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## MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, MARCH 20, 2012

The Council of the City of San José convened in Regular Session at 9:36 a.m. in the Council Chambers at City Hall.

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

Absent: Council Members - Herrera, Nguyen, Pyle. (Excused)

### STRATEGIC SUPPORT SERVICES

#### 3.2 Accept Labor Negotiations Update.

There was no Staff presentation.

### CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:37 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) 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 6-10, Does 10-30, 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 approvals relating to 8<sup>th</sup> addendum to Airport Master Plan. (2) Duran v. Marfia, et al; Names of Parties Involved: Carlos Duran, Marfia, Badge No. 3254, Sergeant Dolezal, Badge No. 2010, Officer Mizuhara, Badge No. 3377, Joe and Richard Roe, individually and in their capacities as San José Police Officers, the true names and exact numbers of whom are unknown at this time; Robert Davis, City of San José, a municipal corporation, Does 1 to 200. Court: United States District Court; Case No: CV10-01380 PSG; Amount of Money or Other Relief Sought: Damages According to Proof. (3) Mulholand, et al. v. City et al; Names of Parties Involved: Paul Mulholand, James Unland and Mary Follenweider, Russell Crosby,

## CLOSED SESSION (Cont'd.)

Mike Moehle, each in his capacity as a fiduciary of the San José Federated City Employees Retirement System and of the City of San José Police and Fire Retirement Plan, City of San José, a municipal entity, and Does 1-10, The Board of Directors of the San José Police and Fire Retirement Board and the Board of Directors of the City of San José Federated City Employees' Retirement System; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-219748; Amount of Money or Other Relief Sought: Damages According to Proof. (4) McDonough, et al; v. City, et al; Names of Parties Involved: City of San José, Dennis D. Hawkins, in his official capacity as the City of San José, Barry Garner, in his capacity as Registrar of Voters of the County of Santa Clara, Karen McDonough, Franco Vado, Robert Sapien, Clifford G. Hubbard; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV220781; Amount of Money or Other Relief Sought: Petition for Writ of Mandate. (B) to confer with Legal Counsel with respect to anticipated litigation pursuant to Government Code Section 54956.9 in two (2) matters. (C) 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

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

Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc. Web: <http://www.sanjoseca.gov/employeerelations/moa.asp>; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 11:30 a.m. and reconvened to Regular Session at 1:32 p.m. in the Council Chambers.

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

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

## **INVOCATION (DISTRICT 3)**

Reverend Sharon Hare, First Presbyterian Church presented the Invocation.

## **PLEDGE OF ALLEGIANCE**

Mayor Reed, accompanied by students of St. Leo Christian School, led the Pledge of Allegiance.

## **ORDERS OF THE DAY**

Upon motion by Vice Mayor Nguyen, seconded by Council Member Liccardo and carried unanimously, the Orders of the Day and the Amended Agenda were approved, Item 3.4 was heard after the Ceremonial Items, Item 1.7 was dropped, Item 1.8 was added to the Evening, Item 6.1 was heard and continued to April 03, 2012, Item 8.1 was heard following the Consent Calendar and Item 11.2 was continued to April 17, 2012. (9-0-2. Absent: Herrera, Pyle.)

## **CEREMONIAL ITEMS**

- 1.1 Presentation of a commendation to the Santa Visit Alviso Foundation for their dedication in bringing the spirit of the holidays to hundreds of children and continued efforts in providing scholarships to youth of the Alviso Community. (Chu)**

Mayor Reed and Council Member Chu recognized and commended the Santa Visit Alviso Foundation.

**1.3 Presentation of a proclamation recognizing the week of March 11-17, 2012 as “National Groundwater Awareness Week” in the City of San José. (Chu)**

Mayor Reed and Council Member Chu recognized the Week of March 11 through March 17, 2012 as “National Groundwater Awareness Week” in the City of San José.

**1.5 Presentation of a proclamation declaring March 19, 2012 as “Assyrian New Year” in the City of San José. (Pyle)**

Mayor Reed and Council Member Kalra recognized March 19, 2012 as “Assyrian New Year” in the City of San José. Council Member Pyle was not present.

**1.6 Presentation of a commendation to Jessica Luna for being selected as San José’s General Consul of Mexico for a Day. (Campos)**

Mayor Reed and Council Member Campos recognized and commended Jessica Luna.

**1.7 Presentation of a proclamation recognizing March 25, 2012 as Greek Independence Day in the City of San José. (Constant)**

Action: Dropped per Orders of the Day.

**STRATEGIC SUPPORT SERVICES**

**3.4 Conduct a Public Hearing and approve the FY 2012-2013 Mayor’s March Budget Message. CEQA: Not a Project, File No. PP10-067. (Mayor)**

Documents Filed: (1) Memorandum from Mayor Reed, dated March 9, 2012, directing the City Manager to submit a proposed budget for Fiscal Year 2012-2013 that is balanced and guided by the policy direction and framework of priorities outlined in the Mayor’s March Budget Message. (2) Memorandum from Council Members Campos, Chu and Kalra, dated March 16, 2012, accepting the Mayor’s Budget Message with amendments. (3) Memorandum from Council Members Campos, Chu and Kalra, dated March 16, 2012, accepting the Mayor’s Budget Message with amendments.

