

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, NOVEMBER 29, 2011

The Council of the City of San José convened in Regular Session at 9:03 a.m. in the Council Chambers at City Hall.

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

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

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

There was no Labor Negotiations Update.

Public Comments: Robert Sapien, President, San José Firefighters, Local 230 expressed comments and concerns about lawful pension reform.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:06 a.m. to a Closed Session in Room W133 (A) 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

CLOSED SESSION (Cont'd.)

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 11:16 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 (1:39 p.m.), Nguyen, Oliverio (1:37 p.m.), Pyle, Rocha; Reed.

Absent: Council Members - All Present.

INVOCATION

Father Joe Kim, Holy Spirit Church presented the Invocation. (District 10)

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, Items 2.3(a) and 2.3(c) were deferred to December 6, 2011 and following Item 3.1, Item 6.1 and Item 6.6 were heard jointly. (9-0-2. Absent: Liccardo, Oliverio.)

CEREMONIAL ITEMS

1.1 Presentation of a proclamation declaring December 1, 2011 as “World AIDS Day” in the City of San José. (Pyle)

Mayor Reed and Council Member Pyle recognized December 1, 2011 as “World AIDS Day” in San José.

1.2 Presentation of a commendation to Julian Zamora from Mt. Pleasant High School for his involvement in the San José Police Department Public Safety Ad Campaign. (Campos)

Mayor Reed and Council Members Campos, Chu and Herrera recognized and commended Julian Zamora.

1.3 Presentation of a commendation to the Martin-Fontana Parks Association for their dedication to preserve and enhance the beauty of TJ Martin and Jeffrey Fontana Parks. (Pyle)

Mayor Reed and Council Member Pyle recognized and commended the Martin-Fontana Parks Association.

1.4 Presentation of a proclamation declaring the month of November as “Family Caregiver Awareness Month” in the City of San José. (Herrera)

Mayor Reed and Council Members Herrera and Kalra recognized the month of November as “Family Caregiver Awareness Month” in 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. (11-0.)

2.1 Approval of Minutes.

Action: There were none.

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 28989 – Amending Chapter 12.10 of Title 12 of the San José Municipal Code by adding a new Section 12.10.035 to prescribe limited restrictions for designated employees terminated due to reductions in work force.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28989 executed on November 15, 2011, submitted by the City Clerk.

Action: Ordinance No. 28989 was adopted. (11-0.)

- (b) **ORD. NO. 28995 – Amending various sections of Chapter 3.48 of Title 3 of the San José Municipal Code, the San José Deferred Compensation Plan, to comply with the Pension Protection Act of 2006.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28995 executed on November 22, 2011, submitted by the City Clerk.

Action: Ordinance No. 28995 was adopted. (11-0.)

- (c) **ORD. NO. 28996 – Amending various sections of Chapter 3.50 of Title 3 of the San José Municipal Code, the San José PTC Plan, to comply with the Pension Protection Act of 2006.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28996 executed on November 22, 2011, submitted by the City Clerk.

Action: Ordinance No. 28996 was adopted. (11-0.)

- (d) **ORD. NO. 28997 – Rezoning certain real property situated on the east side of South 12th Street, on a 0.16 gross-acre site, approximately 140 feet southerly of East Santa Clara Street (562 East Santa Clara Street) to the R-1-8 Single-Family Residence Zoning District. C11-015**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28997 executed on November 22, 2011, submitted by the City Clerk.

Action: Ordinance No. 28997 was adopted. (11-0.)

2.3 Approval of Council Committee Reports.

- (a) **Rules and Open Government Committee Report of November 2, 2011.**
(c) **Rules and Open Government Committee Report of November 9, 2011.**
(Mayor)

Action: Deferred to December 6, 2011 per Orders of the Day.

- 2.3 (b) **Transportation and Environment Committee Report of November 7, 2011. (Liccardo)**
(d) **Neighborhood Services and Education Committee of November 10, 2011. (Pyle)**

Documents Filed: (1) The Transportation and Environment Committee Report dated November 7, 2011. (2) The Neighborhood Services and Education Committee Report dated November 10, 2011.

Council Member Pyle pulled Item 2.3(d) and provided comments and praise for the Senior Nutrition New Service Delivery Model Update.

Action: Upon motion by Council Member Pyle, seconded by Council Member Constant 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.**

Documents Filed: Memorandum from Council Member Chu, dated November 28, 2011, providing an update of his travel to San Diego on November 17-18, 2011.

Council Member Constant provided details on his trip to Phoenix, Arizona representing the City of San José as Vice Chair of the National League of Cities' Public Safety and Crime Prevention Steering Committee.

Council Member Chu presented highlights of his trip to San Diego, California as the designated representative of the City of San José to the League of California Cities Board of Directors' Meeting.

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

Action: There were none.

