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## MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, DECEMBER 06, 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, Liccardo, Nguyen, Pyle, Rocha; Reed.

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

### STRATEGIC SUPPORT SERVICES

#### 3.2 Accept Labor Negotiations Update.

Documents Filed: (1) Letter from Robert Sapien, President, San José Firefighters Local 230, dated December 5, 2011, calling for immediate pension reform. (2) Letter from Robert Sapien, President, San José Firefighters Local 230, dated December 1, 2011, stating that Local 230 would like to proceed with negotiations and arbitration.

Director of Employee Relations Alex Gurza presented a brief report.

Public Comments: Speaking in opposition to calling for a ballot measure election as proposed by Mayor Reed and to urge the Council to provide direction to the City Staff to return to the bargaining table to negotiate immediate lawful pension reform were: Nancy Ostrowski, IFPTE, Local 21, Vera Todorov, and Brian Doyle, ALP, Robert Sapien, President, and Jeff Welch, San José Firefighters Local 230,

### CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:15 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: Smith v. City of San José, et al; Names of Parties Involved: Ted Smith, City of San José, San José Elections Commission, Does 1-20; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-

## CLOSED SESSION (Cont'd.)

CV-089167; Amount of Money or Other Relief Sought: Declaratory relief and attorney's fees. (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9 subsection (c) with respect to initiation of litigation in one (1) matter. (C) to confer with Legal Counsel pursuant to Government Code Section 54956.9 subsection (b) with respect to anticipated litigation (Claim Not Filed) of significant exposure in one (1) matter. (D) to confer to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (2) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (3) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP. (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP. (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO. (6) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW. (8) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (9) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3. (10) San José Police Officers' Association (SJPOA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc. Web: <http://www.sanjoseca.gov/employeerelations/moa.asp>; Telephone for Employee Relations: 408-535-8150.

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

By unanimous consent, Council recessed from the Closed Session at 11:25 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**

Danny Sanchez, Calvary Chapel, presented the Invocation. (Mayor)

## **PLEDGE OF ALLEGIANCE**

Mayor Reed led the Pledge of Allegiance.

## **ORDERS OF THE DAY**

Upon motion by Council Member Constant, seconded by Council Member Campos and carried, the Orders of the Day and the Amended Agenda were approved, and Items 2.3(b)(c)(d) were deferred to December 13, 2011, and discussion was held in the afternoon on Item 3.3. (6-5. Noes: Chu, Kalra, Oliverio, Pyle, Rocha.)

## **CEREMONIAL ITEMS**

- 1.1 Presentation of a commendation to Peter's Bakery in celebrating 75 years of outstanding service as a small and successful business in providing memorable experiences through their products of baked good and desserts. (Campos)**

Mayor Reed and Council Members Campos and Chu recognized and commended Peter's Bakery in celebration of 75 years of outstanding service.

- 1.2 Presentation of a commendation to the South Bay Yacht Club for their representation of the Alviso historical traditions and camaraderie of enjoying boating and boating related activities. (Chu)**

Mayor Reed and Council Member Chu recognized and commended the South Bay Yacht Club.

**1.3 Presentation of a commendation to the San José Silicon Valley Chamber of Commerce in recognition of 125 years of promoting business prosperity in the San José region. (Herrera)**

Mayor Reed and Council Member Herrera recognized and commended the San José/Silicon Valley Chamber of Commerce in recognition of 125 years of promoting business prosperity

**1.4 Presentation of a commendation to the San José Toys for Tots program for its efforts to help needy children experience the joy of Christmas, and to unite all members of the community in a common cause for three months each year during the annual toy collection and distribution campaign in order to contribute to better communities in the future. (Mayor)**

Mayor Reed recognized and commended the San José Toys for Tots program for its exceptional efforts.

## **CONSENT CALENDAR**

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

**2.1 Approval of Minutes.**

There were none.

**2.2 Final Adoption of Ordinances.**

There were none.

**2.3 Approval of Council Committee Reports.**

**(a) Rules and Open Government Committee Report of November 16, 2011.**

**(e) Rules and Open Government Committee Report of November 2, 2011.**

**(f) Rules and Open Government Committee Report of November 9, 2011.**

**(Mayor)**

Action: Deferred per the Orders of the Day to December 13, 2011

**(b) Public Safety, Finance and Strategic Support Committee Report of November 17, 2011. (Constant)**

**(c) Ad Hoc Committee on Airport Competitiveness Report of August 18, 2011.**

**(d) Ad Hoc Committee on Airport Competitiveness Report of September 15, 2011.**

**(Mayor)**

### 2.3 (Cont'd.)

Documents Filed: (1) The Public Safety, Finance and Strategic Support Committee Report dated November 17, 2011. (2) The Ad Hoc Committee on Airport Competitiveness Reports dated August 18, 201 and September 15, 2011.

