurance, Inc., CIFG Assurance North American, Inc., Assured Guaranty Corp., Jason Kissane, Does 1-50; Court: Superior Court of California, In and for the City and County of San Francisco; Case No: CJC-08-004555; Amount of Money or Other Relief Sought: Damages according to proof; (17) Redevelopment Agency/City vs. Bank of America, N.A., et al; Names of Parties Involved: City of San José, The San José Redevelopment Agency, Bank of America, N.A., Merrill Lynch & Col, Inc., UBS Securities, LLC, MBIA, Inc., CitiBank, N.A., CitiGroup Financial Products Inc., CitiGroup Global Markets Holdings Inc., Morgan Stanley, Rabobank Group, Bayerische, Landesbank, Gironzentrale, Piper Jaffray & Co., Societe Generale SA, Financial Security Assurance, Inc., Assured Guaranty US Holdings Inc., Dexia, A.A., National Westminster Bank, PLC, Natixis Funding Corp., Natixis S.A., The Goldman Sachs Group, Inc., Goldman Sachs Mitsui Marine Derivative Products, L.P., Goldman Sachs Bank USA, CDR Financial Products, Winters & Co., Advisors, LLC, George K. Baum & Co., Sound Capital Management, Inc., Investment Management Advisory Group, Inc., First Southwest Company, PDM Investment, LLC, PFM Asset Management, LLC. .; Court: United States District Court, Northern District of California; Case No: CV 1021999; Amount of Money or Other Relief Sought: Damages according to proof. (18) Sipple, et al. v. City of Alameda, et al; Names of Parties Involved: Donald Sipple, John Simon, Karl Simonsen, Christopher Jacobs, Settlement Class Representatives, New Cingular Wireless PCS LLC, City of Alameda, County of Alameda, City of Albany, city of Alhambra, City of Arcadia, City of Baldwin Park, City of Beaumont, City of Bell, City of Bellflower, City of Benecia, City of Berkeley, City of Burbank, City of Calabasas, City of Cathedral, City of Ceres, City of Chico, City of Chula Vista, City of Citras Heights, City of Claremont, City of Colton, City of Compton, City of Covina, City of Cudahy, City of Culver City, City of Cupertino, City of Daily City, City of Desert Hot Springs,

CLOSED SESSION (Cont'd.)

City of Dinuba, City of Downey, City of East Palo Alto, City of El Cerrito, City of El Monte, City of El Segundo, City of Emeryville, City of Eureka, City of Exeter, City of Fairfax, City of Gardena, City of Gilroy, City of Glendale, City of Gonzales, City of Greenfield, City of Grover Beach, City of Guadalupe, City of Gustine, City of Hawthorne, City of Hayward, City of Hercules, City of Hermosa Beach, City of Holtville, City of Huntington Beach, City of Huran, City of Indio, City of Inglewood, City of Irwindale, City of La Habra, City of Lakewood, City of La Palma, City of La Verne, City of Lawndale, City of Lindsey, City of Long Beach, City of Los Alamitos, City of Los Altos, City of Los Angeles, Los Angeles County, City of Lynwood, City of Malibu, City of Mammoth Lakes, City of Maywood, City of Menlo Park, City of Modesto, City of Montclair, City of Monterey, City of Monterey Park, City of Moreno Valley, City of Mountain View, City of Norwalk, City of Oakland, City of Orange Cove, City of Oroville, City of Pacific Grove, City of Palm Springs, City of Palo Alto, City of Paramount, City of Pasadena, City of Pico Rivera, City of Piedmont, City of Pinole, City of Placentia, City of Pleasant Hill, City of Pomona, City of Port Hueneme, City of Porterville, City of Rancho Palos Verde, City of Redondo Beach, City of Redwood City, City of Rialto, City of Richmond, City of Riverside, City of Sacramento, City of Salinas, City of San Bernardino, San City of Buenaventura (Ventura), City of San Francisco, City of San Gabriel, City of San José, City of San Leandro, City of San Luis Obispo, City of San Marino, City of San Pablo, City of Sanger, City of Santa Ana, City of Santa Barbara, City of Santa Cruz, City of Santa Monica, City of Seal Beach, City of Seaside, City of Sierra Madre, City of Soledad, City of South Pasadena, City of Stanton, City of Stockton, City of Sunnyvale, City of Torrance, City of Tulare, City of Waterford, City of Watsonville, City of Westminster, City of Whittier, City of Winters, City of Woodlake, Does 1-50; Court: Superior Court of California, County of Los Angeles; Case No. BC462270; Amount of Money or Other Relief Sought: Damages according to proof; (19) 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; (20) 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 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; (21) 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; (22) 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,

CLOSED SESSION (Cont'd.)

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; (23) 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; (24) 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; (25) 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; (26) 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; (27) 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; (28) 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; (29) 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 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; (30) 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; (31) 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

CLOSED SESSION (Cont'd.)

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; (32) 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; (33) 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; (34) 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; (35) 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; (36) 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; (37) 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 District of California; Case No: CV10-00948 LKH; Amount of Money or Other Relief Sought: Damages according to proof; (38) 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; (39) 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

CLOSED SESSION (Cont'd.)

#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; (40) 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; (41) 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; (42) 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; (43) 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; (44) 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; (45) 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; (46) 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, County of Santa Clara; Case No: 1-07-CV-089167; Amount of Money or Other Relief Sought: Damages according to proof; (47) 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. (E) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (2) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (3) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries,

CLOSED SESSION (Cont'd.)

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

By unanimous consent, Council recessed from the Closed Session at 11:55 a.m. and reconvened to Regular Session at 1:33 p.m. in the Council Chambers.

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

Absent: Council Members - All Present.

INVOCATION

The Ocala Middle School Band 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, with Items 3.5 and 3.7 heard together, and Item 11.1(b) was heard and dropped to be renoticed. (11-0.)

CEREMONIAL ITEMS

- 1.2 Presentation of a commendation to the Housing Industry Foundation for their efforts to help individuals and families remain in or return to stable housing and to assist with special housing projects and renovations in Santa Clara and San Mateo Counties. (Constant)**

Mayor Reed and Council Member Constant recognized and commended the Housing Industry Foundation.

- 1.3 Presentation of a commendation to the Hispanic Association of City Employees in recognition and appreciation of their 38 years of service and commitment to the City of San José. (Campos)**

Mayor Reed and Council Member Campos recognized and commended the Hispanic Association of City Employees.

CONSENT CALENDAR

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

- 2.1 Approval of Minutes.**

Action: There were none.