Mayor Reed opened the Public Hearing.

Public Comments: Kathleen King, Barbara Hansen, People Acting in Community Together (PACT), Alex Reyes and Bryan Reyes expressed support to the funding of Children’s Health Initiative. Charmayne Thompson, Blanca Carbajal, and Maria Marcelo expressed support to the memorandum from Council Member Kalra, Campos and Chu and requested that Council extend the library hours.

David Wall expressed concern about the community survey used in the Mayor’s Budget Message. Sergio Franco, Adam Ramos and Juvencia Gamez, Gardner Community Center, stressed the importance of senior transportation to the Community Centers and to keep senior nutrition and transportation funding in the City budget.

### 3.4 (Public Comments Cont'd.)

Jimmy Nguyen urged the Council to alleviate the outrageous crime rate. Ricky Alexander, Sacred Heart Community Service, provided comments for Angela Browley: stating that she expressed her support to the memorandum from Council Member Kalra, Campos and Chu and advised the Council to consider senior nutrition and transportation as core services. Duane Jones voiced support to extending library hours and the importance of senior nutrition.

Bob Brownstein suggested using existing surplus funds for important public services. Anthony Rosby recommended the Council to open the libraries 7 days a week and to provide more police services to the community. Dehab Haile, former small business owner, urged the Council to provide more help to the community, especially to small businesses.

Mayor Reed closed the Public Hearing.

Mayor Reed recommended more library hours, more money to senior service and the restoration of services cautiously.

Motion: Vice Mayor Nguyen moved approval of Mayor Reed's Budget memorandum dated March 9, 2012 and the memorandum from Council Members Campos, Chu and Kalra, dated March 16, 2012, recommending the allocation for Gang Prevention and Safe School Campos Initiative programs, with the other joint memorandum referred to Staff for analysis and priority. Council Member Constant seconded the motion.

City Manager Debra Figone and Budget Director Jennifer Maguire responded to Council questions and comments.

Extensive Council discussion ensued.

Council Member Liccardo requested to amend the motion to add to the second memorandum, a study for one additional Economic Development Staff Member, specifically for company retention and attraction. The amendment was accepted by Vice Mayor Nguyen and Council Member Constant.

Substitute Motion: Council Member Kalra moved approval of the Mayor's Budget memorandum, dated March 9, 2012, the two memorandums he cosigned with Council Members Campos and Chu, both dated March 16, 2012 and to accept both memoranda as priorities going forward into the budget process. Council Member Campos seconded the motion.

Council Member Campos clarified that the memorandum which stated \$2.4 million for Gang Prevention and Safe School Campus Initiative Programs was inaccurate and should actually state \$2.0 Million.

On a call for the question, the substitute motion failed. (4-5-2. Noes: Constant, Liccardo, Nguyen, Oliverio; Reed. Absent: Herrera, Pyle.)

### 3.4 (Cont'd.)

Action: On a call for the question, the original motion carried unanimously, the Mayor's March Budget Message dated March 9, 2012, was approved, including the following actions: (1) The revised memorandum from Council Members Campos, Chu and Kalra, dated March 16, 2012, accepting the Mayor's March Budget Message with the following amendments: To maximize the use of the allocation of \$2.0 million for Gang Prevention and Safe School Campus Initiative programs, Staff should work with the School District Superintendents to identify impactful opportunities to provide intervention and prevention programming, was approved. (2) The following revised memorandum was referred to Staff for analysis and prioritization: The memorandum from Council Members Campos, Chu and Kalra, dated March 16, 2012, accepting the Mayor's March Budget Message with the following amendments; If during the course of this year's budget crisis the City experiences an additional incremental General Fund surplus, prioritize the following service additions to be added to the budget: Restore branch library services to operate six days a week. Restore transportation services to seniors for Senior Nutrition programming. Continue to provide funding assistance, as in FY 2011-2012, to the Neighborhood Business Associations. Restore staffing for the Fire Department's Hazardous Incident Team. Hire ten additional police officers to be deployed at the discretion of the Police Chief for the suppression of gang violence and neighborhood crimes. Add one additional Economic Development Staff Member, specifically for company retention and attraction. (9-0-2. Absent: Herrera, Pyle.)

- 3.5 (a) **Council by motion waive the 10-day noticing requirement for the following item, approve its placement on the agenda, and consider the following recommendation.**
- (b) **Adopt a Resolution amending Resolution 76158 regarding the Pension Reform Ballot measure to direct the City Clerk to prepare the impartial analysis for the ballot measure instead of the City Attorney as provided under Elections Code Section 9280.**

**(City Attorney's Office).  
(Orders of the Day)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated March 16, 2012, recommending adoption of a resolution.

Motion: Council Member Liccardo moved approval to waive the 10-day noticing requirement and to direct the City Clerk to prepare the impartial analysis for the ballot measure instead of the City Attorney as provided under Elections Code Section 9280. Council Member Constant seconded the motion.

Public Comments: David Wall spoke in opposition to the Staff recommendations. Ross Signorino provided suggestions for preparing the impartial analysis.

Council Members Campos and Kalra expressed opposition to the motion on the floor because of potential conflict of interest issues.

### **3.5 (Cont'd.)**

On a call for the question, the motion failed. Eight votes are required to pass the Staff recommendations. (7-2-2. Noes: Campos, Kalra. Absent: Herrera, Pyle.)