2.7 **Approve settlement in the case of *Greg Elliott v. City of San José*, and authorize the City Attorney to execute a Settlement Agreement and Release with Mr. Elliott and his attorneys in the amount of \$127,500. CEQA: Not a Project; File No. PP10-066h, Settlement Agreements. (City Attorney's Office)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated November 14, 2011, recommending approval of the settlement.

Council Member Liccardo pulled Item 2.7 from the Consent Calendar to record a no vote.

2.7 (Cont'd.)

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the settlement in the case of *Greg Elliott v. City of San José* was approved and the City Attorney was authorized to execute a Settlement Agreement and Release with Mr. Elliott and his attorneys in the amount of \$127,500. (10-1. Noes: Liccardo.)

2.8 Adopt a resolution authorizing the City Manager to execute an amendment to the agreement with Mobizent LLC, (located in Edison New Jersey previously 3i Infotech Corporation) to extend the term of the agreement by two years ending on March 28, 2013, and additional extensions if necessary, for the purpose of completing Phases Three and Four of the project as previously approved by Council. CEQA: Not a Project, File No. PP10-066(a), Agreements and Contracts. (Finance)

Action: Deferred to December 6, 2011 per Administration.

2.9 Adopt a resolution authorizing the City Manager, or designee, to:

- (a) Collaborate with the YWCA Silicon Valley, which is submitting a \$5,900,000 grant application to the California Department of Education for the *21st Century High School After School Safety and Enrichment for Teens Grant Program*.
- (b) Accept any grant funds awarded to the City and negotiate and execute all necessary documents related to any grant funding.

CEQA: Not a Project, File No. PP10-068 (a), General Procedures & Policy Making, Grant Applications. Council Districts 5, 7 and 8. SNI: East Valley/680, K.O.N.A. and Tully-Senter. (Library)

Documents Filed: Memorandum from Library Director Jane Light, dated November 7, 2011, recommending adoption of a resolution.

Action: Resolution No. 76066, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager or Designee, To Collaborate with the YWCA Silicon Valley, Which is Submitting a \$5.9 Million Grant Application to the California Department of Education for the 21st Century High School After School Safety and Enrichment for Teens Grant Program, Accept Any Grant Funds Awarded and Negotiate and Execute All Necessary Documents Related to Any Grant Funding", was adopted. (11-0.)

- 2.10 Approve the first amendment to the master agreement with Engineering Economics, Inc. dba EEI extending the duration from December 31, 2011 to December 31, 2013, for a continuation of ongoing commissioning authority consultant services supporting various City projects, at no additional cost to the City. CEQA: Not a Project, File No. PP10-066(d), Consultant Services for Design, Study, Research, Inspection. (Public Works)**

Documents Filed: City Council Action Request from Deputy Director of Public Works Harry Frietas, dated November 10, 2011, recommending approval of the first amendment to the master agreement.

Action: The first amendment to the master agreement with Engineering Economics, Inc. dba EEI extending the duration from December 31, 2011 to December 31, 2013, for a continuation of ongoing commissioning authority consultant services supporting various City projects, at no additional cost to the City was approved. (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 American Airlines filed for bankruptcy, however there will be no impact on flights at the San José Mineta International Airport. City Manager Figone announced that after 15 years of service, the City of San José Library Director Jane Light will be retiring at the end of March 2012.

TRANSPORTATION & AVIATION SERVICES

- 6.1 As recommended by the Public Safety, Finance and Strategic Support Committee on October 20, 2011, accept the audit of Airport Public Safety Level of Service. (City Auditor)**

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, dated November 16, 2011, transmitting the recommendations of the Transportation and Environment Committee.

Note: Items 6.1 and 6.6 were heard together.

Director of Aviation William Sherry highlighted a few key facts with regard to the Staff recommendations.

Motion: Council Member Constant moved approval of the Staff recommendations of Items 5.1 and 6.6. Council Member Herrera seconded the motion.

6.1 (Cont'd.)

City Auditor Sharon W. Erickson and Director of Aviation William F. Sherry responded to Council questions and comments.

Extensive discussion followed.

Council Member Kalra expressed concern about developing budget solutions for 2012-2013 with the goal of keeping the Airport cost per enplanement at competitive level of no more than \$12 [Item 6.6(d)] and would not be in support.

Council Member Campos requested to amend the motion regarding Item 6.6(d) to direct the City Manager to issue a memorandum notifying the City Council that the cost structure has changed and that the parties will begin the negotiation process. The amendment was accepted by Council Members Constant and Herrera.

Action: On a call for the question, the motion carried unanimously, the audit of Airport Public Safety Level of Service was accepted. (11-0.)