- 2.2 Final adoption of ordinances.**

- (a) **ORD. NO. 28958 – Amending Title 20 of the San José Municipal Code by amending Section 20.10.040 of Chapter 20.10, amending Section 20.40.100 of Chapter 20.40; amending Section 20.50.100 of Chapter 20.50, amending Section 20.70.100 of Chapter 20.70, adding a new Part 9.5 to Chapter 20.80, adding a new Part 13 to Chapter 20.100, and amending Section 20.100.200 of Chapter 20.100, all to establish land use regulations pertaining to Medical Marijuana Collectives and to establish a related zoning verification certificate process.**

Documents: Proof of Publication of the Title of Ordinance No. 28958 executed on September 20, 2011, submitted by the City Clerk.

2.2 (a) (Cont'd.)

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried, Ordinance No. 28958 was adopted. (8-3. Noes: Campos, Kalra, Rocha.) (First Reading: 8-3. Noes: Campos, Kalra, Rocha.)

(b) ORD. NO. 28960 - Amending Title 6 of the San José Municipal Code to add a new Chapter 6.88 to establish regulations pertaining to Medical Marijuana Collectives and to the individual cultivation and use of medical marijuana.

Documents: (1) Proof of Publication of the Title of Ordinance No. 28960 executed on September 20, 2011, submitted by the City Clerk. (2) DVD from Jon Talbert's Teaching on Holistic Remedies CO-OP Inc. (Pot Clubs).

Public Comments: Speaking about the Medical Marijuana Collectives, the individual cultivation and use were Ross Signorino and Michael Hovland, Med Ex Collective and Deliveries.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried, Ordinance No. 28960 was adopted. (8-3. Noes: Campos, Kalra, Rocha.) (First Reading: 8-3. Noes: Campos, Kalra, Rocha.)

2.3 Approval of Council Committee Reports.

- (a) Neighborhood Services and Education Committee Report of September 8, 2011. (Pyle)**
- (b) Revised Rules and Open Government Committee Report of September 7, 2011. (Mayor)**

Documents Filed: (1) The Neighborhood Services and Education Committee Report dated September 8, 2011. (2) Memorandum from City Clerk Dennis D. Hawkins, CMC, transmitting the revised Rules and Open Government Committee Report dated September 7, 2011.

Public Comments: David Wall commented on the revised Rules and Open Government Committee Report.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the Committee Reports were approved. (11-0.)

2.4 Mayor and Council Excused Absence Requests.

Action: There were none.

2.5 City Council Travel Reports.

Mayor Reed presented details about the Silicon Valley Leadership Group's Annual Advocacy Trip Meeting in Washington, D.C. Council Members Herrera and Constant provided highlights of their trip to the League of California Cities Annual Conference in San Francisco, California.

Council Member Herrera noted that last year she was lead on starting a Woman's Caucus as part of League of California Cities, one of the League's Diversity Caucuses, offering a non-partisan opportunity for women elected officials throughout the State to join, support and take positions on policies of interest to women.

2.6 Report from the Council Liaison to the Retirement Boards.

Action: There were none.

2.7 Adopt a resolution authorizing the City Manager to:

- (a) **Negotiate and execute a Second Amendment to the Non-Exclusive Installation and Property Use Agreement ("Agreement") with Wayport, Inc. ("Wayport") to extend the term of the Agreement through October 31, 2015, require a security deposit, and modify the calculation of the use charge.**
- (b) **Negotiate and execute a Third Amendment to the Agreement with Wayport to revise the licensed use area to include Terminal B.**
- (c) **Negotiate and execute additional amendments to extend the term of the Agreement for up to 5 years commencing on November 1, 2015.**

**CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Airport)
(Deferred from 8/30/11 – Item 2.8)**

Documents: Memorandum from Director of Aviation William F. Sherry, A.A.E., dated August 8, 2011, recommending adoption of a resolution.

Action: Item 2.7 was dropped.

2.8 Authorize travel for City Manager Debra Figone to Dublin, Ireland on October 5-11, 2011, to participate in the 25th Anniversary Sister City Trip. Source of Funds: Personally paying for airline and hotel. CEQA: Not a Project, File No. PP10-069, administrative activities. (City Manager's Office)

Documents Filed: Memorandum from City Manager Debra Figone, dated September 9, 2011, requesting authorization for travel.

Action: The travel for City Manager Debra Figone was approved. (11-0.)

- 2.9 Adopt a resolution authorizing the City Manager to negotiate and execute an extension to the Reimbursable Space Act Agreement with NASA Ames Research Center for Utilization of Moffett Federal Airfield for Enforcement and Emergency Response Capabilities, for an extension period not to exceed two years, with a space fee not to exceed \$50,000 over the two year term of the agreement and fuel cost in the amount of federal government cost plus 14.7%. CEQA: Not a project, File No. PP10-066(f), lease of equipment or existing Space for the same use. (Economic Development)**

Documents Filed: Memorandum from Director of Economic Development/Chief Strategist Kim Welsh, dated September 20, 2011, recommending adoption of a resolution.

Action: Resolution No. 76000, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Extension to the Reimbursable Space Act Agreement with NASA Ames Research Center for Utilization of Moffett Federal Airfield by the Police Helicopter Unit", was adopted. (11-0.)

- 2.10 (a) Approve travel by Mayor Reed to Washington, D.C. on September 20-22, 2011 to participate in the Silicon Valley Leadership Group's Annual Washington, D.C. Advocacy Trip. Source of Funds: Mayor's Office Budget.**
- (b) Request for an excused absence for Mayor Reed from the Regular Meeting of the Rules and Open Government Committee on September 21, 2011 due to Authorized City Business: Silicon Valley Leadership Group Annual Washington, D.C. Advocacy Trip.**
- (Mayor)**

Documents Filed: Memorandum from Mayor Reed, dated September 15, 2011, requesting approval of travel and an excused absence.

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

- 2.11 As recommended by the Rules and Open Government Committee on September 21 2011, adopt a resolution to direct the Director of Planning, Building and Code Enforcement to nominate McDonnell Hall at Our Lady of Guadalupe Church, 2020 San Antonio Road, as a San Jose Historic Landmark pursuant to Chapter 13.48 of the San José Municipal Code and to set a public hearing on that proposed nomination of a historic landmark. (Mayor)**

Documents Filed: (1) Memorandum from Mayor Reed, dated September 26, 2011, transmitting the material of the nomination of McDonnell Hall as a Historic Landmark. (2) Memorandum from Council Member Campos, dated September 26, 2011, recommending adoption of a resolution. (3) Memorandum from City Clerk Dennis D. Hawkins, dated September 22, 2011, transmitting the recommendations of the Rules and Open Government Committee. (4) Pamphlet on Our Lady of Guadalupe Church.