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

Second Motion: Council Member Constant moved approval to waive the 10-day noticing requirement and to direct the City Clerk to prepare the impartial analysis for the ballot measure instead of the City Attorney as provided under Elections Code Section 9280. Vice Mayor Nguyen seconded the motion.

Council Member Liccardo requested to amend the motion to include direction to the City Attorney to provide a conflict of interest analysis for the Council in order to present clear decisions about any legal issues that may arise in terms of selection of Council Members going forward. The amendment was accepted by Vice Mayor Nguyen and Council Member Constant.

Council Member Campos thanked Council Member Liccardo for including that direction and stated he will be able to support the amended motion.

Council Member Kalra maintained his opposition because of the potential for conflict of interest.

Action: On a call for the question, the second amended motion carried, the 10-day noticing requirement was waived, Resolution No. 76164, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 76158 Regarding the Pension Reform Ballot Measure to Direct the City Clerk to Prepare the Impartial Analysis for the Ballot Measure Instead of the City Attorney as Provided Under Elections Code Section 9280", was adopted. The City Attorney was directed to provide a conflict of interest analysis for the Council in order to present clear decisions about any legal issues that may arise in terms of selection of Council Members going forward. (8-1-2. Noes: Kalra. Absent: Herrera, Pyle.)

Vice Mayor Nguyen left the meeting at approximately 3:30 pm.

## **CONSENT CALENDAR**

Upon motion by Council Member Constant, seconded by Council Member Liccardo and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (8-0-3. Absent: Herrera, Nguyen, Pyle.)

### **2.1 Approval of Minutes.**

There were none.

## 2.2 Final adoption of ordinances.

- (a) **ORD. NO. 29043** – Amending Section 1.08.010 Chapter 1.08 of Title 1 of the San José Municipal Code clarifying the definition of nuisance and amending Sections 1.14.030, 1.14.050, 1.14.060, 1.14.070 and 1.14.090 of Chapter 1.14 and adding Sections 1.14.045 and 1.14.048 to create additional administrative review for compliance orders.

Documents Filed: Proof of Publication of the title of Ordinance No. 29043 executed on March 13, 2012, submitted by the City Clerk.

Action: Ordinance No. 29043 was adopted. (8-0-3. Absent: Herrera, Nguyen, Pyle.)

- (b) **ORD. NO. 29044** – Rezoning certain real property situated on an approximately 0.18-gross-acre site on the east side of South 10<sup>th</sup> Street, 115 feet northerly of San Carlos Street (284 South 10<sup>th</sup> Street) to the RM(PD) Planned Development Zoning District. PDC11-019

Documents Filed: Proof of Publication of the title of Ordinance No. 29044 executed on March 13, 2012, submitted by the City Clerk.

Action: Ordinance No. 29044 was adopted. (8-0-3. Absent: Herrera, Nguyen, Pyle.)

- (c) **ORD. NO. 29045** – Rezoning certain real property situated on the southwest corner of Monterey Road and Stauffer Boulevard (1901 Monterey Road) from the IP Industrial Park Zoning District to the CIC Combined Industrial/Commercial Zoning District. C12-003

Documents Filed: Proof of Publication of the title of Ordinance No. 29045 executed on March 13, 2012, submitted by the City Clerk.

Action: Ordinance No. 29045 was adopted. (8-0-3. Absent: Herrera, Nguyen, Pyle.)

## 2.3 Approval of Council Committee Reports.

Public Comments: David Wall commented on various Council Committee Reports, including the Airport Competiveness Committee regarding the use of corporate aircraft with the curfew.

There were no Committee Reports for approval on the March 20, 2012 Amended Agenda.

## 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 presented a brief report on the Federated City Employees Retirement System Meeting of March 15, 2012.

## **2.7 As recommended by the Rules and Open Government Committee on March 7, 2012, approve a support position for SB 1220 (DeSaulnier and Steinberg) – Housing Opportunity Trust Fund Act of 2012. (City Manager’s Office)**

Council Member Constant pulled Item 2.7 from the Consent Calendar for discussion.

Motion: Council Member Constant moved to oppose a support position for Senate Bill 1220. Council Member Oliverio seconded the motion.

Council Members Campos and Kalra expressed opposition and concurred that the prospect to create a Housing Opportunity Trust Fund should move forward.

Director of Housing Leslye Corsiglia and City Attorney Richard Doyle responded to Council questions and concerns.

Council discussion ensued.

Substitute Motion: Council Member Kalra moved approval of a support position for Senate Bill 1220. Council Member Campos seconded the motion.

Council Member Liccardo requested to amend the substitute motion to request that Staff consider options to find a permanent source of funding. The amendment was accepted by Council Members Kalra and Campos.

Public Comments: Director of Housing Leslye Corsiglia provided comments for Jenny Nicklaus, EHC LifeBuilders, who expressed support to Senate Bill 1220 because it will ensure the continued development of affordable housing and preservation of help for seniors. Anil Babbar, Santa Clara County Association of Realtors, pointed out that the Santa Clara County Association and Realtors and the State Association are opposing Senate Bill 1220 and he urged the Council to continue their discussion and to remain neutral on this bill today. Jennifer Loving, Destination Home, voiced support to the bill and remarked that homelessness cannot end without a permanent source of funding. David Wall expressed opposition to Senate Bill 1220.

