

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, JANUARY 10, 2012

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, Pyle, Rocha; Reed.

Absent: Council Members - Herrera, Kalra, Nguyen, Oliverio.

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

None provided.

CLOSED SESSION

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

Absent: Council Members - All Present.

Upon motion unanimously adopted, Council recessed at 9:10 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code Section 54956.9 subsection (a) with respect to existing litigation: (1) California Redevelopment Association, et al. v. Matosantos, et al; Names of Parties Involved: California Redevelopment Association, League of California Cities, John F. Shirley, Ana Matosantos, John Chiang, Patrick O'Connell; Court: Supreme Court, Sate of California; Case No.: S194861: Amount of Money or Other Relief Sought: Writ of Mandate; (2) Citizens Against Airport Pollution, v. City, et al.; Names of Parties Involved: Citizens Against Airport Pollution, an unincorporated association, and Does 1 to 5, City of San José, City Council of the City of San José, and Does 6 to 10, Does 10 to 30; Real Parties in Interest; Court: Superior Court of California, County of Santa Clara; Case No.: 1-10-CV-177290: Amount of Money or Other Relief Sought: City to set aside and void

CLOSED SESSION (Cont'd.)

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; (B) to confer with Legal Counsel pursuant to Government Code subsection (c) of Section 54956.9 with respect to initiation of litigation approvals relating to 8th addendum to Airport Master Plan; (3) 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, in one (1) matter. (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI; (2) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA; (3) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP; (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP; (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO; (6) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters; (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW; (8) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (9) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3; (10) San José Police Officers' Association (SJPOA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association; (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; How to obtain a copy of existing contract or MOA: web: http://www.sanjoseca.gov/employee_relations/moa.asp; Telephone for Employee Relations: 408-535-8150.

CLOSED SESSION (Cont'd.)

By unanimous consent, Council recessed from the Closed Session at 11:05 a.m. and reconvened to Regular Session at 1:31 p.m. in the Council Chambers.

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

Absent: Council Members - All Present.

INVOCATION

Father Ion of St. Nicholas Greek Orthodox Church provided the Invocation. (District 1)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance accompanied by third-graders from Country Lane Elementary School.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Council Member Constant and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Items 2.3(b) and (c) and Item 6.1 deferred to January 24, 2012, Item 3.4 deferred to January 31, 2012, and Item 8.1 was heard directly following the Consent Calendar.

CEREMONIAL ITEMS

- 1.1 Presentation of a U.S. Department of Commerce Certificate of Appreciation by Representative Zoe Lofgren to the City of San José to recognize the City's staunch support of international trade and appreciation for cooperation on outreach events to tout the benefits of exporting for San José-based companies. (Mayor)**

Documents Filed: "Export Highlights" provided by the U.S. Commercial Service.

Representative Zoe Lofgren presented a U.S. Department of Commerce Certificate of Appreciation to the City of San José, which was accepted by Mayor Reed.

- 1.2 Presentation of a proclamation declaring the month of January 2012 as "National Blood Donor Month" in the City of San José. (Mayor)**

Mayor Reed acknowledged the month of January 2012 as "National Blood Donor Month" in the City of San José.

1.3 Presentation of a commendation to Jim Crawford for his many years of service and leadership in the downtown community. (Liccardo)

Mayor Reed and Council Members Liccardo and Pyle commended Jim Crawford for his many years of service and leadership in the downtown community.

CONSENT CALENDAR

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

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 28991 – Suspending the effectiveness of Ordinance No. 28958 and providing that Ordinance No. 28958, related to land use regulations for Medical Marijuana Collectives, shall become effective no earlier than City Ordinance No. 28960 establishing Health and Safety Regulations and a registration process related to Medical Marijuana Collectives.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28991 executed on December 16, 2011, submitted by the City Clerk.

Action: Ordinance No. 28991 was adopted. (11-0.)

- (b) **ORD. NO. 29004 – Amending Ordinance No. 28178, as amended, to extend the ending date of the pilot for the Neighborhoods Commission to June 30, 2012.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29004 executed on December 20, 2011, submitted by the City Clerk.

Action: Ordinance No. 29004 was adopted. (11-0.)

- (c) **ORD. NO. 29011 – Amending Title 20 of the San José Municipal Code (The Zoning Code) to amend portions of Chapters 20.10, 20.30, 20.40, 20.50, 20.70, 20.75, 20.80, 20.90, 20.100, and 20.200 to facilitate economic development goals, to establish regulations for the siting of above-ground storage tanks, to provide greater flexibility in connection with minor additions to existing non-residential buildings, to allow certain vehicle leasing activities in the CG-Commercial General Zoning District, to clarify regulations pertaining to incidental electric vehicle charging stations, to allow certain drinking establishments contained within full-service hotels or motels, to provide for the installation of tankless water heaters and energy power inverters, to expand the ability to use temporary use trailers, to provide for the neighborhood agriculture use in specified circumstances, to allow higher densities within the R-M Multi-Family Residential District, to clarify**

2.2 (c) (Cont'd.)

regulations and provide greater flexibility for residential uses in residential and main street zoning districts, to streamline permitting processes for the conversion of two-family dwelling units to one-family dwelling units, to update the boundaries of the Downtown Zoning Area, as well as to make other clarifying or minor technical amendments throughout.