Public Comments: A member of the Mayor's Committee to Honor Cesar Chavez spoke in support to the Staff recommendations.

2.11 (Cont'd.)

Action: Upon motion by Council Member Campos, seconded by Council Member Constant and carried unanimously, Resolution No. 76001, entitled: "A Resolution of the Council of the City of San José Nominating McDonnell Hall at the Our Lady of Guadalupe Church, Located at 2020 San Antonio Road, As a Historic Landmark of Special Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of a Historic Nature, Directing the Director of Planning, Building and Code Enforcement To Initiate the Procedures for Designation of a Historic Landmark Pursuant to the Provisions of Chapter 13.48 of Title 13 of the San José Municipal Code and Setting the Public Hearing Date for Consideration of this Nominated Historic Landmark Designation", was adopted. (11-0.)

2.12 As recommended by the Rules and Open Government Committee on September 21, 2011:

- (a) **Approve the District 4 Spooky Halloween and Haunted House as a City sponsored Special Event.**
- (b) **Approve and accept donations from various individuals, businesses or community groups to support the event.**

CEQA: Not a Project. (City Clerk)

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, dated September 21, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Action: The District 4 Spooky Halloween and Haunted House as a City sponsored Special Event was approved and acceptance of donations from various individuals, businesses or community groups to support the event was authorized. (11-0.)

2.13 As recommended by the Rules and Open Government Committee on September 21, 2011:

- (a) **Approve the District 8 Day in the Park Festival as a City sponsored Special Event.**
- (b) **Approve and accept donations from various individuals, businesses or community groups to support the event.**

CEQA: Not a Project. (City Clerk)

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, dated September 22, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Action: The District 8 Day in the Park Festival as a City sponsored Special Event was approved and acceptance of donations from various individuals, businesses or community groups to support the event was authorized. (11-0.)

2.14 As recommended by the Rules and Open Government Committee on August 31, 2011 and September 21, 2011:

- (a) Approve a request for a Waiver of the Revolving Door Restriction under San José Municipal Code Section 12.10.030 (A). for Edith Ramirez, former Redevelopment Agency employee, to allow her to work on legislative or administrative matters which she worked on during the twelve months prior to her termination of service, or which was within her area of job responsibility as defined in Section 12.10.030 A. The Committee recommends a finding that a Waiver of the Revolving Door Restriction under San José Municipal Code Section 12.10.070 for Ms. Ramirez, is in the best interest of the City.**
- (b) Approve a request for a Waiver of the Revolving Door Restriction under San José Municipal Code Section 12.10.030 (B) for Ms. Ramirez only for the purpose of representing before City commissions or City staff, businesses or persons that, within the last 12 months of Ms. Ramirez's employment with the Agency (1) did not receive any subsidy from the Agency or (2) were not involved with any project Ms. Ramirez worked on. The Committee recommends a finding that a Waiver of the Revolving Door Restriction under San José Municipal Code Section 12.10.070 for Ms. Ramirez, is in the best interest of the City.**
- (c) A waiver of Municipal Code Sections 12.10.030 (C). is not granted. Ms. Ramirez remains subject to the Revolving Door Restrictions under that section and may not receive any gift or payment as defined in 12.10.030 (C).**

Documents Filed: (1) Memorandum from Council Members Kalra, Oliverio and Rocha, dated September 23, 2011, recommending approval of the revolving door policy with direction. (2) Memorandum from City Clerk Dennis D. Hawkins, dated September 23, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Motion: Council Member Rocha moved approval of the letter he cosigned with Council Members Kalra and Oliverio. Council Member Kalra seconded the motion.

Mayor Reed and Vice Mayor Nguyen objected to the motion on the floor.

Substitute Motion: Council Member Constant moved approval of the recommendations from the Rules and Open Government Committee Meetings of August 31, 2011 and September 21, 2011. Vice Mayor Nguyen seconded the motion.

Council Member Kalra expressed opposition to the motion on the floor.

City Attorney Richard Doyle responded to Council questions and concerns. Discussion ensued.

Council Member Liccardo recommended amending the motion to approve the recommendation for Ms. Ramirez and to refer to the Rules and Open Government Committee a review of the Revolving Door ordinance for discussion on October 5, 2011 with recommendation for potential revisions to be brought back to the full Council. The amendment was accepted by Council Member Constant and Vice Mayor Nguyen.

2.14 (Cont'd.)

Public Comments: David Wall expressed opposition and stated that Council should ensure equal opportunity and equal treatment under the law.

Discussion ensued.

Action: On a call for the question, the motion carried unanimously the recommendations of the Rules and Open Government Committee as described in Item 2.14(a)-(c) were approved and a review of the Revolving Door ordinance was referred to the Rules and Open Government Committee for discussion on October 5, 2011 with recommendation for potential revisions to be brought back to the full Council. (11-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone reported that the City was selected as the first recipient of the Robert C. Larson Workforce Housing Public Policy Award which recognized the City for implementing successful public policies to address workforce housing needs of working families. Director of Housing Leslye Corsiglia accepted the award on behalf of the City in Washington D.C. on September 21, 2011.

3.3 Consider an ordinance amending Title 3 of the San José Municipal Code to add new Chapter 3.54 and 3.56, and to amend Sections 3.36.575, 3.36.1925, 3.36.1930, 3.36.2030 and 3.36.2050 for the purposes of establishing a new trust pursuant to Section 115 of the Internal Revenue Code related to retiree health care benefit funding and payment of retiree health care benefits. CEQA: Not a Project; File No. PP10-068(b), Municipal Code or Policy. (City Attorney's Office) (Deferred from 8/30/11 – Item 3.3)

Action: Deferred to November 1, 2011 per Administration.

3.4 Adopt a resolution authorizing the City Manager or designee to 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)

Documents Filed: Memorandum from Director of Employee Relations Alex Gurza, dated September 2, 2011, recommending adoption of a resolution.

3.4 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, Resolution No. 76002, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Execute an Agreement with Magellan Health Services of California, Inc., Employer Services for Employee Assistance Program, Critical Incident Stress Management and Substance Abuse Treatment for a Total Cost Not To Exceed \$3,251,140, for the Period of January 1, 2012 Through December 31, 2016”, was adopted. (11-0.)

3.5 Consider an ordinance amending Section 2.08.160 of Chapter 2.08 of Title 2 of San José Municipal Code and adding a new section 2.08.170 to provide for the appointment of a Council member as nonvoting member of the Board of Administration of the Federated City Employees Retirement System and the Board of Administration for the Police and Fire Department Retirement Plan, and correcting Section 2.08.1270 of the Code to correct a drafting error related to the stipends payable to certain members Board of Administration of the Police and Fire Department Retirement Plan. CEQA: Not a Project; File No. PP10-068(b), Municipal Code or Policy. (City Attorney's Office)

Note: Items 3.5 and 3.7 were heard together per Orders of the Day.