On a call for the question, the motion failed. (5-3-3. Noes: Constant, Oliverio; Reed. Absent: Herrera, Nguyen, Pyle.)

**2.7 (Cont'd.)**

Council Member Kalra moved approval to continue this item in two weeks with direction to Staff to return with any updates. Council Member Campos seconded the motion.

Action: On a call for the question, the motion carried, the discussion on Senate Bill 1220 was continued to April 3, 2012. Staff was directed to return with any updates. (6-2-3. Noes: Kalra, Oliverio. Absent: Herrera, Nguyen, Pyle.)

**2.8 As recommended by the Rules and Open Government Committee on March 14, 2012:**

**(a) Approve the Vietnamese New Year Flag Raising Ceremony as a City Council sponsored Special Event.**

**(b) Approve expending funds and accepting donations from various individuals, businesses, or community groups to support the event.**

**CEQA: Not a Project. (City Clerk)**

Documents Filed: (1) Memorandum from City Clerk Dennis Hawkins, CMC, dated March 20, 2012, transmitting the recommendation of the Rules and Open Government Committee. (2) Supplemental memorandum from City Clerk Dennis Hawkins, CMC, dated March 20, 2012, noting that Mayor Reed is a co-sponsor of the Vietnamese New Year Flag Raising Ceremony.

Action: The Vietnamese New Year Flag Raising Ceremony as a City Council sponsored Special Event, expending funds and accepting donations from various individuals, businesses, or community groups to support the event, were approved. (8-0-3. Absent: Herrera, Nguyen, Pyle.)

**2.9 As recommended by the Rules and Open Government Committee on March 14, 2012:**

**(a) Approve the Cesar Chavez Day Flag Raising Ceremony as a City Council sponsored Special Event.**

**(b) Approve expending funds and accepting donations from various individuals, businesses, or community groups to support the event.**

**CEQA: Not a Project. (City Clerk)**

Documents Filed: Memorandum from City Clerk Dennis Hawkins, CMC, dated March 15, 2012, transmitting the recommendation of the Rules and Open Government Committee.

Action: The Cesar Chavez Day Flag Raising Ceremony as a City Council sponsored Special Event, expending funds and accepting donations from various individuals, businesses, or community groups to support the event, were approved. (8-0-3. Absent: Herrera, Nguyen, Pyle.)

**END OF CONSENT CALENDAR**

## **PUBLIC SAFETY SERVICES**

- 8.1 Authorize the City Manager and Chief of Police to apply for grant funding through the 2012 Community Oriented Policing Services (COPS) Hiring Program to add seven Police Officer positions. (Rules Committee referral 3/14/12)**

Documents Filed: Memorandum from Chief of Police Christopher Moore, dated March 16, 2012, recommending authorization for the City Manager and Chief of Police to apply for grant funding through COPS.

Public Comments: David Wall and Ross Signorino spoke in support to the Staff recommendations.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Kalra and carried unanimously, the City Manager and Chief of Police were authorized to apply for grant funding through the 2012 Community Oriented Policing Services Hiring Program to add seven Police Officer positions. (8-0-3. Absent: Herrera, Nguyen, Pyle.)

## **STRATEGIC SUPPORT SERVICES**

- 3.3 Approve the 2011 Green Vision Annual Report and 2012 Work Plan priorities and implementation framework. CEQA: Not a Project, File No. PP10-069. (City Manager's Office)**

Documents Filed: (1) Memorandum from Mayor Reed, dated March 19, 2012, recommending approval of the Staff report with changes as described below in "Action". (2) Memorandum from City Manager Debra Figone, dated March 20, 2012, recommending approval of the 2011 Green Vision Report and 2012 Work Plan priorities and implementation framework and transmitting the report.

Assistant to the City Manager Ashwini Kantak, Deputy Director of Public Works Matthew Morley, Acting Director of Environmental Services Kerrie Romanow and Director of Transportation Hans Larsen presented the report.

Discussion ensued.

Motion: Council Member Liccardo moved approval of the memorandum from Mayor Reed, dated March 19, 2012, approving the Staff report with the following changes, and an additional requirement as described below in "Action". Council Member Kalra seconded the motion.

Public Comments: David Wall expressed opposition to the Staff recommendations.

### 3.3 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, the memorandum from Mayor Reed, dated March 19, 2012, accepting the Staff report, was approved, with the following revisions: (1) Focus existing resources to retain, expand and attract clean tech businesses as a high priority in the next 18 months. (2) Increase the number of years we apply energy-efficiency savings and rebates to the energy fund from two years to five years and allow the use of some of the money as the match necessary to secure State and Federal grants. (3) Amend the way we are reporting the amount of renewable energy produced (Goal #3). We are reporting the total number of solar systems installed and the equivalent number of residential systems. We should report the total amount of renewable energy produced from all sources (not just solar) and compare it to our goal of 100% of our energy coming from renewable sources based on the total amount of energy needed in 2007 less 50% based on our goal to reduce consumption per capita by 50 percent. (4) Explore private financing options to fund our streetlight conversion and building retrofit projects. (5) In the budget process, identify opportunities for grants that may require matching funds and estimates of the amount needed. The following additional requirement was also included: (6) Within the measurements we assess for green vision progress our best measure of moving our residents into alternative forms of transportation whether that is in the form of reduced VMT or mode share shift or any other measure that we can readily get statistics for on an annual basis. (8-0-3. Absent: Herrera, Nguyen, Pyle.)

## COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 Conduct a public hearing and adopt a resolution designating “Former Fire Station No. 1”, located on northwest corner of North Market and West St. James Streets (201 N. Market Street), as a landmark of special historic, architectural, cultural, or engineering interest, or value of a historic nature (City of San José as Successor Agency to Redevelopment Agency, Owner). CEQA: Exempt. The Historic Landmarks Commission recommends that the City Council approve the proposed Landmark Designation for Former Fire Station No. 1(6-0-1). (Planning, Building and Code Enforcement)**

### **HL08-169 – District 3**

Documents Filed: (1) Memorandum from Mayor Reed, Council Members Liccardo, Rocha and Oliverio, dated March 16, 2012, recommending approval of the Staff recommendations. (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated February 24, 2012, recommending approval of the Staff recommendations. (3) Proof of Publication of Notice of Public Hearing, executed on February 24, 2012, submitted by the City Clerk.

Motion: Council Member Liccardo moved approval of the memorandum he cosigned with Mayor Reed and Council Members Oliverio and Rocha, dated March 16, 2012, approving the Staff recommendations to designate Fire Station No. 1 as a City Landmark.

#### 4.1 (Cont'd.)

Mayor Reed opened the public hearing.

Public Comments: Speaking in support to the Staff recommendations were Ramiro Torres, Historic Landmarks Commission, David Wall, Brian Grayson, Preservation Action Council, San José and Warren Hyde, Retired Architect, Binder and Curtis, who designed the Fire Station.

Mayor Reed closed the public hearing.

Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti responded to Council questions.

Action: On a call for the question, the motion carried unanimously, the memorandum from Mayor Reed and Council Members Liccardo, Rocha and Oliverio, dated March 16, 2012, was approved, accepting the Staff recommendations, and Resolution No. 76165, entitled: “A Resolution of the Council of the City of San José Designating, Pursuant to the Provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, Former Fire Station No. 1 Located at 201 North Market Street as a City Landmark of Special Historical, Architectural, Cultural, Aesthetic or Engineering Interest of Value of a Historic Nature”, was adopted. (8-0-3. Absent: Herrera, Nguyen, Pyle.)

#### 4.2 Adopt a resolution to accomplish all of the following:

- (a) **Extend until August 31, 2012, the time to work with the City of Campbell on an alternative reorganization proposal for the Cambrian No. 36 pocket area.**
- (b) **Express support for consideration of the City of Campbell’s actions to annex the Cambrian No. 36 pocket, including LAFCO consideration of detachment of Central Park Drive, Oak Park Lane and Highland Park Lane area from the City of San José.**
- (c) **Continue the suspension of City’s prior reorganization action for Cambrian No. 36.**
- (d) **Authorize the Director of Planning, Building and Code Enforcement to take certain actions to facilitate the alternative reorganization of the Cambrian No. 36 pocket area pursued by the City of Campbell or, alternatively, to complete the City’s Cambrian No. 36 reorganization.**

**CEQA: Not a Project, File No. PP10-066, Agreements/Contracts; and San José 2020 General Plan Final EIR, Resolution No. 65459. Council District 9. (Planning, Building and Code Enforcement)**

Action: Deferred to March 27, 2012 per Administration.

**4.3 Consideration of an ordinance amending Section 20.70.100 of Chapter 20.70 (Downtown Zoning Districts) of Title 20 of the San José Municipal Code (the Zoning Code) to streamline the permit process for the operation of office and financial services uses within the DG Overlay Area (Downtown Ground-Floor Space) of the DC (Downtown Core) and DC-NT1 (Downtown Code – Neighborhood Transition 1) Zoning Districts. The proposed amendments affect the Downtown Area of the City. CEQA: Envision San José 2040 General Plan Environmental Impact Report, Resolution No. 70601. The Director of Planning and the Planning Commission (6-0-1, Commissioner Kamkar absent) recommend approval with a recommendation by the Commission for staff to evaluate the outcome of this change and report the findings from this analysis to the City Council in two years. (Planning, Building and Code Enforcement)**

Documents Filed: (1) Memorandum from Mayor Reed and Council Member Liccardo, dated March 16, 2012, recommending approval of the Staff recommendations with additional requirements. (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated February 6, 2012, transmitting the Staff Report. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated March 8, 2012, transmitting the Planning Commission recommendation. (4) Proofs of Publications of Notices of Public Hearings, executed on February 10, 2012, submitted by the City Clerk.

Mayor Reed opened the public hearing.

Public Comments: David Wall spoke in favor of the Staff recommendations. Mayor Reed closed the public hearing.

Motion: Council Member Liccardo moved approval of the memorandum he cosigned with Mayor Reed, including additional requirements as described below in “Action”. Council Member Kalra seconded the motion.

Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti responded to Council questions.