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

### 2.4 Mayor and Council Excused Absence Requests.

There were none.

### 2.5 City Council Travel Reports.

There were none.

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

Council Member Constant provided highlights from the December 1, 2011 Police and Fire Retirement Board Meeting and presented the report from the Board's actuary Cheiron.

### 2.7 Approve a Third Amendment to Lease of Airport Premises with G2 Secure Staff, LLC to extend the term for five years, from January 1, 2012 through December 31, 2016, with annual revenue to the City of approximately \$36,293. CEQA: Not a Project, File No. PP10-066(f), Lease of existing space for same use. (Airport)

Documents Filed: Memorandum from Director of Aviation William F. Sherry, A.A.E., dated November 14, 2011, recommending approval of a third amendment to the lease.

Action: The third amendment to Lease of Airport Premises with G2 Secure Staff, LLC to extend the term for five years, from January 1, 2012 through December 31, 2016, with annual revenue to the City of approximately \$36,293 was approved. (11-0.)

### 2.8 Approve a master agreement with Brown and Caldwell for consultant services for Storm Drainage Studies and General Engineering Services from the date of execution to December 31, 2015, in an amount not to exceed \$500,000. CEQA: Not a Project, File No. PP10-066(d). (Public Works)

Documents Filed: Memorandum from Director of Public Works David Sykes, dated November 14, 2011, approving a master agreement.

Action: The master agreement with Brown and Caldwell for consultant services for Storm Drainage Studies and General Engineering Services from the date of execution to December 31, 2015, in an amount not to exceed \$500,000 was approved. (11-0.)

**2.9 Accept the Downtown San José Property-Based Business Improvement District (PBID) Financial Report for FY 2010-2011, which includes a full audit report by an independent Certified Public Accountant as required by the agreement between the City of San José and the PBID. CEQA: Exempt, File No. PP08-095. (Transportation)**

Documents Filed: City Council Action Request from Director of Transportation Hans Larsen, dated November 18, 2011, recommending acceptance of the report.

Council Member Liccardo thanked the City Staff and the San José Downtown Association for their efforts.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the Downtown San José Property-Based Business Improvement District (PBID) Financial Report for FY 2010-2011 was accepted. (10-0-1. Absent: Rocha.)

**2.10 As recommended by the Rules and Open Government Committee on November 16, 2011:**

- (a) **Approve an ordinance adding Section 1.17.015 of Chapter 1.17 of Title 1 of the San José Municipal Code to permit waiver of costs associated with requests for records pursuant to the California Public Records Act.**
- (b) **Adopt a resolution amending the FY 2011-2012 Schedule of Fees and Charges (Resolution No. 72737, as amended) to allow the waiver of certain costs associated with Requests for Public Records, to be effective as specified in the ordinance listed in subsection (a).**

**CEQA: Not a Project, File No. PP10-067(a). (City Manager's Office)**

Documents Filed: Memorandum from City Clerk Dennis D. Hawkins, CMC, dated November 17, 2011, transmitting the recommendations of the Rules and Open Government Committee.

Action: Ordinance No. 29002, entitled: "An Ordinance of the City of San José Amending Chapter 1.17 of Title 1 of the San José Municipal Code to Add a New Section 1.17.015 to Permit Waiver of Costs Associated with Requests for Records Pursuant to the California Public Records Act and Making the Effectiveness and Applicability of the Provisions of this Ordinance Retroactive to November 10, 2011", was passed for publication and Resolution No. 76085, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 72737 as Previously Amended by Resolution Numbers 73019, 73056, 73242, 73637, 73831, 73879, 73881, 74035, 74047, 74452, 74839, 74841, 74981, 75135, 75334, 75338, 75442, 75502, 75509, 75600, 75610, 75639, 75641, 75684, 75725, 75783, 75863 and 75913 To Waive Certain Costs Associated with Requests for Public Records, To Be Effective Retroactive to November 10, 2011", was adopted. (11-0.)

- 2.11 As recommended by the Public Safety, Finance and Strategic Support Committee on November 17, 2011, accept the audit of Annual Form 700 Filers. CEQA: Not a Project, File No. PP10-069. (City Auditor)**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, CMC, dated November 21, 2011, transmitting the recommendation of the Rules and Open Government Committee.