Documents Filed: (1) Memorandum from Council Member Kalra, dated September 23, 2011, recommending amending the draft ordinance by deleting Section 2.08.170 and replacing it with a provision that adds a Council Liaison position as that term is defined in Council Policy 0-36. (2) Memorandum from City Attorney Richard Doyle, dated September 14, 2011, recommending approval of an ordinance.

Mayor Reed presented clarifications and background on Items 3.5 and 3.7.

Motion: Vice Mayor Nguyen moved approval of Items 3.5 and 3.7. Council Member Constant seconded the motion.

Extensive Council discussion ensued.

Action: On a call for the question, the motion carried, Ordinance No. 28970, entitled: “An Ordinance of the City of San José Amending Part 1 of Chapter 2.08 of Title 2 of the San José Municipal Code to Amend Section 2.08.160 and Add a New Section 2.08.170 to Clarify Council’s Intent with Respect to the Nonvoting Member Position on the Board of Administration of the Federated City Employees Retirement System and the Board of Administration of the Police and Fire Department Retirement Plan and To Amend Section 2.08.1270 to Correct a Clerical Error Related to Compensation for Members of the Board of Administration of the Police and Fire Department Plan”, was passed for publication. (6-5. Noes: Campos, Chu, Kalra, Pyle, Rocha.)

- 3.7** (a) **Appoint Council Member Herrera to be the alternate non-voting member of the Federated Retirement Board and of the Police and Fire Retirement Board.**
- (b) **Approve revisions to City Council Policy 0-36 adding a new Section F, “Council Members Sitting as Members of Boards or Commissions”.**
- (c) **Approve the ordinance as recommended by the City Attorney.**
(Mayor/Constant/Herrera)

Documents Filed: Memorandum from Mayor Reed and Council Members Constant and Herrera, dated September 19, 2011, recommending as described above in 3.7(a)-(c).

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Constant and carried, Council Member Herrera was appointed as the alternate non-voting member; Resolution No. 76037, entitled: “A Resolution of the Council of the City of San José Approving Amendments to Council Policy No. 0-36, Relating to City Council/Commission Code of Conduct”, was adopted; the revisions to City Council Policy 0-36 adding a new Section F, “Council Members Sitting as Members of Boards or Commissions”, and the ordinance as recommended by the City Attorney, were approved. (6-5. Noes: Campos, Chu, Kalra, Pyle, Rocha.)

- 3.6** **Accept staff's presentation to the City Council on ethical issues related to gifts. (City Attorney's Office)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated September 15, 2011, recommending acceptance of the Staff presentation.

City Attorney Richard Doyle provided introductory remarks. Senior Deputy City Attorney Lisa Herrick presented the report.

Public Comments: David Wall presented comments about the bribery of City officials.

There was no Council action.

- 3.8** **As recommended by the Rules and Open Government Committee on September 21 2011, appoint Elizabeth “Bettina” Rounds to the Public Member vacancy on the Board of Administration for the Police and Fire Department Retirement Plan. (Mayor)**

Note: The final vote on Item 3.8 was taken in the evening.

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, dated September 22, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Action: Upon motion by Council Member Constant, seconded by Council Member Herrera and carried unanimously, Elizabeth “Bettina” Rounds was appointed to the Public Member vacancy on the Board of Administration for the Police and Fire Department Retirement Plan. (11-0.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.2 (a) Adopt a resolution authorizing the City Manager or designee to:
- (1) Negotiate and execute the purchase agreement with Union Pacific Railroad Company, in the amount of \$6,000,000 for the purchase of land located from Lonus Street to Minnesota Avenue in San José, CA, (APN No. 264-11-100, 264-11-101, 264-54-067, 264-56-108, 434-01-059) for the future Three Creeks Trail.
 - (2) Negotiate and execute all other documents and take such further actions as are necessary to complete the transaction.
 - (3) Settle any claims related to the removal of the existing billboard from this property up to a maximum of \$120,000.
- (b) Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Construction and Conveyance Tax Fund: City-Wide Parks Purposes (Fund 391):
- (1) Increase the Beginning Fund Balance by \$1,165,000.
 - (2) Increase the TRAIL: Three Creeks Land Acquisition appropriation to the Parks, Recreation and Neighborhood Services Department by \$992,000.
 - (3) Establish the Reserve: TRAIL: Three Creeks appropriation to the Parks, Recreation and Neighborhood Services Department for \$173,000.
- (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 \$1,260,000.
 - (2) Increase the TRAIL: Three Creeks Land Acquisition appropriation to the Parks, Recreation and Neighborhood Services Department by \$1,260,000.
- (d) Adoption of the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Subdivision Park Trust Fund (Fund 375):
- (1) Increase the Beginning Fund Balance by \$621,000.
 - (2) Establish the Reserve: TRAIL: Three Creeks appropriation to the Parks, Recreation and Neighborhood Services Department for \$621,000.
- (e) Adopt a resolution authorizing the City Manager or designee to:
- (1) Negotiate and execute an amended and restated funding agreement with Santa Clara County in the amount of \$3,000,000 for use in the acquisition of real property for the Three Creeks Trail.
 - (2) Execute and record a conservation easement on any land owned by City for the Three Creeks Trail as required by Santa Clara County and the Open Space Authority.

CEQA: Exempt, File No. PP03-143. Council District 6. (Economic Development/Parks, Recreation and Neighborhood Services/City Manager's Office)

4.2 (Cont'd.)

Documents Filed: Memorandum from Director of Economic Development/Chief Strategist Kim Welsh, Acting Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares and Budget Director Jennifer A. Maguire, dated September 6, 2011, recommending adoption of a resolution, appropriation ordinances and funding sources resolution amendments and a resolution.

Deputy Director of Parks, Recreation and Neighborhood Services Matt Cano provided comments.

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

Public Comments: Speaking in support to the Staff recommendations were Taisia McMahan, Save Our Trails, Larry Ames, Bruce Tichinin, David Dearborn, Willow Glen Neighborhood Association and Heather Lerner, Executive Director of Happy Hollow Foundation.

David Wall cited that there should a cap on residential housing built and expressed support to creating more trails and keeping open space.

Council discussion ensued.