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Commission and Planning Director was approved, the memorandum from Mayor Reed and Council Member Liccardo, dated March 16, 2012, was approved, accepting the Staff recommendations, with the following additional requirements: (1) Eligibility for exemption of the special use permit requirement is limited to those sites that were vacant as of January 1, 2012. (2) The ordinance must return to the Community and Economic Development Committee for review within twelve months after its enactment, to assess the impact of the ordinance on the 17% vacancy rate on ground floor spaces in the DG Overlay Area and to explicitly determine whether to return the ordinance to Council for revision. Ordinance No. 29047, entitled: “An Ordinance of the City of San José Amending Section 20.70.100 of Chapter 20.70 (Downtown Zoning Regulations) of Title 20 (Zoning Code) of the City of San José to Allow Certain Uses in the DG Area (Downtown Ground Floor Space) When Certain Enumerated Criteria Are Met”, was passed for publication. (8-0-3. Absent: Herrera, Nguyen, Pyle.)

## TRANSPORTATION & AVIATION SERVICES

- 6.1 (a) **Adopt a resolution establishing Minimum Standards for 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.**
- (c) **Adopt a RFP-first approach for West Side general aviation that would have a second, new full-service FBO operational in late 2014 (estimated).**
- CEQA: Resolution Nos. 67380 and 71451, File No. PP12-001. (Airport)**

Director of Aviation William Sherry presented introductory remarks.

Mayor Reed opened the floor for public testimony.

Public Comments: The following speakers provided comments on the Airport West Side Development: David Wall, Patricia Benfield Jones, Rick Boyce, NetJets, Eric Hietala, Tom Poultevt, Pat Sausedo, San José Silicon Valley Chamber of Commerce, Joan Gallo, Tim Murray, Atlantic Aviation, Robert Harmssen, CAAP, and Kenneth Hayes.

Director of Aviation William Sherry presented the Report on the Airport West Side Development, Overview of Development Options and Approval of Minimum Standards and Lease Terms and responded to Council questions and concerns.

Council discussion ensued.

Council Member Kalra suggested that this item should come back to Council for action.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Constant and carried unanimously, Item 6.1 was continued to April 03, 2012. (8-0-3. Absent: Herrera, Nguyen, Pyle.)

## OPEN FORUM

- (1) Angelica complained about the lack of adequate signage, her subsequent ticket and that her fixed income does not allow her any extra money to pay for the ticket she received. Mayor Reed referred Angelica to the City Manager's Office.
- (2) Robert Mulcone requested that the City provide more social programs and assistance to the mentally disabled residents of San José.
- (3) David Wall reiterated grave concerns about the reclaimed water, advanced water treatment and the water pollution control plant.

## ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 6:16 p.m.

## RECESS/RECONVENE

The City Council recessed at 6:16 p.m. from the afternoon Council Session and reconvened at 7:03 p.m. in the Council Chambers, City Hall.

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

Absent: Council Members - Herrera, Nguyen, Pyle. (Excused)

City Clerk Dennis D. Hawkins read the requests for continuance of the applications. Upon motion by Council Member Liccardo, seconded by Council Member Oliverio, and carried unanimously, the below noted continuances and actions were taken as indicated. (8-0-3. Absent: Herrera, Nguyen, Pyle.)

## CEREMONIAL ITEMS

### **1.2 Presentation of a proclamation declaring the Week of March 11 – 17, 2012 in commemoration of the 100<sup>th</sup> Anniversary of Girl Scouts of the USA. (Campos)**

Mayor Reed and Council Member Campos recognized the week of March 11 through March 17, 2012 for the 100<sup>th</sup> Anniversary of the Girl Scouts of the United States of America.

### **1.4 Presentation of a commendation to Lynbrook High School Future Business Leaders of America (FBLA) for their initiative in developing the “Energy Career Pathways Toolkit” to increase student awareness about career opportunities and avenues in the energy sector. (Constant)**

Mayor Reed and Council Member Constant recognized and commended the Lynbrook High School Future Business Leaders of America.

### **1.8 Presentation of a commendation to the Bellarmine College Preparatory Varsity Football Team. (Liccardo/Oliverio)**

Mayor Reed and Council Members Liccardo and Oliverio recognized and commended the Bellarmine College Preparatory Varsity Football Team for their outstanding achievements.



## PUBLIC HEARINGS

- 11.2 Consideration of an ordinance rezoning the real property located at the southwest corner of Miller Street and Asbury Street from the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District to (1) add 100 units to the already approved 400 unit development for a total of 500 multi-family attached residential units, and (2) increase in building height from 150 to 200 feet on the 2.80 gross acre site (Green Valley Corporation, Owner; Barry Swenson Builder, Developer). CEQA: Mitigated Negative Declaration. The Director of Planning and the Planning Commission (6-0-1, Commissioner Cahan absent) recommend approval.

**PDC05-101 – District 3**

Action: Continued to April 17, 2012 per Orders of the Day.

- 11.3 (a) Consideration of an ordinance rezoning the real property located on the north side of River Oaks Parkway, approximately 200 feet east of Research Plan (401 River Oaks Parkway), from the IP Industrial Park Zoning District to the A(PD) Planned Development Zoning District to allow for the development of up to 450 multi-family attached residential units on an 8.1 gross acre site (GRE River Oaks, LLC, Owner). **PDC11-018**
- (b) Consideration of an ordinance to approve a Development Agreement with River Oaks San José, LLC (Irvine Company) to reallocate up to 450 residential units from Affordable Rate to Market Rate Units in the North San José Area Development Policy area subject to performance by IAC for payment of contributions, commencement of construction and subsequent occupancy per deadlines of performance. **DA12-001**

**CEQA: North San José Area Development Policy Update, EIR Resolution No. 72768 and Addendum thereto. Council District 4.**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated March 2, 2012, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File Numbers PDC11-018, and DA12-001, dated February 29, 2012. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated March 8, 2012, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on February 17, 2012, submitted by the City Clerk.