Documents Filed: Proof of Publication of the Title of Ordinance No. 29011 executed on December 20, 2011, submitted by the City Clerk.

Action: Ordinance No. 29011 was adopted. (11-0.)

- (d) **ORD. NO. 29012 – Amending Title 20 of the San José Municipal Code (The Zoning Code) to add a new Chapter 20.85 setting forth certain height restrictions and to amend portions of Chapters 20.20, 20.40, 20.50, 20.90, and 20.120 to align zoning code provisions with the recently adopted Envision San José 2040 General Plan.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29012 executed on December 20, 2011, submitted by the City Clerk.

Action: Ordinance No. 29012 was adopted. (11-0.)

- (e) **ORD. NO. 29013 – Amending Sections 23.02.800, 23.02.860, and 23.02.1220 of Chapter 23.02 and Section 23.04.030 of Chapter 23.04 to establish and provide regulations for a pilot program for programmable electronic display signs within subareas of the Stevens Creek Boulevard Signage Area and the Oakridge/Blossom Hill Urban Village Signage Area, amending Section 23.04.020 of Chapter 23.04 to modify the regulations for signage in commercial areas, including fin signs, skyline signs and roof signs, and amending Section 23.04.035 of Chapter 23.04 to modify the regulations for freeway signs.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29013 executed on December 20, 2011, submitted by the City Clerk.

Action: Ordinance No. 29013 was adopted. (11-0.)

- (f) **ORD. NO. 29017 – Rezoning certain real property situated on an approximately 0.56-gross-acre site on the south side of Paula Street, 200 feet westerly of Race Street (1024,1044, and 1050 Paula Street) to the RM(PD) Planned Development Zoning District. PDC11-002**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29017 executed on December 20, 2011, submitted by the City Clerk.

Action: Ordinance No. 29017 was adopted. (11-0.)

- 2.2 (g) **ORD. NO. 29018 – Rezoning certain real property situated at the southeast corner of Southwest Expressway and South Bascom Avenue from the R-M Multiple Family Residence Zoning District to the R-M(PD) Planned Development Zoning District. PDC10-028**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29018 executed on December 20, 2011, submitted by the City Clerk.

Action: Ordinance No. 29018 was adopted. (11-0.)

2.3 **Approval of Council Committee Reports.**

- (a) **Rules and Open Government Committee Report of November 30, 2011. (Mayor)**
- (d) **Neighborhood Services and Education Committee Report of December 8, 2011. (Pyle)**
- (e) **Public Safety, Finance and Strategic Support Committee Report of December 15, 2011. (Constant)**

Documents Filed: (1) Rules and Open Government Committee Report dated November 30, 2011. (2) Neighborhood Services and Education Committee Report of December 8, 2011. (3) Public Safety, Finance and Strategic Support Committee Report of December 15, 2011.

Action: The Committee Reports were approved. (11-0.)

- (b) **Transportation and Environment Committee Report of December 5, 2012. (Liccardo)**
- (c) **Rules and Open Government Committee Report of December 7, 2011. (Mayor)**

Action: Deferred to January 24, 2012.

- 2.4 (a) **Request for an excused absence for Council Member Constant from the Regular Meetings of the Rules and Open Government Committee on February 8, 2012, April 4, 2012, May 30, 2012, August 1, 2012, October 10, 2012, and December 12, 2012 due to Authorized City Business: Local Agency Formation Commission of Santa Clara County Meetings in San José, CA. (Constant)**
- (b) **Request for an excused absence for Council Member Constant from the Regular Meeting of the Rules and Open Government Committee on September 5, 2012 due to Authorized City Business: Presiding as member of the League of California Cities (LOCC) Public Safety Committee at the LOCC Public Safety Committee Meeting and Annual Conference in San Diego, CA. (Constant)**

- 2.4 (c) **Request for an excused absence for Council Member Constant from the Regular Meetings of the Rules and Open Government Committee on January 18, 2012 and the Federated City Employees' Retirement System on January 19, 2012 due to Authorized City Business: Education/Training. (Constant)**
(Rules Committee referral 1/4/12)
- (d) **Request for excused absences for Vice Mayor Nguyen from the Regular Meetings of the City Council, Rules and Open Government Committee and the Public Safety, Finance and Strategic Support Committee from February 1, 2012 through March 31, 2012 due to birth of child. (Nguyen)**
[Rules Committee referral 1/4/12 – Item A(1)(a)(1)]

Documents Filed: (1) Request for excused absence from Council Member Constant, dated December 7, 2011. (2) Request for excused absence from Council Member Constant dated December 8, 2011. (3) Request for excused absence from Council Member Constant, dated January 4, 2012. (4) Request for excused absence from Vice Mayor Nguyen, dated December 16, 2011.

Action: Council Member Constant and Vice Mayor Nguyen's absences were excused. (11-0.)

2.5 **City Council Travel Reports.**

Action: There were none.

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

Council Member Constant provided an update on reports provided by the Police and Fire Retirement Board's Chief Investment Officers and by independent actuary Cheiron.