Action: On a call for the question, the motion carried unanimously, Resolution No. 76003, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager or Designee to Take Various Actions Relating to the Purchase of Land Located from Lonus Street to Minnesota Avenue in San José for the Future Three Creeks Trail"; Ordinance No. 28971, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the Construction and Conveyance Tax Fund: Citywide Parks Purposes for the Trail: Three Creeks Land Acquisition and for the Reserve: Trail: Three Creeks; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption"; Resolution No. 76004, 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 Construction and Conveyance Tax Fund: Citywide Parks Purposes"; Ordinance No. 28972, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the Construction and Conveyance Tax Fund: Parks Purposes Council District No. 6 for the Trail: Three Creeks Land Acquisition; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption"; Resolution No. 76005, 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 and Conveyance Tax Fund: Parks Purposes Council District No. 6"; Ordinance No. 28973, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the Subdivision Park Trust Fund for the Reserve: Trail: Three Creeks Appropriation; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption";

4.2 (Action Cont'd.)

Resolution No. 76006, 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" and Resolution No. 76007, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager or Designee to Negotiate and Execute An Amended and Restated Funding Agreement With Santa Clara County for Acquisition of Real Property for the Three Creeks Trail; and Execute and Record a Conservation Easement(s) On Any Land Owned By the City for the Three Creeks Trail", were adopted. (11-0.)

4.3 Adopt a resolution:

- (a) **Authorizing the issuance of a tax-exempt multifamily housing revenue note designated as "City of San José Multifamily Housing Revenue Note (First and Rosemary Family Apartments), Series 2011B" in an aggregate principal amount not to exceed \$30,700,000 (the "Governmental Lender Note" or "Note").**
- (b) **Approving a loan of Note proceeds to 1st and Rosemary Family Housing, L.P., a California limited partnership created by ROEM Apartments Communities, LLC to finance the construction of the First and Rosemary Apartments located at 34, 66, 80 East Rosemary Street in San José.**
- (c) **Approving in substantially final form the Borrower Loan Agreement, Funding Loan Agreement, and Regulatory Agreement and Declaration of Restrictive Covenants (the "Documents").**
- (d) **Authorizing and directing the City Manager, Acting Director of Finance, Assistant Director of Finance, Treasury Division Manager, Debt Administrator, and Director of Housing, or their designees, to execute and, deliver these Documents and other related Note documents as necessary.**
- (e) **Declaring its intent to use the proceeds of the notes to reimburse project expenditures.**

CEQA: EIR Resolution 72768, adopted June 21, 2005, File No. PDC07-101. Council District 3. SNI: Rincon De Los Esteros. (Finance/Housing)

Documents Filed: Memorandum from Director of Housing Leslye Corsiglia and Acting Director of Finance Julia H. Cooper, dated September 14, 2011, recommending adoption of a resolution.

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

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

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

4.3 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, Resolution No. 76008, entitled: “A Resolution of the Council of the City of San José Authorizing the Execution and Delivery of a Multifamily Housing Revenue Note and the Loan of the Proceeds Thereof for the Financing of the First and Rosemary Family Apartments; and Approving Other Related Documents and Actions”, was adopted. (10-0-1. Absent: Oliverio.)

4.1 (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.

CEQA: Not a Project, File No. PP10-069. (Planning, Building and Code Enforcement)

(Continued from 9/20/11 – Item 4.3)

Director of Planning, Building and Code Enforcement Joseph Horwedel presented an update to the Draft Habitat Conservation Plan and alignment to the June 2011 Budget Message. Kay Goode, U.S. Fish and Wildlife Services provided comments.

Public Comments: Roland LeBrun and David Wall expressed opposition to the Draft Habitat Conservation Plan.

Erin McDaniel, Greenbelt Alliance and Habitat Conservation Now, voiced her support to the adoption of the Habitat Conservation Plan. Dennis Martin, NAIOP Silicon Valley, encouraged Council to continue to ask for a better bargain, as this program will be a significant cost to businesses in the future.

Director of Planning, Building and Code Enforcement Joseph Horwedel and City Attorney Richard Doyle responded to Council questions and concerns.

Discussion ensued.

Action: No Council Action. Staff directed to return to Council on October 18, 2011.

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Joint Council/Redevelopment Agency Meeting was convened at 4:33 p.m. to consider Items 9.1 and 9.2 in a Joint Session.

9.1 Adopt a resolution authorizing the City Manager or designee to select and purchase certain City and Redevelopment Agency insurance policies (property and liability for the City; property only for the Redevelopment Agency) for the period October 1, 2011 to October 1, 2012, at a total cost not to exceed \$1,500,000 for all policies, with the following insurance carriers:

- (a) **Lexington Insurance Company, (Boston, MA) for Property, including Boiler & Machinery.**
- (b) **National Union Fire Insurance Company (New York, NY) to provide the following coverage:**
 - (1) **Airport Owners and Operators Liability including War Risks & Extended Perils Coverage (Primary and Excess).**
 - (2) **Police Aircraft Hull & Liability including War Risks & Extended Perils.**
- (c) **St Paul/Travelers Insurance Company, (Hartford, CT) for Automobile Liability (Airport fleet vehicles and Shuttle Buses physical damage only/WPCP fleet vehicles).**
- (d) **Indian Harbor Insurance Company, (Stamford, CT) for Secondary Employment Law Enforcement Professional Liability.**

CEQA: Not a Project, File No. PP 10-066(a), agreements and contracts for purchase of insurance. (City Manager's Office/Redevelopment Agency)

Documents Filed: Memorandum from Acting Director of Finance Julia H. Cooper and Redevelopment Agency Director Richard Keit, dated September 7, 2011, recommending adoption of a resolution.

Acting Director of Finance Julia H. Cooper responded to Council questions. Discussion ensued.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Pyle and carried unanimously, Resolution No. 76009, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Select and Purchase Insurance Policies for the Period October 1, 2011 to October 1, 2012 at a Cost Not To Exceed \$1,500,000", was adopted. (10-0-1. Absent: Chu.)

9.2 Adopt resolutions by the City Council and Redevelopment Agency Board approving the Amended Enforceable Obligation Payment Schedule detailing the obligations of the Redevelopment Agency, and the City related to the Low and Moderate Income Housing Fund in order to comply with the provisions of Section 34169 of the Health and Safety Code. CEQA: Not a Project, File No. PP10-069, City Organizational and Administrative Activities. (City Manager's Office/ Redevelopment Agency)

9.2 (Cont'd.)

Documents Filed: Replacement memorandum from City Manager Debra Figone and Redevelopment Agency Director Richard Keit, dated September 23, 2011, making minor edits to the attached Amended Enforceable Obligation Payment Schedule and recommending adoption of resolutions.

Director of Housing Leslye Corsiglia pointed out that this is the Amended Enforceable Obligation Payment Schedule.