Action: The audit of Annual Form 700 Filers was accepted. (11-0.)

- 2.12 As recommended by the Public Safety, Finance and Strategic Support Committee on November 17, 2011, accept the Follow-up Report on Supplemental Military Pay. CEQA: Not a Project, File No. PP10-069. (City Manager's Office)**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, CMC, dated November 21, 2011, transmitting the recommendation of the Rules and Open Government Committee.

Action: The Follow-up Report on Supplemental Military Pay was accepted. (11-0.)

- 2.13 Adopt a resolution authorizing the City Manager to negotiate and execute an amendment to the agreement with Mobizent LLC, (located in Edison New Jersey previously 3i Infotech Corporation) to update the scope, extend the term of the agreement through June 30, 2014, and execute additional amendments to extend the agreement as required in the event that additional time is needed to complete 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) (Deferred from 11/29/11 – Item 2.8)**

Documents Filed: Replacement memorandum from Acting Director of Finance Julia H. Cooper, dated November 23, 2011, recommending changing the language to negotiate and execute and adoption of a resolution.

Action: Resolution No. 76086, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Amendment to the Agreement with Mobizent LLC for Mobile Identification Interface Services", was adopted. (11-0.)

- 2.14 Approve travel by Council Member Campos to Los Angeles, California on January 13 – 15, 2012 to attend the League of California Cities – Latino Caucus Board Retreat. Source of Funds: Mayor/Council Travel Fund. (Campos)**

Documents Filed: Memorandum from Council Member Campos, dated November 28, 2011, requesting an absence due to authorized City business.

Action: The travel for Council Member Campos was approved. (11-0.)

- 2.15 (a) The City Council acknowledges receipt of the following:**
- (1) The Certification by the City Clerk of results of elections conducted among active Police and Fire Department employees for the nomination of a Fire Department employee representative to the Board of Administration of the Police and Fire Department Retirement Plan.**
  - (2) The Certification by the City Clerk of results of elections conducted among employee members of the Federated Retirement System for the nomination of an employee representative to the Board of Administration of the Federated City Employees' Retirement System.**
- (b) The City Council:**
- (1) Appoint the applicant with the highest vote count, Matt Loesch, as an active employee member of the Board of Administration of the Federated City Employees' Retirement System (FCERS) to a term expiring November 30, 2015.**
  - (2) Appoint the applicant with the highest vote count, Sean Kaldor, as the active Fire Department employee member of the Board of Administration of the Police and Fire Department Retirement Plan to a term expiring November 30, 2015.**

**(City Clerk)**

*Note: Item 3.6 was renumbered to Item 2.15.*

Documents Filed: (1) Memorandum from City Clerk Dennis Hawkins, CMC, dated November 23, 2011, transmitting the recommendation of the Rules and Open Government Committee. (2) Supplemental memorandum from City Clerk Dennis Hawkins, CMC, dated November 30, 2011, transmitting new information because the voting period for the nomination of employee representatives to the Boards of Administration of the Police and Fire Department Retirement Plan and the Federated City Employees' Retirement System had not yet closed and the results of the employee vote were not available at the time the memorandum was submitted. (3) Supplemental memorandum from City Clerk Dennis Hawkins, CMC, dated December 2, 2011, transmitting the modified recommendation of the Rules and Open Government Committee.

Action: The modified recommendations of the Rules and Open Government Committee as described in Item 2.15 above, were approved. (11-0.)

- 2.16 As recommended by the Rules and Open Government Committee on November 30, 2011, appoint Mitch Schoch, President and CEO of BenteK, Inc., in San José, California to serve as a private-sector representative on the Silicon Valley Work Force Investment Network Board of Directors. (Mayor)**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, CMC, dated November 30, 2011, transmitting the recommendation of the Rules and Open Government Committee.

Action: Mitch Schoch, President and CEO of BenteK, Inc., in San José, California was appointed to serve as a private-sector representative on the Silicon Valley Work Force Investment Network Board of Directors. (11-0.)

## **END OF CONSENT CALENDAR**

### **STRATEGIC SUPPORT SERVICES**

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

City Manager Debra Figone congratulated City employees for raising \$110,000 through the 2011 Combined Charitable Giving Campaign, including those employees who donated 1,452 hours to the social service and non profit agencies who participated in this year's campaign by dedicating their time to volunteerism.