Mayor Reed provided meeting disclosures.

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

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

Mayor Reed opened the public hearing.

### 11.3 (Cont'd.)

Public Comments: Dan Miller, representing the Irvine Company, spoke in concurrence with the Staff report, the development agreement and with the findings as stated. Jim Foran, Parkside Homeowners Association, spoke in favor of the River Oaks Trail Connection. David Wall presented comments. Mayor Reed closed the public hearing.

Council Member Chu presented meeting disclosures.

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

Action: On a call for the question, the motion carried, the recommendation of the Planning Commission and Planning Director was approved, Ordinance No. 29048, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated at the North Side of River Oaks Parkway, Approximately 200 Feet East of Research Place, From the IP Industrial Park District to the IP(PD) Planned Development Zoning District” and Ordinance No. 29409, entitled: “An Ordinance of the City of San José Approving a Development Agreement With the Irvine Company Relative to the Development of the River Oaks Multifamily Residential Project on Certain Real Property Located in North San José and Authorizing the City Clerk to Execute the Development Agreement and Cause the Same To Be Recorded with the Santa Clara County Recorder’s Office”, were passed for publication. (7-1-3. Noes: Oliverio. Absent: Herrera, Nguyen, Pyle.)

- 11.4 (a) **Consider adoption of a resolution denying an appeal of the Planning Commission’s certification of a Subsequent Environmental Impact Report (SEIR) and certifying the SEIR has been completed in compliance with CEQA and reflects the City’s independent judgment and analysis.**
- (b) **Consider an ordinance rezoning the real property located at the southeast corner of Almaden Expressway and Chynoweth Avenue (14418 Almaden Road) to allow for the development of up to 400,000 square feet of commercial uses on a 43.5 gross acre site and modifications to previously approved roadway network by extending Cherry Avenue through the site to Sanchez Avenue with revisions to the development standards as recommended by staff.**
- (c) **Adopt a resolution approving a street renaming to change a portion of Chynoweth Avenue, located between Almaden Expressway and the Guadalupe River, to Cherry Avenue.**

**CEQA: Almaden Ranch Environmental Impact Report, Resolution to be adopted. The Director of Planning and the Planning Commission (6-0-1, Commissioner Cahan absent) recommend that the City Council find the project in conformance with the California Environmental Quality Act (CEQA) and certify the Subsequent Environmental Impact Report (SEIR). The Director of Planning and the Planning Commission (5-1-1, Commissioner Platten opposed, Commissioner Cahan absent) recommend approval of the proposed Planned Development Rezoning as recommended by staff.**

**PDC10-006 – District 9**

## 11.4 (Cont'd.)

Documents Filed: (1) Memorandum from Council Member Rocha, dated March 20, 2012, recommending approval of the Planning Commission recommendation with additional actions. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated March 1, 2012, transmitting the Planning Commission recommendation of approval. (3) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated March 13, 2012, recommending a minor revision to one of the development standards related to parking in excess of the minimum requirements. (4) Proofs of Publications of Notices of Public Hearings, executed on February 8, 2012 and March 2, 2012, submitted by the City Clerk. (5) Letter from Thomas Donnelly, Jones Day to the City of San José Planning, Building and Code Enforcement, dated March 16, 2012, expressing support to Almaden Properties, LLC, environmental appeal and in opposition to the certification of the Almaden Ranch draft SEIR. (6) Letter from the Erikson Neighborhood Association, dated March 19, 2012, requesting actions relative to the proposed Almaden Ranch Retail Center and a proposed Bicycle/Pedestrian Bridge adjacent to the project.

Director of Planning, Building and Code Enforcement Joseph Horwedel offered opening comments.

Mayor Reed presented meeting disclosures.

Mayor Reed opened the public hearing.

Thomas Donnelly, Jones Day, representing the Appellant, spoke in support to the environmental appeal of his client Almaden Properties, LLC filed with the City of San José and expressed opposition to the certification of the Almaden Ranch draft Subsequent Environmental Impact Report (SEIR). He added that the median needs to be properly studied with an analysis and for Staff to develop appropriate mitigation measures.

Gerry De Young, representing Arcadia Development Company, presented background of the project and requested the Council approve the project with the Staff conditions and the memorandum from Council Member Rocha.

Public Comment: David Wall expressed opposition to the project. Gerald Cummings, Robinson Oil Corporation, spoke in support of the project but in opposition to the median as it will make to difficult for customers to enter and exit. Farokh Mehran, Precision Tune and Care, expressed opposition to the median because of adverse effects on his business and urged the Council to perform a thorough analysis, including adding a right turn onto Chenoweth.

Judy Lindou urged the Council to oppose the Almaden Ranch Project because it is contrary to the San José 2040 General Plan. Jim Kohl spoke in opposition and expressed concerns about the development that does not match the San José 2040 General Plan.