6.6 As recommended by the Public Safety, Finance and Strategic Support Committee on November 17, 2011, approve the following actions:

- (a) **Continue Airport Law Enforcement Services to be provided by the San José Police Department and discontinue negotiations with the Santa Clara County Sheriff's Office regarding potential outsourcing;**
- (b) **Approve a revised San José Police Department – Airport Division staffing model that modifies staffing levels to 11 sworn positions (1.0 Police Lieutenant, 6.0 Police Sergeants, and 4.0 Police Officers) and relies upon overtime staffing equivalent to 16 sworn positions effective February 1, 2012;**
- (c) **Approve Appropriation Ordinance and Funding Sources Resolution amendments to reflect a full year of San José Police Department services at the Airport using the revised police staffing model starting February 1, 2012, as follows:**
 - (1) **Airport Maintenance and Operation Fund:**
 - (a) **Decrease Airport Non-Personal/Equipment appropriation by \$1,817,000.**
 - (b) **Decrease Contingency Reserve by \$445,515.**
 - (c) **Increase Transfer: Fire/Police Services by \$2,262,515.**
 - (2) **General Fund:**
 - (a) **Increase the transfer from the Airport Maintenance and Operation Fund by \$2,262,515.**
 - (b) **Increase the Police Department's Personal Services appropriation by \$2,093,093.**
 - (c) **Increase the Police Department's Non-Personal/Equipment appropriation by \$38,352.**

- 6.6 (d) **Direct staff to develop budget solutions for 2012-2013 with the goal of keeping the Airport cost per enplanement at competitive level of no more than \$12, including authorization to reinitiate negotiations with the Santa Clara County Sheriff's Office with no further competitive procurement process required.**

CEQA: Not a Project, File No. PP10-066(e), Services involving no physical change to the environment. (Airport/Police/City Manager's Office)

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, dated November 21, 2011, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee.

Action: Upon motion by Council Member Constant, seconded by Council Member Herrera and carried, the Airport Law Enforcement Services to be provided by the San José Police Department was authorized to continue and negotiations with the Santa Clara County Sheriff's Office regarding potential outsourcing was discontinued; a revised San José Police Department – Airport Division staffing model that modifies staffing levels to 11 sworn positions (1.0 Police Lieutenant, 6.0 Police Sergeants, and 4.0 Police Officers) and relies upon overtime staffing equivalent to 16 sworn positions effective February 1, 2012 was approved; Ordinance No. 28998, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the Airport Maintenance and Operation Fund and in the General Fund for the Airport Non-Personal/Equipment, For the Transfer for Fire/Police Services, For the Police Department Personal Services and for the Police Department Non-Personal Equipment; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption” and Resolution No. 76067, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 75872 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2011-2012 To Adjust Revenues in the General Fund”, were adopted and Staff was directed to develop budget solutions for 2012-2013 with the goal of keeping the Airport cost per enplanement at competitive level of no more than \$12, including authorization to reinitiate negotiations with the Santa Clara County Sheriff's Office with no further competitive procurement process required. The City Manager was further directed to issue a memorandum notifying the City Council that the cost structure has changed and that the parties will begin the negotiation process. (9-2. Noes: Campos, Kalra.)

STRATEGIC SUPPORT SERVICES

- 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)**

Action: Deferred to January 10, 2012 per Administration.

3.4 Report on Request for Proposal for Citywide Janitorial Services and adoption of a resolution authorizing the City Manager to:

- (a) **Execute four separate agreements with GCA Services Group Inc. (Alviso, CA) for Janitorial Services, with an initial three year term ending October 31, 2014 for each agreement, and a cumulative total amount not to exceed \$18,009,454: as follows:**

<u>Department</u>	<u>Max. Compensation (three years)</u>
Public Works (Citywide Facilities)	\$8,853,696
Airport	7,728,377
Parks, Recreation & Neighborhood Services	1,387,790
Office of Cultural Affairs	<u>39,591</u>
Total	\$18,009,454

- (b) **Subject to approval by the Treatment Plant Advisory Committee, execute an agreement with GCA Services Group, Inc., (Alviso, CA) for Janitorial Services, with an initial three year term ending October 31, 2014 for the Environmental Services Department Water Pollution Control Plant, and a total amount not to exceed \$1,109,154.**
- (c) **Execute amendments as required to add or delete facilities, or change service levels due to seasonal changes or budget constraints, subject to the appropriation of funds.**
- (d) **Execute five one-year options to renew each of the agreements subject to the appropriation of funds.**

CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Finance)

Documents Filed: Replacement memorandum from Acting Director of Finance Julia H. Cooper, dated November 21, 2011, transmitting an update to include an analysis and summary and recommending adoption of a resolution.

Assistant City Manager Edward K. Shikada provided introductory remarks. Purchasing Division Manager Mark Giovannetti and Assistant Director of Aviation/Chief Operating Officer Kim Aguirre presented the report.

Extensive Council discussion ensued.

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

Vice Mayor Nguyen asked that Rick Sanchez (GCA Services Group Inc.) consider ten days vacation a year for their employees.

3.4 (Cont'd.)

Council Member Campos expressed grave concerns that the janitorial staff employed by GCA Services Group Inc. has merely five vacation days per year and voiced strong opposition to the motion on the floor. Council Member Kalra concurred with Council Member Campos.