2.7 **Authorize the City Attorney to execute a settlement agreement and release with Applegate Johnston, Inc. waiving the City's liquidated damage claim on the Fire Station No. 19 project as consideration for Applegate Johnston's making certain modifications on the Environmental Innovation Center project. CEQA: Not a Project; File No. PP10-066(h), Settlement Agreements. (City Attorney's Office)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated December 14, 2011, recommending execution of a settlement agreement and release with Applegate Johnston, Inc.

Council Member Oliverio pulled Item 2.7 to request further insight from City Attorney Richard Doyle.

City Attorney Richard Doyle and Director of Public Works David Sykes provided additional information on the City's liquidated damage claim on Fire Station No. 19.

Given the updated information, Council Member Chu stated he would not be supporting the recommendation.

2.7 (Cont'd.)

Public Comments: David Wall asked that the Council use the City Charter to investigate the settlement for impropriety and poor judgment.

Action: Upon motion by Council Member Herrera, seconded by Council Member Liccardo and carried, the City Attorney was authorized to execute a settlement agreement and release with Applegate Johnston, Inc. waiving the City's liquidated damage claim on the Fire Station No. 19 project as consideration for Applegate Johnston's making certain modifications on the Environmental Innovation Center project. (7-4. Noes: Campos, Chu, Kalra, Oliverio.)

2.8 Authorize travel for City Manager Debra Figone:

- (a) To San Antonio, Texas, on January 18-20, 2012, to participate in the Large Cities Executive Forum, and**
- (b) To proceed to Dallas, Texas, on January 21-23, 2012, to attend the American Library Association Conference.**

Source of Funds: City Manager's Non Personal Services Appropriation. CEQA: Not a Project, File No. PP10-069, Administrative Activities. (City Manager's Office)

Documents Filed: Memorandum from City Manager Debra Figone, requesting authorization to travel.

Action: The request for travel was authorized. (11-0.)

- 2.9**
- (a) Approve an ordinance pursuant to Section 1702 of the City Charter to authorize the establishment of a public right-of-way over an approximately 850 feet long by a variable of 25-45 feet wide piece of City-owned property that currently comprises a portion of Ramblewood Park adjacent to Route 101 southbound off-ramp to Yerba Buena Road to accommodate the Route 101 Improvement Project, Phase II.**
 - (b) Adopt a resolution declaring parcels located at the interchange of Route 101 and Yerba Buena Road, and identified in Exhibit A of the staff memorandum, as surplus to the needs of the City.**
 - (c) Adopt a resolution authorizing the City Manager to negotiate and execute:**
 - (1) A Highway Easement Deed with the State of California for the area within Ramblewood Park established by Council as a public right-of-way in Recommendation (a) to provide Caltrans the property rights associated with the ownership, operations and maintenance of existing State of California facilities along the Route 101 southbound off ramp to Yerba Buena Road;**
 - (2) A Right of Entry and Transfer Agreement to:**
 - (a) Provide the State of California the temporary entry rights to:**
 - (1) Operate and maintain certain highway improvements previously constructed;**
 - (2) Facilitate the right-of-way certification to complete the Route 101 Improvement Project, Phase II; and**
 - (3) Undertake construction of such Phase II.**

- 2.9 (c) (2) (b) **Accomplish the subsequent transfer by City to the State of California of City's interest in the property declared surplus for the operation and maintenance of Route 101;**
- (3) **Any additional documents and to take any additional actions necessary to effect the terms of agreements authorized in Recommendations (c)(1) and (c)(2).**

CEQA: Mitigated Negative Declaration, File No. OA05-010. Acting as Lead Agency, Caltrans prepared an Initial Study and adopted a Mitigated Negative Declaration (MND) in 2005 for the US 101 Operational Improvement Project. The City, acting as a Responsible Agency, shall consider and can rely upon Caltrans' MND for purposes of informing the City's decision to complete the proposed agreement with Caltrans. Council Districts 2, 7 and 8. (Economic Development/Transportation)

Documents Filed: (1) Memorandum from Director of Transportation Hans Larsen and Director of Economic Development/Chief Strategist Kim Walesh, dated December 5, 2011, recommending approval of an ordinance and resolutions. (2) Supplemental memorandum from Director of Transportation Hans Larsen and Director of Economic Development/Chief Strategist Kim Walesh, dated January 5, 2012, updating Council with ongoing negotiations with Caltrans.

Council Member Herrera pulled Item 2.9 to thank Staff for their work on this project and to ask Director of Transportation Hans Larsen questions regarding the supplemental memorandum.

Action: Upon motion by Council Member Herrera, seconded by Council Member Pyle and carried unanimously, Ordinance No. 29019, entitled: "An Ordinance of the City of San José Establishing a Public Right-of-Way Over a Portion of Ramblewood Park to Accommodate the Existing Southbound Route 101 Off Ramp to Yerba Buena Road, in Accordance with Charter Section 1702", was passed for publication, and Resolution No. 76114, entitled: "A Resolution of the Council of the City of San José Declaring Certain City-Owned Property Located at the Interchange of Route 101 and Yerba Buena Road as Surplus to the Needs of the City", and Resolution No. 76115, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Highway Easement Deed with the State of California for an Area Within Ramblewood Park; A Right of Entry and Transfer Agreement to Provide the State of California with Temporary Entry Rights to Operate and Maintain Highway Improvements and to Provide for the Subsequent Transfer to the State of California of City's Interest in Other Property for the Operation and Maintenance of Such Highway Improvements; and Any Additional Documents and Actions Necessary to Effect the Terms of the Agreements", were adopted. (11-0.)