#### 11.4 (Cont'd.)

Michelle Beasley, Greenbelt Alliance, expressed disappointment that the 43 acres of undeveloped land within the City limits would be transformed to yet another big box retail center. Darren Porle, San José Cool Cities/Sierra Club, expressed opposition to the project and urged the Council to consider how and if this development project meets the goals of the San José 2040 General Plan.

Matt Francois, Safeway Stores, expressed opposition about the project site directly across the Almaden Safeway Center and their concerns with the proposed median along Cherry Avenue which would block entrance onto the main driveway on Chynoweth. David Noel, Pamela Parrish, and Jerry Lane Erikson Neighborhood Association spoke in favor of the proposed development and the memorandum from Council Member Rocha. Jessica Gonzales expressed opposition citing that the development does not meet the goals of the San José 2040 General Plan.

Thomas Donnelly, Jones Day, representing the Appellant, and Gerry De Young, representing Arcadia Development Company provided additional closing remarks.

Mayor Reed closed the public hearing.

Director of Planning, Building and Code Enforcement Joseph Horwedel presented comments. Council discussion followed.

Motion: Council Member Rocha moved approval of the Staff recommendations and The Statement of Overriding Considerations was read into the record by Council Member Rocha: “The Final Environment Impact Report for this proposed project identified significant and unavoidable environmental impacts. However, as described in more detail in the proposed resolution of the EIR findings for this item there is no feasible way to lessen or avoid these significant effects for this project and approval of this proposed project is anticipated to result in several benefits to the City. All of these benefits outweigh the significant, unavoidable environmental impacts identified in the Final EIR for this Project”. Council Member Constant seconded the motion.

Mayor Reed and Council Members Kalra and Campos expressed support to the motion on the floor.

Council Member Campos offered meeting disclosures.

Council Member Chu provided meeting disclosures and requested that each portion of Item 11.4 be voted upon separately.

## 11.4 (Cont'd.)

### Motion on Item 11.4(a)

Upon motion by Council Member Rocha, seconded by Council Member Constant and carried, the Staff recommendations were approved. (7-1-3. Noes: Chu. Absent: Herrera, Nguyen, Pyle.)

Council Member Liccardo expressed support to the motion and presented meeting disclosures.

### Motion on 11.4(b)

Council Member Rocha moved approval of his memorandum dated March 20, 2012, recommending approval of the Planning Commission recommendation with additional actions. Council Member Constant seconded the motion. (7-1-3. Noes: Chu. Absent: Herrera, Nguyen, Pyle.)

Action: On a call for the question, the motion unanimously, the recommendation of the Planning Commission and Planning Director was approved, Resolution No. 76166, entitled: "A Resolution of the Council of the City of San José Finding Final Environmental Impact Report Prepared for a Project Described in Application File No. PDC10-006 Has Been Completed in Compliance with the California Quality Act of 1970", was adopted denying the appeal. The memorandum from Council Member Rocha, dated March 20, 2012, approved the Planning Commission recommendation, including following actions: (1) Direct the City Manager to bring forward a proposal through the capital budget process to allocate \$50,000 in District 9 parks funds as seed money for preliminary work on a pedestrian bridge that could provide east/west access over the Guadalupe River between Cherry Avenue and Chynoweth Avenue. This amount would match the developer's offer to voluntarily contribute \$50,000 for the same purpose. (2) Amend the development standards dated February 7, 2012, such that the parking requirements section on page 2 is revised as follows: (a) Allow on-site parking 10% beyond the minimum requirement without triggering additional site design measures. (b) Remove mention of green roofs as one potential site design measure. (c) Change the reference to "solar panel carports in the surface parking lot" to "solar panels on buildings". Ordinance No. 29050, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Southeast Corner of Almaden Expressway and Chynoweth Avenue, From the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District", was passed for publication and CEQA Resolution No. 76168, entitled: "A Resolution of the Council of the City of San José Making Certain Findings Concerning Significant Effects and Mitigation Measures, Adopting a Mitigation Monitoring and Reporting Program, Making Findings Concerning Alternatives and Adopting a Statement of Overriding Considerations for the Almaden Ranch Retail Center Project (File No. PDC10-006) For Which a Final Subsequent Environmental Impact Report Has Been Prepared in Accordance with the California Environmental Quality Act of 1970, as Amended", was adopted. (7-1-3. Noes: Chu. Absent: Herrera, Nguyen, Pyle.)

## 11.4 (Cont'd.)

### Motion on 11.4(c):

Upon motion by Council Member Rocha, seconded by Council Member Constant and carried unanimously, Resolution No. 76167, entitled: "A Resolution of the Council of the City of San José Renaming a Portion of Chynoweth Avenue, Located East of Almaden Expressway, To Cherry Avenue", was adopted. (8-0-3. Absent: Herrera, Nguyen, Pyle.)

## ADJOURNMENT

The Council of the City of San José was adjourned at 9:22 p.m. in memory of Patricia Randazzo, a committed teacher of the East Side Union High School District for thirty-seven years and longtime resident of San José, who was dedicated to serving beyond the classroom through her work in the community. (Herrera)

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis D. Hawkins, CMC  
City Clerk

/smd 03-20-12 MIN

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