Public Comments: Ross Signorino expressed concern that the workers have only five days off per year.

The City Manager was requested to issue an information memorandum over the next 60 days explaining the third tier review used in the Request for Proposal (RFP) process and the elements of the process used to evaluate conditions of workers.

Action: On a call for the question, the motion carried, Resolution No. 76068, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute Agreements with GCA Services Group Inc. for Citywide Janitorial Services", was adopted. The City Manager was directed to issue an information memorandum over the next 60 days explaining the third tier review used in the Request for Proposal (RFP) process and the elements of the process used to evaluate conditions of workers. (9-2. Noes: Campos, Kalra.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 (a) **Accept the status report of housing unit reservation and allocation in North San José and direct staff to continue to track residential developer progress.**
- (b) **Request that staff return to the Council with an amendment to the North San José Area Development Policy to reallocate up to 600 unused affordable rate units for projects that:**
- (1) **Best implement the North San José Area Development Policy criteria,**
 - (b) **result in the best results for the affordable housing program, (c) broaden the diversity of residential unit mix, and**
 - (2) **Are shovel-ready projects that would begin construction within 18 months.**
- (c) **Request that staff return to the Council at the same meeting with a recommended amendment to the Policy that maintains the overall allocation of affordable units at 20% of total units constructed**

CEQA: Not a Project, File No. PP10-069(a), Staff Reports/Assessments/Annual Reports/ Information Memos. Council Districts 3 and 4. (Planning, Building and Code Enforcement/Housing)

Documents Filed: Memorandum from Mayor Reed and Council Members Chu and Liccardo, dated November 21, 2011, recommending approval of the Staff recommendations with direction as depicted above.

4.1 (Cont'd.)

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

Public Comments: Expressing support to the Staff recommendations were Dan Miller (Irvine Company), Mike Black (Barry Swenson Builder), Erik Schoennauer (Equity Residential), Joshua Howard (California Apartment Association), Bruce Dorfman (River View Development) and Ross Signorino.

Motion: Council Member Liccardo moved approval of the memorandum he cosigned with Mayor Reed and Council Member Chu, dated November 21, 2011, accepting the Staff recommendations with further direction. Council Member Chu seconded the motion.

Director of Housing Leslye Corsiglia responded to questions from Council Member Oliverio.

Action: On a call for the question, the motion carried, the memorandum from Mayor Reed, Council Members Chu and Liccardo, dated November 21, 2011, was approved, approving the Staff recommendations as outlined in the November 7, 2011 report and the Staff's Preferred Policy Alternative Option 1, which will allow some portion of the units reserved for affordable housing to be used for market rate projects for developers willing to meet or exceed the inclusionary requirement. (10-1. Noes: Oliverio.)

4.2 **Adopt a resolution authorizing the City Manager to execute a five-year lease with The Huang Family Trust and, subject to appropriation of funds, to exercise the option to extend and negotiate an extension term rental rate pursuant to the lease, for the use of approximately 7,903 square feet of office space located at 1671 The Alameda in San José, at a rental rate of \$123,286 for the first year, \$126,985 for the second year, \$130,794 for the third year, \$136,026 for the fourth year, and \$141,467 for the fifth year. The total rental cost for the initial five-year term of this lease is \$658,561. CEQA: Not a Project, File No. PP10-066(f), Agreements/Contracts, including lease of office space with no tenant improvements or change of use. (Economic Development)**

Documents Filed: Memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated November 7, 2011, recommending adoption of a resolution.

Deputy Director of Economic Development Nanci Klein offered opening remarks and Police Captain Garcia presented the report.

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

4.2 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, Resolution No. 76069, entitled: "A Resolution of the Council of the City of San José Authorizing The City Manager to Execute a Five-Year Trust with the Huang Family Trust for the Lease of Real Property located at 1671 The Alameda for Office Space", was adopted. (10-0-1. Absent: Liccardo.)

4.3 **Adopt a resolution approving the agreement set forth below and authorizing the City Manager to execute the agreement together with all other documents needed to conclude the transaction: (a) A permanent easement agreement with the San José Water Company for water facilities installation on the site of the future Fire Station No. 21.**

CEQA: An Addendum was issued to EIR, File No. PP08-184 wherein it was concluded that the proposed project would result in no new significant environmental impacts as discussed in the original EIR. Council Districts 5 and 8. (Economic Development)

Documents Filed: Memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated November 7, 2012, recommending adoption of a resolution.

Action: Upon motion by Council Member Herrera, seconded by Council Member Pyle and carried unanimously, Resolution No. 76070, entitled: "A Resolution of the Council of the City of San José Approving An Agreement for the Conveyance of a Permanent Easement to the San José Water Company for the Future Fire Station No. 21 and Authorizing the City Manager to Execute the Agreement and To Execute Any Additional Documents Necessary to Complete the Transaction", was adopted. (10-0-1. Absent: Constant.)