- 3.3 (a) Accept the attached City of San José Fiscal & Service Level Emergency Report.**  
**(b) Adopt a Resolution declaring a Fiscal and Service Level Emergency based on the City of San José Fiscal & Service Level Emergency Report, including the findings set forth in the Resolution.**  
**(Mayor)**

Documents Filed: (1) Memorandum from Mayor Reed, Council Member Nguyen and Council Members Constant, Herrera and Liccardo, dated December 1, 2011, recommending deferring consideration of the declaration of a fiscal and service level emergency, modify the proposed ballot measure language regarding retiree Cost of Living Adjustment (COLA) and adoption of resolutions. (2) Memorandum from City Manager Debra Figone, dated November 22, 2011, recommending acceptance of the San José Fiscal and Service Level Emergency Report and adoption of a resolution. (3) The Fiscal and Service Level Emergency Report dated November 22, 2011. (4) Supplemental memorandum from City Manager Debra Figone, dated December 1, 2012, transmitting additional information for Council consideration and recommending delay of adoption of a resolution declaring a fiscal and service level emergency.

Mayor Reed presented introductory comments.

City Manager Debra Figone presented opening remarks and summarized the Fiscal Emergency Plan.

**3.3 (Cont'd.)**

Motion: Council Member Constant moved approval to drop Item 3.3 to be renoticed and deferred to 2012. Council Member Liccardo seconded the motion.

Director of Employee Relations Alex Gurza, City Manager Debra Figone and City Attorney Richard Doyle responded to Council questions.

Extensive Council discussion ensued.

Public Comments: Speaking in opposition to declaring a fiscal and service level emergency, urging the Council to negotiate with the unions were Robert Lindley, FORUM, Tom Brim, Paula Martinez, MEF, Robert Sapien, San José Firefighters, Steve Osteen, Ben Field, South Bay Labor Council and David Wall.

Action: On a call for the question, the motion carried unanimously, Item 3.3 was dropped to be renoticed and deferred to 2012. (11-0.)

- 3.4 (a) Discussion and consideration of a Retirement Reform ballot measure for a March 6, 2012 election.**
- (b) If Council wishes to proceed, adopt a resolution of the Council calling a special municipal election to be held on March 6, 2012, and, on its own motion, giving notice of the submission to the electors of the City of San José, the following measure at that election:**

<p><b>To maintain essential City services, shall the Charter be amended to reform retirement benefits of City employees and retirees by, among others: (1) increasing current employees' contributions; (2) establishing a voluntary reduced pension plan for current employees; (3) establishing pension cost and benefit limitations for new employees; (4) limiting disability retirements; (5) temporarily suspending retiree Cost of Living adjustments; and (6) requiring voter approval to increase future pension benefits?</b></p>
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- (c) Council discussion and consideration of permitting rebuttal arguments in the March 6, 2012 Voter's Sample Ballot, pursuant to Elections Code Section 9285, to be incorporated in the resolution calling the election.**
- (d) Council discussion and consideration of a resolution authorizing an individual member or members of the City Council to submit an argument in favor of the City measure on the March 6, 2012 Voter's Sample Ballot, pursuant to Elections Code Section 9282, to be incorporated in the resolution calling the election.**

**(Mayor)**

### 3.4 (Cont'd.)

Documents Filed: (1) Information memorandum from Mayor Reed, dated November 23, 2011, listing online articles and resources that highlight the need to address public sector retirement benefits and other significant pension reform efforts taking place across California and the United States. (2) Supplemental memorandum from Mayor Reed, dated December 5, 2011, recommending approving the proposed ballot measure language with the changes noted in the attached draft and including direction to Staff. (3) Memorandum from Council Members Pyle and Rocha, dated December 2, 2011, recommending acceptance of the memorandum from the Mayor Reed, Council Member Nguyen and Council Members Herrera, Liccardo and Constant, dated December 1, 2012, with amendments and direction to Staff. (4) Memorandum from Council Member Kalra, dated December 5, 2011, recommending directing the City Attorney to provide the Council with an estimate of potential costs, fees and damages in the event that the ballot reform measure is successfully challenged in court. (5) Memorandum from City Manager Debra Figone, dated November 22, 2011, presenting recommendations as described above in Item 3.4. (6) Preliminary June 30, 2011 Actuarial Valuation Results from Cheiron dated December 6, 2011. (7) Letter to Director of Retirement Services Russell Crosby from Gene Kalwarski, Principal Consulting Actuary, Cheiron, dated July 20, 2011, providing projections to be required of the City of San José to the City of San José Federated Employees' Retirement System, The Federated Retiree Health Care Plan, the Police and Fire Department Retirement Plan and the Police and Fire Department Medical and Dental Insurance Plan for the next five years.