2.10 Adopt a resolution to amend the City of San José Pay Plan effective January 10, 2012, to create the following classifications:

(a) Deputy City Attorney U I/II/III/IV (2151, 2152, 2191, 2192).

(b) Senior Deputy City Attorney U I/II/III/IV (2195, 2197, 2137, 2193)

CEQA: Not a Project, File No. PP10-068(b), Municipal Code, Title 3. (Human Resources)

Documents Filed: Memorandum from Deputy City Manager/Human Resources Director Alex Gurza, dated December 5, 2011, recommending adoption of a resolution.

Action: Resolution No. 76116, entitled: “A Resolution of the Council of the City of San José Amending the City of San José Pay Plan for Various Job Classifications”, was adopted. (11-0.)

2.11 (a) Adopt a resolution adopting the Mitigated Negative Declaration (MND) prepared for the Alum Rock Park Bank Repair and Stream Restoration Project (File No. PP08-203), as having been completed in compliance with CEQA reflecting the City’s independent judgment and analysis, and the adoption of a mitigation monitoring and reporting program.

(b) Approve a Cooperative Agreement with Santa Clara Valley Transportation Authority for construction of riparian improvements and repair of the Youth Science Institute Bridge in the Upper Penitencia Creek in Alum Rock Park.

**CEQA: Mitigated Negative Declaration/IS, File No. PP08-203. (Parks, Recreation and Neighborhood Services/Planning, Building and Code Enforcement)
(Deferred from 12/13/11 – Item 2.18)**

Documents Filed: (1) Joint memorandum from Acting Director of Parks, Recreation and Neighborhood Services, Julie Edmonds-Mares and Director, Planning, Building and Code Enforcement Joseph Horwedel, dated November 21, 2011, recommending adoption of a resolution and approval of an Agreement. (2) Supplemental memorandum from Acting Director of Parks, Recreation and Neighborhood Services, Julie Edmonds-Mares, dated December 9, 2011, providing an update and terms and conditions with the agreement with VTA. (3) Supplemental memorandum from Director, Planning, Building and Code Enforcement Joseph Horwedel, dated January 6, 2012, providing responses to public’s draft environmental review.

Action: Resolution No. 76117, entitled: “A Resolution of the Council of the City of San José Adopting the Alum Rock Park Bank Repair and Stream Restoration Projects 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.)

- 2.12 (a) **Approve travel by Council Member Constant to Ontario, CA on March 30, 2012 to attend the League of California Cities Public Safety Policy Committee Meeting. Source of Funds: Mayor & Council Travel Fund. (Constant)**
(Rules Committee referral 12/14/11)
- (b) **Approve travel by Council Member Constant to Sacramento, CA on June 15, 2012 to attend the League of California Cities Public Safety Policy Committee Meeting. Source of Funds: Mayor & Council Travel Fund. (Constant)**
(Rules Committee referral 12/14/11)
- (c) **Approve travel by Council Member Constant to San Diego, CA on June 15, 2012 to attend the League of California Cities (LOCC) Public Safety Committee at the LOCC Public Safety Committee Meeting and Annual Conference. Source of Funds: Mayor & Council Travel Fund. (Constant)**
(Rules Committee referral 12/14/11)

Documents Filed: Memorandum from Council Member Constant, dated December 8, 2011, requesting authorization to travel due to authorized City business.

Action: The travel for Council Member Constant was authorized. (11-0.)

- 2.13 **As recommended by the Rules and Open Government Committee on January 4, 2012, approve the African American History Month Flag Raising Event by raising the Pan-African flag on February 3, 2012. (Kalra)**
[Rules Committee referral 1/4/12 – Item A(1)(a)(2)]

Documents Filed: Memorandum from Council Member Kalra, dated December 13, 2011 recommending an additional item to the January 10, 2012 Council meeting.

Action: The African American History Month Flag Raising Event by raising the Pan-African flag on February 3, 2012, was approved. (11-0.)

- 2.14 **As recommended by the Rules and Open Government Committee on January 4, 2012:**
- (a) **Approve the 2012 District 4 Thank You Volunteer Event as a City-sponsored Special Event; and**
- (b) **Approve and accept donations from various individuals, businesses or community groups to sponsor the event.**
- CEQA: Not a Project. (City Clerk)**
[Rules Committee referral 1/4/12 – Item H(4)]

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated January 4, 2012, transmitting the recommendations of the Rules and Open Government Committee.

Action: The 2012 District 4 Thank You Volunteer Event as a City Council Sponsored Special Event was approved and authorization to accept donations from various individuals, businesses or community groups to support the event, was approved. (11-0.)