4.4 **Adopt a resolution authorizing the City Manager to:**

- (a) Execute the Cooperation Agreement with the Santa Clara Valley Water District for the establishment of procedures for completing real property transactions.**
- (b) Negotiate the form of all standardized conveyance templates reflecting the terms of the Cooperation Agreement for use in implementing the Cooperation Agreement.**
- (c) Negotiate and execute an amendment to the Cooperation Agreement incorporating those templates into the Cooperation Agreement.**

CEQA: Not a Project, File No. PP10-066(g), Memorandum of Understanding, (No physical changes). (Economic Development)

Documents Filed: Memorandum from Director of Economic Development/Chief Strategist Kim Walesh, dated November 8, 2011, recommending adoption of a resolution.

4.4 (Cont'd.)

Action: Upon motion by Council Member Herrera, seconded by Council Member Liccardo and carried unanimously, Resolution No. 76071, entitled: "A Resolution of the Council of the City of San José Approving a Cooperation Agreement Between the Santa Clara Valley District and the City of San José for the Establishment of Procedures for Real Property Transactions", was adopted. (10-0-1. Absent: Constant.)

- 4.5 (a) **Conduct an Administrative Hearing on and consider an Appeal of the Planning Commission's certification of the Final Environmental Impact Report (FEIR) for the proposed project, Moe's Stop Gas and Service Station, File No. PP11-049, a Conditional Use Permit to allow the demolition of an existing single-family detached residence, the expansion of an existing gas and service station, and other modifications, for property located at the southeast corner of McKee Road and N. 33rd Street. In addition, consider adoption of a resolution to uphold the Planning Commission's certification of the FEIR and certify that:**
- (1) **The City Council has read and considered the Final EIR.**
 - (2) **The Final EIR has been completed in compliance with the California Environmental Quality Act (CEQA).**
 - (3) **The Final EIR reflects the independent judgment and analysis of the City of San José.**
 - (4) **The Director of Planning, Building and Code Enforcement shall transmit copies of the Final EIR to any other decision-making body of the City of San José for the project.**
- (b) **Conduct an Administrative Hearing and consider an Appeal of the Planning Commission's decision to approve a Conditional Use Permit for the Moe's Stop Gas and Service Station project, File No. CP11-049, and consider adoption of a resolution approving this Conditional Use Permit.**

CEQA: EIR Resolution to be adopted. Council District 3. SNI: Five Wounds/Brookwood Terrace. (Planning, Building and Code Enforcement)

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 16, 2011, recommending conducting an administrative hearing and approval of the Staff recommendations. (2) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 21, 2011, regarding a letter Staff transmitted to the Law Offices of James M. Dombroski regarding the Moe's Stop Gas and Service Station. (3) Proof of Publication of Notice of Public Hearing, executed on November 18, 2011, submitted by the City Clerk.

Mayor Reed opened the administrative hearing.

Public Comments: Gary Wesley, representing Moe's Stop Gas and Service Station, the Applicant, spoke to the merits of the Moe's Stop Gas and Service Station expansion. Kristina Chu, representing the Applicant also, requested a deferral of this item in order to have ample time to prepare. The Appellant was not present.

4.5 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, Resolution No. 76072, entitled: “A Resolution of the Council of the City of San José Finding a Final Environmental Impact Report Prepared for the Moe’s Stop Gas and Service Station Project Described in Planning Division File No. CP11-049 Has Been Completed In Compliance With the California Environmental Quality Act”; Resolution No. 76073, entitled: “A Resolution of the City Council of the City of San José Approving a Request for a Conditional Use Permit to Allow the Demolition of an Existing Single-Family Detached Residence and the Expansion of an Existing Gas and Service Station on a 0.51 Gross-Acre Site on the Southeast Corner of McKee Road and North 33rd Street (1604 McKee Road), San José” and Resolution No. 76074, entitled: “A Resolution of the Council of the City of San José Making Certain Findings Regarding Environmental Impacts in Accordance with the California Environmental Quality Act of 1970 for the Moe’s Stop Gas & Service Station Project, For Which a Focused Environmental Impact Report Has Been Prepared”, were adopted. (10-0-1. Absent: Constant.)

4.6 Consider a Historic Landmark Nomination and Mills Act Historic Property Contract for the “Bowman-SweigertKHouse” located on the west side of North 3rd Street, approximately 140 feet southerly of Hensley Street (420 North Third Street), on a 0.2-acre site (City Landmark No. HL11-197 and California Mills Act No. MA11-002). SNI: 13th Street.