Mayor Reed provided introductory remarks.

Director of Employee Relations Alex Gurza presented the report.

Public Comments: Providing comments pro and con to the consideration of a Retirement Reform ballot measure for a March 6, 2012 election were: Matthew Mahood, San José Silicon Valley Chamber of Commerce, Jay Wendling, Retired Police and Fire, Elena Backman, Gloria Chun Hoo, League of Women Voters, Paul Martinez, MEF, Johnny Khamis, Gerry Chappuis, Robert Sapien, San José Firefighters, Tim Callahan, Paul Prange, Bob Leninger, Federated Retirees Association, Brian Doyle, Glenn Schwarzbach, Vera Todorov, ALP, Chris Dayley, Roger Storz, Robyn Zamora, Tom Cochran, Robert Lindley, FORUM, Mike Enderby, Ruben Gonzalez, Fred Hirsch, Kevin R. Fish, Nancy Ostrowski, IFPTE Local 21, Cay Denise MacKenzie, Dale L. Depp, AMSP/IFPTE Local 21, George McCarron and Jim Unland, San José Police Officers Association, Russell Baker, Steve O'Steen, Carol Garvey, Stephen McMahon, San José Teachers Association, Dan Rodriguez, Keith Keesling, LaVerne Washington, David Wall, Emilie Gatfield, Linda Dittes, Bob Brownstein, Martha O'Connell, Randi Kinman, Conrad M., Jeff Welch, San José Firefighters Local 230, Ross Signorino and Ben Field, South Bay Labor Council.

Extensive Council discussion followed.

### 3.4 (Cont'd.)

Motion: Vice Mayor Nguyen moved approval of the memorandum she cosigned with Mayor Reed, Council Members Constant, Herrera and Liccardo, dated December 1, 2011 and the supplemental memorandum from Mayor Reed, dated December 5, 2011. Council Member Constant seconded the motion.

Mayor Reed requested to amend the motion to include an amendment in the language of the ballot measure to remove a couple words, add the title "Pension Reform" and keep the word count at 75 words. The amendment was accepted by Vice Mayor Nguyen and Council Member Constant.

Vice Mayor Nguyen requested to amend the motion to eliminate the last bullet in the Mayor's memorandum dated December 1, 2011. Council Member Constant accepted the amendment.

Substitute Motion: Council Member Rocha moved approval of the memorandum he consigned with Council Member Pyle, dated December 2, 2011. Council Member Pyle seconded the motion.

Council Member Chu requested to amend the motion to include an effort to obtain approval of the language on the ballot measure before approval from the Council. The amendment was accepted by Council Members Rocha and Pyle.

On a call for the question, the motion failed. (5-6. Noes: Constant, Herrera, Liccardo, Nguyen, Oliverio; Reed.)

Discussion ensued on the Original Motion.

Council Members Liccardo and Herrera expressed support to the motion on the floor.

City Attorney Richard Doyle requested to amend the original motion to add an authorization for the Council Members to prepare, submit and/or sign "in favor of" and "in opposition to" ballot arguments and rebuttals on the June 5, 2012 Voter's Sample Ballot. The amendment was accepted by Vice Mayor Nguyen and Council Member Constant.

Substitute Motion: Council Member Kalra moved approval of his memorandum dated December 5, 2011, directing the City Attorney to provide the City Council with an estimate of potential costs, fees and damages in the event that the ballot reform measure is successfully challenged in court. Council Member Pyle seconded the motion. On a call for the question, the motion failed. (5-6. Noes: Constant, Herrera, Liccardo, Nguyen, Oliverio; Reed.)

Second Substitute Motion: Council Member Liccardo moved approval of releasing information related to fees, costs and financial risks to be discussed in Closed Session first, with the Council to vote on what is released to the public. Council Member Oliverio seconded the motion.