2.15 As recommended by the Rules and Open Government Committee on January 4, 2012:

- (a) Approve the Ignite Your Future: Free Business Start-Up Seminar & Resource Fair as a City-sponsored Special Event; and**
- (b) Approve and accept donations from various individuals, businesses or community groups to sponsor the event.**

CEQA: Not a Project. (City Clerk)

[Rules Committee referral 1/4/12 – Item H(4)]

Documents Filed: Memorandum from City Clerk Dennis Hawkins, dated January 4, 2012, transmitting the recommendations of the Rules and Open Government Committee.

Action: The Ignite Your Future: Free Business Start-Up Seminar and Resource Fair as a City Council Sponsored Special Event was approved and authorization to accept donations from various individuals, businesses or community groups to support the event, was approved. (11-0.)

2.16 (a) Accept the Certificate of Sufficiency issued by the County of Santa Clara Registrar of Voters regarding the referendum to repeal Ordinance 28960, which establishes regulations pertaining to medical marijuana collectives and to individual cultivation and use of medical marijuana.

- (b) Refer to staff further analysis and the development of options for City Council action no later than March 6, 2012 to either a) repeal Ordinance 28960 or b) call a municipal election. (City Clerk)**

(Rules Committee referral 1/4/12)

Documents Filed: Memorandum from City Clerk Dennis Hawkins, CMC, dated January 4, 2012, recommending placement of the item “Certificate of Sufficiency of Referendum Petition to Repeal Ordinance 28960” on the January 10, 2012 agenda.

Public Comments: Ross Signorino expressed concerns regarding the regulation of medical marijuana collectives.

Action: Upon motion by Council Member Herrera, seconded by Council Member Pyle and carried unanimously, the Certificate of Sufficiency issued by the County of Santa Clara Registrar of Voters regarding the referendum to repeal Ordinance 28960, which establishes regulations pertaining to medical marijuana collectives and to individual cultivation and use of medical marijuana, was accepted, with Staff to conduct further analysis and the development of options for City Council action no later than March 6, 2012. (11-0.)

END OF CONSENT CALENDAR

PUBLIC SAFETY SERVICES

8.1 Accept the IPA Audit of IPA Recommendations adopted by the San José Police Department from 1993 – 2009. (Independent Police Auditor)

Documents Filed: (1) Memorandum from Independent Police Auditor Judge La Doris Cordell, dated December 14, 2011, recommending acceptance of the audit report of the Independent Police Auditor recommendations made between 1993 and 2009. (2) Staff Presentation “IPA Audit of Recommendations to SJPD (1993-2009)”, dated January 10, 2012.

Independent Police Auditor Judge La Doris Cordell presented results of the audit. She and Assistant Police Chief Rikki Goede responded to questions from Council.

Public Comments: Ross Signorino applauded the police department’s effectiveness in spite of budget constraints.

Action: No action required.

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone reflected on the challenges faced by the City in 2011 and a sense of optimism for those ahead in 2012.

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) (Rules Committee referral 05/25/11) (Deferred from 6/7/11 – Item 3.6, et al and 11/29/11 – Item 3.3)

Action: Dropped per Administration.

3.4 (a) Consider increasing the Marijuana Business Tax rate from 7% of gross receipts to 10% of gross receipts, as allowed under Measure U; and (b) Direct staff to prepare an ordinance to implement the increased Marijuana Business tax rate for Council consideration at a public hearing originally scheduled for January 24, 2012, to take place no later than March 6, 2012. CEQA: Not a Project, File No. PP10-067(a), Increase to rate without changes to, or expansion of services. (Finance)

Action: Deferred to January 31, 2012 per Orders of the Day.

**3.5 Accept the annual report on City government performance. (City Auditor)
(Rules Committee referral 12/14/11)**

Documents Filed: (1) City of San José Service Efforts and Accomplishments Report 2010-11: Annual Report (#11-10) on City Government Performance, provided by the City Auditor, December 2011. (2) Staff presentation, dated December 2011, summarizing city government performance.

City Auditor Sharon Winslow-Erickson provided an overview of the subject report.

Action: Upon motion by Council Member Constant, seconded by Vice Mayor Nguyen and carried unanimously, the annual report on City government performance was accepted. (11-0.)

**3.6 Adopt a resolution to approve the terms of a collective bargaining agreement between the City and the San Jose Police Officers' Association for the term of July 1, 2011 to June 30, 2013, and authorizing the City Manager to execute an agreement. CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (City Manager's Office)
(Rules Committee referral 1/4/12)**

Documents Filed: Memorandum from Deputy City Manager Alex Gurza, dated December 21, 2011, recommending adoption of a resolution.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, Resolution No. 76118, entitled: "A Resolution of the Council of the City of San José Approving an Agreement Between the City of San José and the San José Police Officers' Association with a Term of July 1, 2011 to June 30, 2013", was adopted. (11-0.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Adopt a resolution authorizing the City Manager or designee to negotiate and execute a Second Amendment to the Consortium Funding Agreement with The Housing Trust of Santa Clara County (Housing Trust) under the Neighborhood Stabilization Program 2 to redirect Program Income from the San José Dream Home Program directly to the Housing Trust instead of the City of San José. CEQA: Not a Project, File No. PP10-066, Agreements/Contracts. (Housing)

Documents Filed: (1) Memorandum from Director of Housing Leslye Corsiglia, dated December 6, 2011, recommending adoption of a resolution. (2) Statement of Declaration of Conflict of Interest Form signed January 6, 2012 from Council Member Liccardo, noting a conflict of interest due to his partner's employment with the Housing Trust. (3) Statement of Declaration of Conflict of Interest Form signed January 11, 2012 from Council Member Kalra, noting a conflict of interest due to his membership on the Housing Trust Board of Directors.