Action: Upon motion by Council Member Pyle, seconded by Vice Mayor Nguyen and carried unanimously, Resolution No. 76010, entitled: "A Resolution of the Council of the City of San José Approving the Amended Enforceable Obligation Payment Schedule Updated the Obligations of the Redevelopment Agency and the City of San José as it Relates to the Low and Moderate Income Housing Fund In Order to Comply With the Provisions of Section 34169 of the Health and Safety Code" and Redevelopment Agency Resolution No. 6030, entitled: "A Resolution of the Board of Directors of the Redevelopment Agency of the City of San José Approving the Amended Enforceable Obligation Payment Schedule Updated the Obligations of the Redevelopment Agency and the City of San José as it Relates to the Low and Moderate Income Housing Fund In Order to Comply With the Provisions of Section 34169 of the Health and Safety Code", were adopted. (11-0.)

The Joint Council/Redevelopment Agency Meeting was adjourned at 4:41 p.m.

OPEN FORUM

- (1) Reyna Burns and Danielle Sattle, Holistic Pain Management Institute expressed their desire to Adopt-a-Park on behalf of their place of employment, however they were rejected due to the type of industry they represent, and complained that it was unjustified.
- (2) Mark Trout expressed his concerns about forced vaccinations.
- (3) Jose Francisco Medeiros complained that the Police Department did not notify him first before towing his car following the Labor Day holiday weekend.
- (4) David Wall expressed his opinions about the Habitat Plan and other incubators.

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 5:14 p.m.

RECESS/RECONVENE

The City Council recessed at 5:14 p.m. from the afternoon Council Session and reconvened at 7:03 p.m. in the Council Chambers, City Hall.

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

Absent: Council Members - All Present.

City Clerk Dennis D. Hawkins read the requests for continuance of the applications. Upon motion by Council Member Liccardo, seconded by Council Member Herrera, and carried unanimously, the below noted continuances and actions were taken as indicated. (11-0.)

CEREMONIAL ITEMS

1.1 Presentation of a proclamation declaring the month of September 2011 as “Histiocytosis Awareness Month” in the City of San José. (Constant)

Mayor Reed and Council Member Constant recognized the month of September 2011 as “Histiocytosis Awareness Month” in the City of San José.

1.4 Presentation of a proclamation recognizing September 26-October 2, 2011 as “Astronaut Week” in the City of San José. (Mayor)

Mayor Reed, Council Members Herrera and Constant recognized September 26, 2011 through October 2, 2011 as “Astronaut Week” in the City of San José.

1.5 Presentation of a commendation to members of the San José Police Department and the Santa Clara County District Attorney’s Office for the successful investigation, prosecution and incarceration of a dozen gang members in the El Hoyo Palmas street gang for multiple violent and heinous crimes in San José. (Mayor)

Mayor Reed and Council Member Liccardo recognized and commended members of the San José Police Department and the Santa Clara County District Attorney’s Office.

1.6 Administer Oaths of Office to District 3 Youth Commissioner Esmeralda Valerio, District 7 Youth Commissioner Kenneth Huynh, and District 9 Youth Commissioner Nicole Lim. (City Clerk)

Documents: Memorandum from City Clerk Dennis D. Hawkins, dated September 21, 2011 regarding administering the Oaths of Office.

City Clerk Dennis D. Hawkins, CMC, administered the Oaths of Office to the new Youth Commissioners. Mayor Reed, Vice Mayor Nguyen and Council Members Liccardo and Rocha congratulated the Youth Commissioners.

PUBLIC HEARINGS ON CONSENT CALENDAR

- 11.1 (a) **Consideration of an ordinance zoning the real property located on the northeast corner of Highway 280 and Saratoga Avenue (500 Saratoga Avenue) for a private school master plan which includes the demolition of approximately 85,000 square feet of existing buildings and construction of approximately 316,440 gross square feet of new construction and a new turf field on a 15.9 gross acre site, with no proposed increase in student population (Harker Academy Foundation, Owner). CEQA: Mitigated Negative Declaration, Resolution Adopted.**
PDC10-017 – District 1

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated August 19, 2011, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC10-017, dated September 6, 2011. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated September 27, 2011, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing, executed on August 26, submitted by the City Clerk.

Director of Planning, Building and Code Enforcement Joseph Horwedel stated that Staff was recommending approval and apologized for the late distribution to the Council of the recommendations from the Planning Commission.

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

Action: Upon motion by Council Member Constant, seconded by Council Member Kalra and carried unanimously, the recommendation of the Planning Director and Planning Commission was approved, Ordinance No. 28974, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Northeast Corner of Highway 280 and Saratoga Avenue, From the R-1-5 and R-1-8 Single Family Residence Zoning Districts to A(PD) Planned Development Zoning District”, was passed for publication, and CEQA Resolution No. 76013, entitled: “A Resolution of the Council of the City of San José Adopting the Harker School Master Plan Mitigated Negative Declaration, For Which An Initial Study Was Prepared, All in Accordance With the California Environmental Quality Act and Adopting a Related Mitigation Monitoring and Reporting Program”, was adopted. (11-0.)

- 11.1 (b) **Consideration of an ordinance rezoning the real property located at the southeast corner of Almaden Expressway and Chynoweth Avenue (14418 Almaden Road) to allow for the development of up to 400,000 square feet of commercial uses and modifications to a previously approved roadway network by extending Cherry Avenue through the site to Sanchez Avenue south of Highway 85 on a 43.5 gross acre site (Arcadia Homes, Inc, Brad Durga, Owner). CEQA: Almaden Ranch Environmental Impact Report (EIR).**

PDC10-006 – District 9

Documents: Proof of Publication of Notice of Public Hearing, executed on August 5, 2011, submitted by the City Clerk.

Director of Planning, Building and Code Enforcement Joseph Horwedel and City Attorney Richard Doyle responded to questions and comments from Mayor Reed.

A short Council discussion ensued.

Action: Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, Item 11.1(b) was dropped, to be renoticed at a future date. (11-0.)

END OF PUBLIC HEARINGS ON CONSENT CALENDAR

PUBLIC HEARINGS

- 11.2 Consideration of an ordinance rezoning the real property located at the northwest corner of Jackson Street and North 19th Street (897 Jackson Street) from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow the addition of a 2-story, accessory structure (consisting of a home office over a 2 car garage) to be constructed without a driveway adjacent to the North 19th Street property line on a .29 gross acre site currently zoned for single-family, duplex and bed and breakfast uses (Eric Thacker Trustee, et al., Owner). CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommends denial (4-0-2; Commissioner Cahan and Platten absent).
PDC10-027 – District 3**

Documents Filed: (1) Memorandum from Council Member Liccardo, dated September 27, 2011, approving the Staff recommendations with conditions and one clarification. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated August 12, 2011, transmitting the Planning Commission recommendation of denial. (3) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC10-027, dated August 3, 2011. (4) Proof of Publication of Notice of Public Hearing, executed on July 29, 2011, submitted by the City Clerk.