- (a) **Conduct a public hearing and adopt a resolution designating the “Bowman-Sweigert House” as a landmark of special historic, architectural, cultural, aesthetic or engineering interest or value of an historic nature.**
- (b) **Conduct a public hearing on the Historical Property Contract between the City of San José and the owners of the “Bowman-Sweigert House” (James D. Williams, et al, property owner) and adopt a resolution approving the contract.**

The Historic Landmarks Commission recommends that the City Council approve: (1) the proposed Landmark Designation and (2) the proposed Historic Property Contract (4-0-1, Commissioner Abatecola absent). CEQA: Exempt. (Planning, Building and Code Enforcement)

HL11-197/MA11-002 – District 3

Documents Filed: (1) Memorandum from Secretary of the Historic Landmarks Commission Joseph Horwedel, dated November 10, 2011, recommending approval of the proposed landmark designation and the contract. (2) Proof of Publication of Notice of Public Hearing, executed on October 7, 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.

4.6 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, Resolution No. 76075, entitled: “A Resolution of the Council of the City of San José Designating, Pursuant to the Provisions of Chapter 13.48 of Title 13 of the San José Municipal Code , The Bowman-Sweigert House Located at 429 North Third Street as a City Landmark of Special Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of a Historic Nature” and Resolution No. 76076, entitled: “A Resolution of the Council of the City of San José Approving a Historic Landmark Preservation Agreement with Lance Shoemaker and James Williams for the Bowman-Sweigert House (City Landmark No. HL11-197)”, were adopted. (10-0-1. Absent: Constant.)

4.7 **Conduct a public hearing and adopt a resolution designating “McDonnell Hall”, located on the south side of East San Antonio Street, approximately 140 feet southerly of Hensley Street (2020 East San Antonio Street), on a 3.27 gross acre site, as a landmark of special historic, architectural, cultural, or engineering interest, or value of a historic nature (Catholic Bishop of San José, Owner). SNI: Mayfair. CEQA: Exempt. The Historic Landmarks Commission recommends that the City Council approve the proposed Landmark Designation for McDonnell Hall (5-0). (Planning, Building and Code Enforcement)** **HL11-199 – District 5**

Documents Filed: (1) Memorandum from Mayor Reed and Council Member Campos, dated November 21, 2011, recommending adoption of a resolution and if designation is approved, a letter to the National Park Service should follow to provide information on this action. (2) Memorandum from Secretary of the Historic Landmarks Commission Joseph Horwedel, dated November 15, 2011, transmitting the recommendation of the Historic Landmarks Commission. (3) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 21, 2011, transmitting additional documentation supporting the proposed City Landmark Designation of McDonnell Hall. (4) Letter from Linda Batton, Director of Social Ministries, Diocese of San José, dated November 29, 2011, in support of the resolution to adopt McDonnell Hall as a historic landmark in the City of San José.

Mayor Reed opened the public hearing.

Public Comments: Speaking in support to the Staff recommendations were Reverend Deacon Sal Alvarez and Al Munoz, Our Lady of Guadalupe Church.

Mayor Reed closed the public hearing.

Motion: Council Member Campos moved approval of the memorandum he cosigned with Mayor Reed, dated November 21, 2011, recommending adoption of a resolution and a letter to the National Park Service to follow to provide information on this action. Council Member Chu seconded the motion.

4.7 (Cont'd.)

Discussion ensued.

Action: On a call for the question, the motion carried unanimously, the memorandum from Mayor Reed and Council Member Campos, dated November 21, 2011, was approved, accepting the Staff recommendations; Staff was directed to send a letter to the National Park Service providing information on this action today and Resolution No. 76077, entitled: “A Resolution of the Council of the City of San José Designating, Pursuant to the Provisions of Chapter 13.48 of Title 13 of the San José Municipal Code , The McDonnell Hall Structure Located at 2020 East San Antonio Street as a City Landmark of Special Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of a Historic Nature”, was adopted. (10-0-1. Absent: Constant.)

TRANSPORTATION & AVIATION SERVICES

- 6.2 (a) **Adopt a resolution authorizing the Director of Public Works to determine the lowest responsive and responsible bidder for the San Carlos Street Multimodal Streetscape Improvement Project and to either: (i) award the contract to the lowest responsive and responsible bidder in an amount not to exceed \$1,700,000, or (ii) reject all bids and re-bid the Project.**
- (b) **Approve a contingency equal to ten percent of the award amount.**
- (c) **Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the Building and Structure Construction Tax Fund.**
- (1) **Increase the appropriation to the Department of Transportation for the above mentioned project by \$326,000.**
 - (2) **Increase the estimate for Earned Revenue by \$70,000.**
 - (3) **Decrease the Ending Fund Balance by \$256,000.**

CEQA: File No. PP03-08-254, Re-use of the Downtown Strategy SEIR, Resolution No. 68839. Council District 3. SNI: University. (Public Works/Transportation/City Manager's Office)

Documents Filed: Memorandum from Director of Public Works David Sykes, Director of Transportation Hans Larsen and Budget Director Jennifer A. Maguire, dated November 7, 2011, recommending adoption of a resolution, approval of a related contingency and adoption of appropriation ordinances and funding sources resolution amendments.