4.1 (Cont'd.)

Council Members Kalra and Liccardo were recused from voting due to an arising conflict of interest with the Housing Trust of Santa Clara County.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, Resolution No. 76119, entitled: “A Resolution of the Council of the City of San José authorizing the City manager or Designee to Negotiate and Execute the Second Amendment to the Consortium Funding Agreement with the Housing Trust of Santa Clara County”, was adopted. 8-0-1-2. Absent: Constant. Abstain: Kalra, Liccardo.)

- 4.2 (a) **Approve the Administration’s recommendations for expending Community Development Block Grant (CDBG) program funding for FY 2012-13, as follows:**
- (1) **Allocating the maximum allowable funding to nonprofit partners under the public service category:**
 - (a) **Issuing a Request for Proposals/Qualifications (RFP/Q) for a contract of up to \$100,000 for door-to-door transportation services to seniors.**
 - (b) **Issuing an RFP/Q for a contract of up to \$100,000 for services that respond to the isolation prevention needs of seniors.**
 - (c) **Issuing an RFP/Q for up to two contracts totaling up to \$300,000 for foreclosure response services.**
 - (d) **Issuing an RFP/Q for up to three contracts totaling up to \$467,000 for full-service multi-disciplinary homeless outreach services and full-service programs for homeless families and youth**
 - (e) **Allocating up to \$300,000 for targeted, priority projects or services in three place-based strategy neighborhoods (Mayfair, Santee/McKinley and Five Wounds/Brookwood Terrace).**
 - (2) **Funding fair housing activities out of the Administration Allocation rather than the public service category:**
 - (a) **Allocating up to \$1,304,000 for Program Administration services provided by several City departments.**
 - (b) **Awarding a sole-source contract for up to \$385,000 to a consortium of Fair Housing service providers.**
 - (3) **Allocating the remainder of available funds for community development improvement projects:**
 - (a) **Allocating up to \$1,504,000 for infrastructure and facility improvement projects in the three place-based strategy neighborhoods.**
 - (b) **Issuing an RFP/Q for a contract of up to \$200,000 for neighborhood clean-up services in the three place-based strategy neighborhoods.**
 - (c) **Issuing an RFP/Q for a contract of up to \$400,000 for emergency home repair services.**

4.2 (Cont'd.)

- (a) (3) (d) **Allocating up to \$1,300,000 for blight eradication services to be provided by the Department of Planning, Building and Code Enforcement.**
- (e) **Allocating up to \$2,125,000 for housing rehabilitation and mobilehome rehabilitation loans and grants to be provided by the Housing Department.**
- (b) **Provide direction on the payment of U.S. Department of Housing and Urban Development Section 108 debt service in the amount of \$1,960,000.**
- (c) **Approve the Administration's recommendation for expending Emergency Solutions Grant (ESG) funding for FY 2012-13, including the issuance of an RFP/Q for contracts totaling up to \$690,000 for full-service multi-disciplinary homeless outreach services and full-service programs for homeless families and youth.**

CEQA: Not a Project, File No. PP10-068, General Procedures and Policy Making. Council Districts 3, 5, 7 and City-wide. (Housing)

Documents Filed: (1) Joint memorandum from Mayor Reed and Council Members Herrera, Pyle and Rocha, dated January 6, 2012, accepting Staff's recommendations with amendments. (2) Memorandum from Council Member Liccardo, dated January 10, 2012, providing recommendations to CDBG priorities. (3) Memorandum from Director of Housing Leslye Corsiglia, dated December 15, 2011, recommending CDBG and ESG funding priorities. (4) Joint memorandum from Council Members Chu and Kalra, dated January 6, 2012, providing recommended priorities for expenditure of CDBG funds. (5) Supplemental memorandum from Director of Housing Leslye Corsiglia, dated January 4, 2012, providing additional information as a result from testimony from the Housing and Community Development Advisory Commission. (6) Supplemental memorandum from City Attorney Richard Doyle, dated January 9, 2012, clarifying points made in the Mayor and Council Members memorandum of January 6, 2012. (7) Memorandum provided by Sara Triano, from Director, Office of Equality Assurance, Steven T. Wing, dated January 6, 1997, outlining "Disability Access Design Standards". (8) "No More Cuts to Senior Programs!!" petition signed by 138 seniors, received January 10, 2012.

Director of Housing Leslye Corsiglia and Assistant to the City Manager Kip Harkness offered a presentation outlining the expenditures of CDBG Funds.