Motion: Council Member Liccardo moved approval of his memorandum, dated September 27, 2011, approving the application with conditions and one revision (e): *Any attempt to do so will require application pursuant to the City's Secondary Unit Ordinance or other lawful process.* Council Member Constant seconded the motion.

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

Action: On a call for the question, the motion carried unanimously, the revised memorandum from Council Member Liccardo, dated September 27, 2011, and the application for rezoning were approved, with the following conditions: (1) The setback from the northern lot line be 5 feet or more. (2) The height of the structure be no more than 24 feet at its peak. (3) No deck may be constructed on the second floor on any side of the proposed structure other than the south. (4) Vegetation or an accessory (such as a trellis) be placed in between the structure and fence on the northern border, so as to obscure views into the neighbor's yard from the second floor of the structure. (5) The proposed structure not be used as a residence of any kind. *Any attempt to do so will require application pursuant to the City's Secondary Unit Ordinance or other lawful process and Ordinance No. 28975*, entitled: "An Ordinance of the City of San José Rezoning Real Property Situated at the Northwest Corner of Jackson Street and North 19th Street (897 Jackson Street) from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District", was passed for publication, as amended. (11-0.)

**11.3 Conduct an Administrative Hearing and consider an Appeal of the Planning Commission's decision to deny a Conditional Use Permit and Determination of Public Convenience or Necessity to allow the off-sale of alcoholic beverages at an existing grocery store on an approximately .74 gross-acre site in the CP Pedestrian Commercial Zoning District located on the southeast corner of Story Road and McGinness Avenue (2806 Story Road) (Ajluni Andrew Trustee & Et Al, Owner; Mi Rancho Supermarkets Inc., Applicant). CEQA: Exempt. Mandatory Denial by Planning Commission, but Director of Planning, Building and Code Enforcement and Planning Commission recommend uphold appeal (7-0-0).
CP11-007/ABC11-002 – District 5**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated August 5, 2011, transmitting the Report from the Planning Commission. (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated September 2, 2011, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP11-007/ABC11-002, dated July 1, 2011. (3) Proof of Publication of Notice of Public Hearing, executed on September 16, 2011, submitted by the City Clerk.

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

City Attorney Richard Doyle and Director Horwedel responded to Council questions and concerns.

Mayor Reed opened the public hearing.

Gregg Kays, representing the Applicant, Mi Rancho Supermarkets, described the full service supermarket, spoke to the merits of the project and responded to questions from the Council Members.

Public Comments: Speaking in support to allowing the off-sale of alcoholic beverages at Mi Rancho Supermarket at the corner of Story Road and McGinness Avenue were Alofa Talivaa, Steven Chavez, Christina Duarte, Brittany Timoteo, Carmen Talivaa and Ulitafa Mariner, Sierra Neighborhood Association. Aaron Resendez observed that there were too many liquor stores in the area already.

Mayor Reed closed the public hearing.

Motion: Council Member Campos moved approval of the Staff recommendations to uphold the appeal and approve the Conditional Use Permit. Council Member Constant seconded the motion.

11.3 (Cont'd.)

Council Member Campos provided meeting disclosures.

Action: On a call for the question, the motion carried unanimously, Resolution No. 76014, entitled: “A Resolution of the Council of the City of San José Approving a Conditional Use Permit and Granting a Determination of Public Convenience or Necessity to Allow Off-Sale of Alcohol, Limited to Beer and Wine, In Conjunction with an Approximately 7,000 Square Foot Full Service Grocery Store Located at 2806 Story Road on An Approximately .74 Gross Acre Site”, was adopted. (11-0.)

11.4 **Conduct an Administrative Hearing and consider an Appeal of the Planning Commission’s decision to deny a Conditional Use Permit and Determination of Public Convenience or Necessity to allow the off sale of alcohol at a full service grocery store located within an existing approximately 19,200 square foot tenant space on a 2.55 gross acre site in the CP Commercial Pedestrian Zoning District located at the northwest corner of Foxworthy Avenue and Meridian Avenue (1665 Foxworthy Avenue) (Fremont Center Plaza, LLC, Owner). CEQA: Exempt. Mandatory Denial by Planning Commission, but Director of Planning, Building and Code Enforcement and Planning Commission recommend uphold appeal (4-0-2). CP11-047/ABC11-009 – District 9**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated September 2, 2011, recommending upholding the appeal of the Planning Commission’s decision and approve the subject Conditional Use Permit. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP11-047/ABC11-009, dated July 29, 2011. (3) Proof of Publication of Notice of Public Hearing, executed on September 16, 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.

Council Member Rocha provided meeting disclosures.

Motion: Council Member Rocha moved approval of the Staff/Planning recommendations to uphold the appeal and approve the Conditional Use Permit. Council Member Pyle seconded the motion.

Mayor Reed, Vice Mayor Nguyen and Council Member Constant provided meeting disclosures.

Action: On a call for the question, the motion carried unanimously, Resolution No. 76015 was adopted to uphold the appeal, the recommendation of the Planning Commission and the Planning Director was approved, and the Conditional Use Permit was approved. (11-0.)

11.5 Conduct an Administrative Hearing and consider an Appeal of the Planning Commission's decision to deny a Conditional Use Permit and not grant a Determination of Public Convenience or Necessity to allow the off sale of alcohol at a retail store in an approximately 10,050 square foot portion of an existing approximately 43,000 square foot building on 6.15 gross acre site in the CG-Commercial General Zoning District, located at/on the northwest corner of Prospect Road and Saratoga Avenue (5205 Prospect Road, Unit B) (West Valley Shopping Center, Inc., Owner; BevMo, Applicant). CEQA: Exempt. Mandatory Denial by Planning Commission, but Planning Commission recommends uphold appeal (5-0-1). The Director of Planning, Building and Code Enforcement recommends the City Council deny the subject Conditional Use Permit and not make a Determination of Public Convenience or Necessity by finding that the required findings for a Determination of Public Convenience or Necessity cannot be made and that there is not a significant overriding public benefit served by the proposed off-sale of alcohol. Alternatively, the Council may adopt a resolution approving the subject Conditional Use Permit and Determination of Public Convenience or Necessity by finding that there is a significant overriding public benefit served by the proposed off-sale of alcohol as well as making other appropriate findings.