6.2 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, a related contingency equal to ten percent of the award amount was approved; Resolution No. 76078, entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Public Works to Award a Construction Contract for the San Carlos Multimodal Streetscape Improvement Project to the Lowest Responsive and Responsible Bidder In An Amount Not To Exceed \$1,700,000”; Ordinance No. 28999, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the Building and Structure Construction Tax Fund for the San Carlos Multimodal Streetscape Improvement Project; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption” and Resolution No. 76079, 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 Building and Structure Construction Tax Fund”, were adopted. (10-0-1. Absent: Constant.)

6.3 Adopt resolutions to:

- (a) **Authorize the City Manager to execute and submit two separate grant applications to the Metropolitan Transportation Commission (MTC) for the Community Design & Transportation (CDT) Capital Grant Program (CIP) in the amount not to exceed \$1,500,000 for the St. John Street Multi-Modal Improvements – Phase 1, with a local match of \$375,000, and in the amount not to exceed \$1,456,000 for the Park Avenue Multi-Modal Improvements, with a local match of \$364,000.**
- (b) **Make the required assurances to comply with the project applications, deadlines to complete the projects, grant program requirements, and other assurances required by MTC as explained in this memorandum.**
- (c) **Authorize the City Manager to accept any grant award(s) and negotiate and execute any documents to effectuate the grant(s), including the authority to negotiate and execute any documents that increase the amount of the grant awarded or require an increase in the local match of funds from the City for the projects, subject to the appropriation of funds.**

CEQA: Not a Project, File No. PP10-068(a) Grant Application. (Transportation)

Documents Filed: Memorandum from Director of Transportation Hans Larsen, dated November 7, 2011, recommending adoption of resolution.

Council Member Liccardo offered his appreciation to Director of Transportation Hans Larsen, Deputy Director Manuel Pineda and the Transportation Staff for their efforts.

6.3 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, Resolution No. 76080, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute and Submit an Application to the Metropolitan Transportation Commission for the Community Design and Transportation Capital Grant Program for the St. John Street Multi Modal Improvements – Phase 1, To Accept the Grant if Awarded and To Execute All Related Documents" and Resolution No. 76081, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute and Submit an Application to the Metropolitan Transportation Commission for the Community Design and Transportation Capital Grant Program for the Park Avenue Multi Modal Improvements – Phase 1, To Accept the Grant if Awarded and To Execute All Related Documents", were adopted. (10-0-1. Absent: Constant.)

- 6.4 (a) ***Adopt a resolution authorizing the City Manager to Negotiate and Execute a Relinquishment Agreement with the State of California for the relinquishment of State Route 82 from I-880 to US 101 (9.92 miles) and State Route 130 from US 101 to White Road (2.6 miles) and Caltrans transfer to the City up to \$12,410,000 of federal programming authority, with a required local match of \$1,450,000 subject to the approval of the California Transportation Commission and appropriation through the Metropolitan Transportation Commission.***
- (b) **Adopt a resolution to authorize and direct the Director of Planning, Building and Code Enforcement to complete the necessary application(s) and documentation for designation of CA-SCL-128/H and the San Jose Underpass (Bridge Number 37-0045) as a historic district and landmark, respectively, for submittal to the Historic Landmarks Commission and City Council so that designation proceedings for the above-named resource can be completed in a timely and expedited manner.**

CEQA: Exemption, 15331: Historical Resource Restoration/Rehabilitation. Council Districts 2, 3, 5, 6, 7 and 10. (Transportation)

Documents Filed: (1) Memorandum from Mayor Reed, Vice Mayor Nguyen, Council Members Campos, Liccardo and Oliverio, dated November 22, 2011, recommending acceptance of the Staff recommendations. (2) Replacement memorandum from Director of Transportation Hans Larsen, dated November 18, 2011, incorporating minor technical corrections and to reflect the current meetings dates of December 14, and 15, 2011 when the California Transportation commission is scheduled to take action on the Relinquishment Agreement and adoption of resolutions.

Assistant Director of the Department of Transportation James H. Ortbal provided introductory remarks. Deputy Director for Transportation Planning Projects Manuel Pineda presented the report.

Brief discussion followed.

6.5 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, Resolution No. 76082, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Relinquishment Agreement with the State of California for the Relinquishment of State Route 82 from I-880 to US 101 and State Route 130 from US 101 to City Limit and Caltrans Transfer to the City of San José Up to \$12,410,000 of Federal Programming Authority, With a Required Local Match of \$1,450,000 Subject to the Approval of the California Transportation Commission and Appropriation Through the Metropolitan Transportation Commission" and Resolution No. 76083, entitled: "A Resolution of the Council of the City of San José Regarding the Relinquishment of a Portion of State Routes 82 and 130", were adopted. (10-0-1. Absent: Constant.)