Public Comments: Urging allocation and restoration of CDBG funding to various community services, and speaking on behalf of the youth, disabled and senior citizens in the City of San José, were the following: Eugene Sherrill, Lori Burns (Local Early Education Planning Council), Anil Babbar (SCC Association of Realtors), Frederick Ferrer (Health Trust), Gary Steinke (Alzheimer's Activity Center), Michelle Knopik (Respite & Research for Alzheimer's Disease), Peter Ross (Alma Community Center), Angie Norquist (Sacred Heart Community Services), Martha O'Connell, Patricia Gardner (SVCN), Georgia Basil (SALA), Steve Schmoll (COA), Colleen Hudgen (Live Oak), Angelica Cortez (SVCN), Amy Andonian (Catholic Charities), Dr. Birk Melese (Ethiopian Community Services), Donna Furuta (PACT), Bev Dekovan (Agents for Change), Kyra Kazantzis (Law Foundation), Eric Weaver (Opp. Fund), Bev Jackson ,

4.2 (Cont'd.)

(Rebuilding Together), Jeff Bornefield (CCPY), Christa Gannon (FLY), Judy Whittier (BWC), Jenny Niklaus (EHC Lifebuilders), Trish Crowder (Family Support Housing), Kathleen Krenek (Next Door), Sarah Triano (SVILC), Greg Keperle (Catholic Charities), Allison Iasser (Alma Community Center), Jaime Alvarado (SOMOS Mayfair), Robert Lattimore (A New America Community Corporation), Kevin Stoner (Autumn Terrace), Augustin Millan and Mireya Molina (Alma Community Center), Kate Smith (Destination Home), Monica Gallico (Five Wounds Brookwood Terrace), Elizabeth Figueroa and Dayana Salazar (Comm Univercity), Jean Abeles (Daybreak/Catholic Charities), Imelda Rodriguez (Olinder Neighborhood), Marilyn Hills (Agents for Change), Carol McMillan, Jennifer Padgett (Community Technology Alliance); Michele Schroeder, Fawn Reed and Elizabeth A. Sacco (Senior Adults Legal Assistance); Jean Ables (Catholic Charities/Day Break Respite Care), Beatriz Lopez (SALA), Marybeth Nacey (FMCE/Franklin McKinley School District), Karl Lee (SCC Association of Realtors), Ramin Naderi (Indian Health Center of Santa Clara Valley), Joanna Molina (CCPY), Matt Huerta (NHSSR), Nayana Shah (Silicon Valley Independent Living Center), Dan Lachman (Housing Trust of Santa Clara County), Lori Prud'Homme, Tili Ayala (SVILC member), Wanda Hale, Katsa Derloruot and Tita Das (LTC Ombudsman Program/Catholic Charities), Cheryl Mehe ula (CA Association of Mortgage Professionals), Boo Bullis, Ricky Alexander (Sacred Heart Community Service), Wes Mukoya (Council on Aging) and Mary Anne Mendall (Aging Services Collaborative).

Motion: Council Member Herrera moved approval of the Staff recommendations, including recommendations as outlined in the memorandum she cosigned with Mayor Reed and Council Members Pyle and Rocha, broadening the definition of 'isolation prevention' in providing senior services as well as the definition of acceptable uses of the home repair program as noted below in "Action". Council Member Pyle seconded the motion.

Council Member Liccardo offered amendments to the motion as outlined below in "Action". Amendments to the motion were accepted.

Council discussion followed.

Director of Housing Leslye Corsiglia and Assistant to the City Manager Kip Harkness responded to questions from Council.

Action: On a call for the question, the motion carried unanimously, with staff's recommendations regarding Community Development Block Grant (CDBG) program funding priorities accepted, with the following amendments:

- (a) Defer approval of the decision on the payment source for the HUD 108 loans and return to Council with an analysis of alternative funding sources. As part of this review, staff should assess the feasibility of having the Parking Fund accept some amount of the obligation for the debt financing for the Convention Center (and its garage) to keep the General Fund whole.
- (b) Set a target goal of \$400,000 in City funding for senior-related services;

4.2 (Cont'd.)

- (c) Adopt a broader definition of "isolation prevention" so as to include all senior services that reduce or prevent isolation, including but not limited to transportation services and day care;
- (d) Direct staff to consider ways to allow more agencies providing senior-related services to receive funding by either reducing the minimum grant amount or enabling consortia between agencies.
- (e) Of the \$400,000 earmarked for emergency home repairs, instead allocate \$300,000 for emergency home repairs (including water heater replacement, furnace repair, roof leaks, and electrical repairs);
- (f) Set aside \$100,000 from the emergency/minor repair category to fund home repairs that remedy safety issues, and provide accessibility and mobility improvements for low-income homeowners, targeting seniors and people with disabilities.

(11-0.)

4.3 Conduct a public hearing and adopt a resolution:

- (a) **Overruling any and all objections to the 2012-2013 Hazardous Vegetation Commencement Report; and**
- (b) **Directing the Santa Clara County Department of Agriculture and Resource Management to abate the seasonal and/or recurrent public nuisances on those properties identified in the Report pursuant to Chapter 9.12 of Title 9 of the San José Municipal Code and the Weed Abatement Agreement between the City of San José and the County of Santa Clara.**

CEQA: Exempt, File No. PP08-245. (Planning, Building and Code Enforcement)

Documents Filed: (1) Memorandum from Director, Planning, Building and Code Enforcement Joseph Horwedel, dated December 6, 2011, recommending adoption of a resolution.