### 3.4 (Cont'd.)

Action: On a call for the question, the original motion carried, the revised memorandum from Mayor Reed, Vice Mayor Nguyen and Council Members Constant, Herrera and Liccardo, dated December 1, 2011, was approved: (1) Consideration of the declaration of a Fiscal and Service Level Emergency until after Cheiron has provided an update of their five year projections and other questions have been answered was deferred. (2) Resolution No. 76087, entitled: “A Resolution of the Council of the City of San José Calling and Giving Notice Of, On Its Own Motion, The Submission to the Electors of the City of San José, At A Special Municipal Election To Be Held on June 5, 2012, A Ballot Measure Proposal to Amend the San José City Charter To Add a New Article XV-A To Reform City Pensions and Benefits Provided to Current Employees and Established Reduced Pensions and Benefits for New Employees and Establish Reduced Pensions and Benefits for New Employees and To Place Other Limitations on Pensions and Benefits”, was adopted, as amended, calling a Municipal election on June 5, 2012 and giving notice of the submission to the electors of the City of San José, the following measure at that election, modified as follows: (a) PENSION REFORM. To protect essential services: neighborhood police patrols, fire stations, libraries, community centers, streets and parks, shall the Charter be amended to reform retirement benefits of City employees and retirees by: increasing employees’ contributions, establishing a voluntary reduced pension plan for current employees and pension cost and benefit limitations for new employees, reforming disability retirements to prevent abuses, temporarily suspending retiree COLAs (Cost of Living Adjustments) during emergencies and requiring voter approval for increases in future pension benefits. (3) The Mayor was authorized to prepare and submit an argument in favor of the City Measure on the June 5, 2012 Voter’s Sample Ballot. (4) Council Members were authorized to prepare, submit and/or sign “in favor of” and “in opposition to” ballot arguments and rebuttals on the June 5, 2012 Voter’s Sample Ballot. The supplemental memorandum from Mayor Reed, dated December 5, 2011, was approved: (1) The proposed ballot measure language with the changes noted in the attached draft was approved. (2) Staff directed to delay transmitting the ballot measure resolution and related documents to the registrar to allow time for continued mediation, if requested by the bargaining units. (3) Staff directed to invite all bargaining units to waive all other impasse procedures and engage in mediation over the ballot measure and other retirement issues with two separate mediations, one for Police and Fire and one for all bargaining units representing employees in the Federated City Employees’ Retirement System. (6-5. Noes: Campos, Chu, Kalra, Pyle, Rocha.)

Second Substitute Motion: On a call for the question, the motion carried, and information related to fees, costs and financial risks will be discussed in Closed Session first and the Council will vote on what is released to the public. (7-4. Noes: Campos, Chu, Kalra, Pyle.)

### 3.5 **Discussion and consideration of Council action to either repeal Ordinance No. 28960, which establishes regulations pertaining to medical marijuana collectives and to individual cultivation and use of medical marijuana, or to submit the Ordinance to the voters at a Municipal Election. (City Clerk)**

Action: Item 3.5 was dropped.



- 3.6 (a) The City Council acknowledges receipt of the following:**
- (1) The Certification by the City Clerk of results of elections conducted among active Police and Fire Department employees for the nomination of a Fire Department employee representative to the Board of Administration of the Police and Fire Department Retirement Plan.**
  - (2) The Certification by the City Clerk of results of elections conducted among employee members of the Federated Retirement System for the nomination of an employee representative to the Board of Administration of the Federated City Employees' Retirement System.**
- (b) The City Council:**
- (1) Appoint the applicant with the highest vote count, Matt Loesch, as an active employee member of the Board of Administration of the Federated City Employees' Retirement System (FCERS) to a term expiring November 30, 2015.**
  - (2) Appoint the applicant with the highest vote count, Sean Kaldor, as the active Fire Department employee member of the Board of Administration of the Police and Fire Department Retirement Plan to a term expiring November 30, 2015.**

**(City Clerk)**

Action: Item 3.6 was renumbered to Item 2.15. See Item 2.15 for Action.

**3.7 Accept the following annual reports:**

- (a) Comprehensive Annual Financial Report for the City of San José for Fiscal Year 2010-2011.**
- (b) Comprehensive Annual Debt Report for the City of San José for Fiscal Year 2010-2011.**

**CEQA: Not a Project, File No. PP10-69 (a) Annual Reports. (Finance)**

Action: Deferred to December 13, 2011 per Administration.