6.5 As recommended by the Transportation and Environment Committee on November 7, 2011:

- (a) **Approve an ordinance amending Chapter 13.28 of Title 13 of the San José Municipal Code with the following proposed revisions:**
- (1) **Streamline and reorganize the Street Tree Ordinance into five parts: (i) General Provisions, (ii) Powers and Duties, (iii) Permit Requirements, (iv) Maintenance Responsibility and Protection of the Community Forest, and (v) Enforcement and Assessment.**
 - (2) **Add definition provisions and delete other obsolete provisions as described in the report.**
 - (3) **Reorganize the Permit Requirements section on planting, removing, and pruning of street trees to provide clarity and consistency and authorize the Director of Transportation to amend and revoke permits.**
 - (4) **Provide clarity on the tree maintenance and replacement requirements of property owners adjacent to or fronting on any portion of a street, including the requirement that all work is to be done according to American National Standards Institute A300 standards.**
 - (5) **Clarify the Enforcement and Assessment provisions including the ability of the City to recover the costs associated with non-emergency tree services performed on behalf of property owners.**
 - (6) **Make other revisions as described in the memorandum to Council.**
- (b) **Approve an ordinance amending Section 1.08.020 of Chapter 1.08 of Title 1 of the San José Municipal Code to update the list of infractions to be consistent with the numbering in the proposed revisions to Chapter 13.28 of the San José Municipal Code.**
- (c) **Adopt a resolution amending the Administrative Citation Schedule of Fines to modify certain administrative fines for violations related to Chapter 13.28 of the San José Municipal Code, effective on January 13, 2012, and repealing Resolution No. 75865.**

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

6.5 (Cont'd.)

Documents Filed: (1) Memorandum from City Clerk Dennis D. Hawkins, dated November 16 2011, transmitting the recommendations of the Transportation and Environment Committee. (2) Supplemental memorandum from Director of Transportation Hans Larsen, dated November 11, 2011, recommending approval of ordinances and adoption of a resolution.

Action: Upon motion by Council Member Herrera, seconded by Council Member Pyle and carried unanimously, Ordinance No. 29000, entitled: "An Ordinance of the City of San José Amending Chapter 13.28 of Title 13 of the San José Municipal Code to (1) Streamline and Reorganize the Chapter into Five Parts; (2) Add and Delete Certain Definition Provisions; (3) Revise the Permit Requirements; (4) Revise the Maintenance and Replacement Standards and (5) Clarify the Assessment and Enforcement Provision" and Ordinance No. 29001, entitled: "An Ordinance of the City of San José Amending Section 1.08.020 of Chapter 1.08 of Title 1 of the San José Municipal Code, Which Lists All Infractions, To Update the List of Infractions", were passed for publication and Resolution No. 76084, entitled: "A Resolution of the Council of the City of San José Amending the Administrative Citation Schedule of Fines for Certain Violations of the San José Municipal Code in Order to Modify Certain Administrative Fines for Violations Related to Chapter 13.28 of the San José Municipal Code and Repealing Resolution No. 75865 To Be Effective on January 13, 2012", was adopted. (11-0.)

PUBLIC SAFETY SERVICES

- 8.1 (a) **Approve award to purchase Self Contained Breathing Apparatus and related equipment to Fisher Scientific Company, LLC (Pittsburgh, PA) for a total cost not to exceed \$1,940,403, including all warranties, training, testing, delivery, and sales tax, and authorize the City Manager to execute the purchase order.**
- (b) **Authorize the City Manager to execute purchase orders as required for additional quantities of Self Contained Breathing Apparatus equipment, subject to the appropriation of funds.**
- CEQA: Not a Project, File No. PP10-066 (c), Contract award for purchase of supplies and equipment. (Finance)**

Documents Filed: Memorandum from Acting Director of Finance Julia H. Cooper, dated November 7, 2011, recommending approval to purchase equipment and authorization to execute the purchase order and to execute purchase orders as required.

8.1 (Cont'd.)

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, purchase of Self Contained Breathing Apparatus and related equipment to Fisher Scientific Company, LLC (Pittsburgh, PA) for a total cost not to exceed \$1,940,403, including all warranties, training, testing, delivery, and sales tax was approved and the City Manager was authorized to execute the purchase order; and the City Manager was authorized to execute purchase orders as required for additional quantities of Self Contained Breathing Apparatus equipment, subject to the appropriation of funds. (11-0.)

OPEN FORUM

John A. Ramos, Primer Pueblo Studies, requested that the City Council consider a partnership between the City of San José and the City of Culiacan, Mexico for the purpose of enhancing the historic De Anza Trail.

ADJOURNMENT

The Council of the City of San José was adjourned at 4:39 p.m. in memory of Pastor Edmund “Ed” Morales, who passed away on October 3, 2011. “Pastor Ed”, who headed the Victory Outreach Church in South San José, was admired and respected for his effective and unorthodox approaches to dealing with gang violence. (Mayor)

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis D. Hawkins, CMC
City Clerk

/smd 11-29-11 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.