Public Comment: 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 Rocha, seconded by Council Member Liccardo, and carried unanimously, Resolution No. 76120, entitled: "A Resolution of the Council of the City of San José Overruling Objections to the 2012-2013 Hazardous Vegetation Commencement Report and Directing the Santa Clara County Department of Agriculture and Resource Management to Abate the Seasonal And/Or Recurrent Public Nuisances on Those Properties Identified in the Report Pursuant to Chapter 9.12 of Title 9 of the San José Municipal Code and Weed Abatement Agreement Between the City of San José and the County of Santa Clara", was adopted. (10-0-1. Absent: Constant.)

NEIGHBORHOOD SERVICES

- 5.1 (a) **Report on bids and award of contract for the Fair Swim Center Pump Room Renovation Project in the amount of \$959,800 to the low bidder, Waterworks Industries, Inc., and approval of a contingency in the amount of \$143,970.**
- (b) **Adopt the following Appropriation Ordinance amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District 7 (Fund 385):**
- (1) **Increase the appropriation to the Fair Swim Center Improvements Project by \$171,000; and**
 - (2) **Decrease the appropriation to Pool Repairs by \$171,000.**

CEQA: Exempt, File No. PP11-089. Council District 7. SNI: Tully/Senter. (Public Works/Park, Recreation and Neighborhood Services/City Manager's Office)

Documents Filed: (1) Joint memorandum from Director of Public Works David Sykes and Acting Director of Parks, Recreation and Neighborhood Services, Julie Edmonds-Mares, dated December 5, 2011, recommending approval of a construction contract. (2) Joint supplemental memorandum from Director of Public Works David Sykes, Acting Director of Parks, Recreation and Neighborhood Services, Julie Edmonds-Mares and Budget Director Jennifer Maguire, dated January 4, 2012, providing additional information obtained following the bid opening.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Liccardo and carried unanimously, Ordinance No. 29020, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28928 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District No. 7 for the Fair Swim Center Improvements Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. (10-0-1. Absent: Constant.)

TRANSPORTATION & AVIATION SERVICES

- 6.1 (a) **Adopt a resolution approving proposed Minimum Standards for future development of new and upgraded general aviation facilities on the west side of the Norman Y. Mineta San José International Airport;**
- (b) **Accept the key terms and conditions to be used in the Request For Proposals process for a new fixed base operator leasehold to be developed on the west side of the Airport.**

CEQA: Resolution Nos. 67380 and 71451, File No. PP12-001. (Airport)

Action: Deferred to January 24, 2012 per Orders of the Day.

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 Adopt a resolution authorizing the City Manager, subject to the concurrence of the Treatment Plant Advisory Committee, to submit an application to Reclamation for a WaterSMART grant through the Title XVI Water Reclamation and Reuse Program (Funding Opportunity Announcement No. R12SF80050), in an amount of up to \$5,000,000 for the construction of a regional recycled water intertie from north San José through the City of Santa Clara to the City of Sunnyvale's recycled water system and the construction of a new pipeline connecting the Sunnyvale recycled water system to the new Apple II campus via Wolfe Road. CEQA: Not a Project, File No. PP10-068 (a) Grant Application (where Council is not obligated to enter into an agreement at the time of application). (Environmental Services) (Rules Committee referral 1/4/12)**

Documents Filed: Memorandum from Acting Director Environmental Services Kerrie Romanow, dated January 3, 2012, recommending adoption of a resolution.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, Resolution No. 76121, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Submit an Application to the U.S. Bureau of Reclamation for a Federal Watersmart Grant through the Title XVI Water Reclamation and Reuse Program (Funding Opportunity Announcement No. R12SF0050), in an Amount of up to \$5 Million for the Construction of a Regional Recycled Water Intertie from North San José through the City of Santa Clara to the City of Sunnyvale's Recycled Water System and the Construction of a New Pipeline Connecting the Sunnyvale Recycled Water System to the New Apple II Campus Via Wolfe Road, Subject to the Concurrence of the Treatment Plant Advisory Committee (TPAC)", was adopted. (10-0-1. Absent: Constant.)

OPEN FORUM

- (1) Ross Signorino spoke to the long-term benefits of recent actions taken by Mayor Reed.
- (2) Margaret Harris asked that regulations be lifted for Hamline Community Gardens and that they may be permitted to operate independently.

ADJOURNMENT

The Council of the City of San José adjourned at 5:47 p.m. in memory of Robert Delgado. Robert was a devoted husband to Rosie Honesto Delgado and a loving father to Rorie Lujan, Mark, Robert Jr., and Armando Delgado. He was a dedicated member and coach of Eastridge Little League for 38 years, EYAC football for 11 years, and a dedicated volunteer for the Overfelt High School Wrestling team. (Campos)

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis Hawkins, CMC
City Clerk

rmk/1-10-12MIN