- 3.8 As recommended by the Public Safety, Finance and Strategic Support Committee on November 17, 2011, approve an ordinance amending Section 16.18.030 of Chapter 16.18 and Section 16.30.200 of Chapter 16.30 of Title 16 of the San José Municipal Code, the Gaming Control Regulatory Program Ordinance, to: (1) confine gaming to the single ground floor level of a permitted cardroom or to such other areas of a permitted cardroom as may be approved pursuant to the cardroom permit amendment procedure, (2) make the location of gaming in a cardroom a term and condition of the cardroom permit, and (3) make the requirement to apply for a cardroom permit amendment in order to be allowed to have gaming outside the single ground floor level of a cardroom retroactive to any application for a cardroom permit amendment pending on or after April 1, 2011. CEQA: Not a Project; File No. PP10-068(b), Municipal Code or Policy.**

### 3.8 (Cont'd.)

Documents Filed: (1) Memorandum from City Clerk Dennis Hawkins, CMC, dated November 21, 2011, transmitting the recommendation of the Public Safety, Finance and Strategic Support Committee. (2) Memorandum from City Attorney Richard Doyle, dated November 22, 2011, recommending approval of an ordinance. (3) Supplemental memorandum from City Clerk Dennis Hawkins, CMC, dated December 6, 2011, correcting the errors transmitted previously on November 21, 2011.

City Attorney Richard Doyle presented background on the proposed ordinance amending Title 16 regarding the location of gaming within a cardroom.

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

Chief of Police Christopher Moore and City Attorney Richard Doyle responded to Council questions and comments.

Action: On a call for the question, the motion carried unanimously, Ordinance No. 29003, entitled: "An Ordinance of the City of San José Amending Section 16.18.030 of Chapter 16.18 and Section 16.30.200 of Chapter 16.30 of Title 16 of the San José Municipal Code, The Gaming Control Regulatory Program Ordinance To: (1) Confine Gaming to the Single Ground Floor Level of a Permitted Cardroom or to Such Other Areas of a Permitted Cardroom as May Be Approved Pursuant to the Cardroom Permit Amendment Procedure, (2) Make the Location of Gaming in a Cardroom a Term and Condition of the Cardroom Permit and (3) Make the Requirement to Apply For a Cardroom Permit Amendment in Order To Be Allowed to Have Gaming Outside the Single Ground Floor Level of a Cardroom Retroactive to Any Application For a Cardroom Permit Amendment Pending On or After April 1, 2011", was passed for publication. (11-0.)

### 3.9 **As recommended by the Public Safety, Finance and Strategic Support Committee on November 17, 2011, accept the Team San José Quarterly Performance Report First Quarter Results ending September 30, 2011. (Team San José)**

Action: Deferred to December 13, 2011 per Administration.

## COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 Conduct an Administrative Hearing and consider an Appeal of the Planning Commission's decision to deny a Conditional Use Permit and Determination of Public Convenience or Necessity as mandated by Title 6 of the San José Municipal Code to allow the off-sale of alcohol at a full-service grocery store on a 6.48 gross-acre site in the CG Commercial General Zoning District, located on the northwest corner of Prospect Road and Saratoga Avenue (5205 Prospect Road, Suite 153)(West Valley Shopping Center, Inc. Owner/Sunflower Farmers Market, Applicant). CEQA: Exempt. The Director of Planning, Building and Code Enforcement recommends the Council uphold the appeal of the Planning Commission's decision and approve the subject Conditional Use Permit and make a Determination of Public Convenience or Necessity by finding that the required findings for a Conditional Use Permit can be made and find there is a significant overriding public benefit served by the proposed off-sale of alcohol and grant a Determination of Public Convenience or Necessity.**  
**CP11-054/ABC11-013 – District 1**

Documents Filed: (1) Memorandum from Mayor Reed and Council Member Constant, dated December 2, 2011, recommending approval of the Staff recommendations. (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 10, 2011, recommending Council uphold the appeal of the Planning Commission's decision and approve the Conditional Use Permit. (3) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP11-054/ABC11-013, dated October 12, 2011. (4) Proof of Publication of Notice of Public Hearing, executed on November 18, 2011, submitted by the City Clerk.

Motion: Council Member Constant moved approval of the memorandum he cosigned with Mayor Reed, dated December 2, 2011, recommending approval of the Staff recommendations.

Council Member Constant provided meeting disclosures.

Mayor Reed opened the Administrative Hearing.

Public Comments: Steve Khroyan, representing Sunflower Farmers Market, spoke to the merits of the opening a second Sunflower Farmers Market stating that it is a full service grocery store that will specialize in natural organic foods with an emphasis on affordable pricing. He added that the market will also be offering unique organic and specialty wines.