CP11-048/ABC11-010 – District 1

Documents Filed: (1) Memorandum from Mayor Reed and Council Member Constant, dated September 23, 2011, recommending adoption of a resolution approving the subject Conditional Use Permit. (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated September 21, 2011, recommending denial of the subject Conditional Use Permit. (3) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC10-026, dated May 16, 2011.

Director of Planning, Building and Code Enforcement Joseph Horwedel stated that Staff was not recommending the Council approve the off sale. He continued that Staff concurred BevMo! has been a good retailer but the issue was how the off sale licenses are distributed around the City. Director Horwedel pointed out that there are currently numerous off sale licenses in this area.

Mayor Reed opened the public hearing.

Jeff Sealy, BevMo!, spoke to the merits of the proposal to occupy a portion of the former PW Market in the West Valley Shopping Center and presented a slide presentation. Mr. Sealy pointed out that BevMo! was a good responsible, operator, and has an outstanding record with the State of California Department of Alcoholic Beverage Control (ABC).

Council Member Liccardo expressed his concerns and requested that when a motion was made to add BevMo!'s self imposed conditions on the Conditional Use Permit.

Public Comments: Speaking in support to upholding the appeal and approving the Conditional Use Permit were Sarah Edwards, John Machado, John Reimann, West Valley Shopping Center, and Matt Francois, BevMo!.

11.5 (Cont'd.)

Mayor Reed closed the public hearing.

Motion: Council Member Constant moved approval of the memorandum he cosigned with Mayor Reed, dated September 23, 2011, including the addition of the self imposed conditions by BevMo! to the CUP: (1) No cigarettes, malt liquor or fortified wines, Lotto tickets or adult magazines allowed. (2) Store will close early: 9:00 p.m. regularly and 10:00 p.m. during holidays. (3) Pay phones not permitted outside the store. (4) No customers under 21 allowed. (5) No Staff under 21 years of age employed. (6) All employees subject to drug test prior to employment. (7) Store will solicit customer feedback via surveys. (8) BevMo! to operate a minor decoy program. Council Member Campos seconded the motion.

City Attorney Richard Doyle and Director of Planning, Building and Code Enforcement Joseph Horwedel responded to Council questions and concerns.

Discussion ensued.

Council Member Constant requested to amend the motion to include and direct the City Attorney and Director of Planning, Building and Code Enforcement to take care of Condition 3 contained in the motion. Council Member Campos accepted the amendment.

Council Member Oliverio voiced his objection to the motion on the floor.

Action: On a call for the question, the motion carried unanimously, the memorandum from Mayor Reed and Council Member Constant, dated September 23, 2011, was approved, the Conditional Use Permit and Determination of Public Convenience or Necessity was approved by finding that there is a significant overriding public benefit served by the proposed off-sale of alcohol as well as making other appropriate findings as outlined below: (a) Conditional Use Permit (CUP) Determination: A CUP may be issued to the provisions in 20.80.900.A.2 and 20.80.800.A.3 of the Municipal Code if the decision making body makes the following findings: (1) 20.80.900.A.2: For uses closer than 500 feet to another off-sale use that results in more than 4 off-sale establishments within 1,000 feet, the excess concentration will not: (a) Adversely affect the peace, health, safety morals or welfare of persons residing or working in the area. (b) Impair the utility or value of property of others in the area. (c) Be detrimental of public health, safety or general welfare. The reasons for these are below: (1) This permit will allow the ownership transfer of an existing alcohol license used at the existing building. (2) The project is substantially surrounded by commercial uses. (3) No substantial adverse parking or traffic impacts have been identified relating to the project. (4) No police issues were identified by the Police Department. (2) 20.80.800.A.3: For uses closer than 500 feet from listed sensitive uses or closer than 150 feet from residentially zoned property, that the building is situated and oriented in a manner that would not adversely affect such residential or other sensitive use: (a) The project is located in an existing shopping center, oriented in a compatible manner with its other retail tenants and not towards residential

11.5 (Action Cont'd.)

uses. (b) Public Convenience and Necessity (PCN): 6.84.030.B – A PCN may be issued by finding that a significant and overriding public benefit will be served by the proposed project. These public benefits are outlined below: (1) This project will add 2-15 jobs and generate an estimated \$1 million in sales annually from this location. (2) This project will add a specialty goods retail establishment to the shopping center. (3) This project draws residents from other nearby cities to shop San José. Thus, increasing sales tax revenue from residents of nearby residents and preventing further tax leakage. (4) BevMo! maintains an excellent reputation as a good retail neighbor and high quality store at its existing stores in San José and adjacent communities. (5) BevMo! has a track record of being a responsible retailer in regard to the safe handling and sale of alcoholic beverages. (6) BevMo! has received a significant outpouring support from current customers, existing tenants, adjacent neighborhood associations and broader District 1 community.

6.84.030.C.2: The proposed outlet for the off sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant impact on public health or safety. (1) This project will occupy a currently vacant space in the West Valley Shopping Center with a reputable and popular specialty goods establishment. Other approved conditions were: (c) Add the self imposed conditions by BevMo! to the CUP: (1) No cigarettes, malt liquor or fortified wines, Lotto tickets or adult magazines allowed. (2) Store will close early: 9:00 p.m. regularly and 10:00 p.m. during holidays. (3) Pay phones not permitted outside the store. (4) No customers under 21 allowed. (5) No Staff under 21 years of age employed. (6) All employees subject to drug test prior to employment. (7) Store will solicit customer feedback via surveys. (8) BevMo! to operate a minor decoy program. (d) Proposed Amendment to Condition 3 was approved: This Conditional Use Permit authorizes the off sale of a full range of alcoholic beverages and on site beer and wine tastings, to be implemented only in conjunction with a specialty alcohol retailer on the property subject to the terms of this permit. (e) Store will include a dedicated area, the percentage of floor area and/or shelf space to be determined and agreed upon by City Staff and BevMo!, for food and ancillary products, and Resolution No. 76016, entitled: “A Resolution of the Council of the City of San José Granting a Conditional Use Permit and Issuing a Determination of Public Convenience or Necessity to Allow for the Sale of a Full Range of Alcoholic Beverages for Off Site Consumption at a Retail Store in an Existing Approximately 10,050 Square Foot Tenant Space that is a Portion of a 43,000 Square Foot Building in a Shopping Center on an Approximately 6.15 Gross Acre Site”, was adopted, as amended. (10-1. Noes: Oliverio.)

OPEN FORUM

Mark Trout reiterated his concerns about forced vaccinations.

ADJOURNMENT

The Council of the City of San José was adjourned at 8:58 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis D. Hawkins, CMC
City Clerk

/smd 09-27-11 MIN

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