Mayor Reed closed the Administrative Hearing

#### 4.1 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, the memorandum from Mayor Reed and Council Member Constant, dated December 2, 2011, was approved, the recommendation of the Planning Commission and Planning Director was approved, and Resolution No. 76088, entitled: “A Resolution of the Council of the City of San José Approving a Conditional Use Permit and Granting a Determination of Public Convenience or Necessity to Allow Off Sale of Alcohol Limited to Beer and Wine Only, With Incidental Instructional Tasting Per a Type 86 License, at a Full Service Grocery Store in an Existing Approximately 33,000 Square Foot Tenant Space in an Approximately 43,000 Square Foot Building in a Shopping Center on an Approximately 6.48 Gross Acre Site at the Northwest Corner of Prospect Road and Saratoga Avenue (5205 Prospect Road, Suite 153, West Valley Shopping Center), was adopted. (11-0.)

#### 4.2 **Conduct an Administrative Hearing and consider an Appeal of the Planning Commission’s decision to deny a Conditional Use Permit and Determination of Public Convenience or Necessity as mandated by Title 6 of the San José Municipal Code to allow off-sale of beer and wine for a full-service grocery store in a 17,370 square-foot tenant space in a portion of a 35,000 square-foot existing building, on an approximately 2.30 gross-acre site in the CG Commercial General Zoning District, located on the southwest corner of East Santa Clara Street and South 7th Street (272 E. Santa Clara St.) (Carlos Oropeza Legorreta, Owner; Fresh & Easy Neighborhood Market Scott Whitney, Developer). Council SNI: 13<sup>th</sup> Street. CEQA: Exempt. The Director of Planning, Building and Code Enforcement recommends the City Council uphold the appeal of the Planning Commission’s decision and approve the subject Conditional Use Permit and make a Determination of Public Convenience or Necessity by finding that the required findings for a Conditional Use Permit can be made and find there is a significant overriding public benefit served by the proposed off-sale of alcohol and grant a Determination of Public Convenience or Necessity.**

##### **CP11-040/ABC11-008 – District 3**

Documents Filed: (1) Memorandum from Council Member Liccardo, dated December 2, 2011, recommending approval of the Staff recommendations, with a modification. (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 10, 2011, recommending Council uphold the appeal of the Planning Commission’s decision and approve the Conditional Use Permit. (3) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP11-040/ABC11-008, dated October 12, 2011. (4) Proof of Publication of Notice of Public Hearing, executed on November 18, 2011, submitted by the City Clerk.

Mayor Reed opened the Administrative Hearing.

Motion: Council Member Liccardo moved approval of his memorandum dated December 2, 2012, recommending approval of the Staff recommendations, with a modification as described below in “Action”. Council Member Herrera seconded the motion.

## 4.2 (Cont'd.)

Public Comments: Steve Khroyan, representing Fresh & Easy, spoke to the merits of the project and stated that this will be the fourth grocery store opened in the City of San José

Mayor Reed closed the Administrative Hearing

Action: On a call for the question, the motion carried unanimously, the memorandum from Council Member Liccardo, dated December 2, 2011, was approved, the following modification to condition 9.d. of the draft resolution to read: “Uniformed security shall be present for whatever duration that the store operates and is open to the public beyond 10:00 p.m.” was approved, the recommendation of the Planning Commission and Planning Director was approved, and Resolution No. 76089, entitled: “A Resolution of the Council of the City of San José Approving a Conditional Use Permit and Granting a Determination of Public Convenience or Necessity to Allow Off Sale of Alcohol, Limited to Beer and Wine Only, at a Full Service Grocery Store in an Existing Approximately 17,587 Square Foot Tenant Space in an Approximately 35,000 Square Foot Retail Building in a Shopping Center on an Approximately 2.3 Gross Acre Site at the Southwest Corner of East Santa Clara Street and South 7th Street (272 East Santa Clara Street)”, was adopted, as amended. (11-0.)

## OPEN FORUM

David Wall requested information on the procedure to appoint board members to the Environmental Innovation Center and expressed concern about a potential contract service agreement with the San José Downtown Association scheduled to be heard at Rules and Open Government Committee on December 7, 2011.

## ADJOURNMENT

The Council of the City of San José was adjourned at 5:41 p.m. in memory of Specialist Sean Walsh, 21, of San José, who was killed while on patrol in the Khost province in Eastern Afghanistan on November 16, 2011. Deployed in the California National Guard's 185th Military Police Battalion in December, 2010, Sean died during his courageous service to our country. (Herrera/Chu)

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis D. Hawkins, CMC

City Clerk

/smd 12-06-11 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.