



## MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, MARCH 1, 2016

The Council of the City of San José convened in Regular Session at 9:15 a.m. in the Council Chambers at City Hall.

Present: Councilmembers - Carrasco, Herrera, Jones, Kalra, Khamis, M. Nguyen, T. Nguyen, Oliverio, Peralez; Liccardo.

Absent: Councilmembers - Rocha. (Excused)

### STRATEGIC SUPPORT SERVICES

#### 3.2 Accept Labor Negotiations Update.

There was no report.

### CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:36 a.m. to a Closed Session in Room W133; (A) Public Employment/Public Employee Recruitment/Appointment Pursuant to Government Code Section 54957; Department or Agency: Police Department; Title: Chief of Police; (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9(d)(1) with respect to anticipated litigation in one (1) matter; (C) to confer with Legal Counsel pursuant to Government Code Section 54956.9(d)(1) with respect to existing litigation; (1) In re: Claim of Brown; Amount of Money or Other Relief Sought: Administrative Appeal; (2) In re: Claim of Smith; Amount of Money or Other Relief Sought: Administrative Appeal; (3) Webster v. City, et al.; Names of Partie(s) Involved: Dana Webster, Gina Novello, Heather Hoshii, City of San José, and Does 1-50; Court: Superior Court of California, County of Santa Clara; Case No: 1-13-CV-247326; Amount of Money or Other Relief Sought: Damages According to Proof; (4) IAFF Local 230 v. City of San José; Names of Partie(s) Involved: International Association of Firefighters Local 230, City of San José; Court: State of California Public Employees Relations Board; Case No.: SF-CE-969-M;

## CLOSED SESSION (Cont'd.)

Amount of Money or Other Relief Sought: Damages According to Proof; (5) IFPTE Local 21 v. City of San José; Names of Partie(s) Involved: International Federation of Professional and Technical Engineers Local 21, City of San José; Court: State of California Public Employees Relations Board; Case No.: SF-CE-996-M; Amount of Money or Other Relief Sought: Damages According to Proof; (6) American Federation of State, County & Municipal Employees, et al. v. City; Names of Partie(s) Involved: American Federation of State, County & Municipal Employees, City of San José; Court: State of California Public Employees Relations Board; Case No.: SF-CE-924-M; Amount of Money or Other Relief Sought: Damages According to Proof; (7) OE#3 v. City of San José; Names Of Partie(s) Involved: Operating Engineers Local Union No. 3, City of San José; Court: State of California Public Employees Relations Board; Case No.: SF-CE-900-M; (8) ABMEI v. City, et al.; Names of Partie(s) Involved: Association of Building, Mechanical and Electrical Inspectors, City of San José; Court: State of CA Public Employment Relations Board; Case No.: UPC SF CE 1358 M; Amount of Money or Other Relief Sought: Damages According to Proof; (9) San José Retired Employees Association, et al. v. City, et al; Names of Parties Involved: San José Retired Employees Association, Howard E. Fleming, Donald S. Macrae, Frances J. Olson, Gary J. Richert and Rosalinda Navarro, City of San José Does 1 – 50, Board of Administration for the Federated City Employees Retirement System; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-233660; H040979; H042074; Amount of Money or Other Relief Sought: Declaratory Relief and Verified Petition for Writ of Mandate. (10) Sapien, et al. v. City of San José, et al; Names of Parties Involved: Robert Sapien, Marty Kathleen McCarthy, Thanh Ho, Randy Sekany, Ken Heredia, City of San José, Debra Figone in her official capacity as City Manager of the City of San José, Does 1-15, The Board of Administration for the 1961 San José Police and Fire Department Retirement Plan; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-225928; Amount of Money or Other Relief Sought: Challenge to Measure B. (11) Harris, et al. v. City of San José, et al; Names of Parties Involved: Teresa Harris, Jon Reger, Moses Serrano, Suzann Stauffer, City of San José, Debra Figone in her official capacity as City Manager of the City of San José, The Board of Administration for the 1975 Federated City Employees' Retirement Plan, Does 1-15; Court: Superior Court of California, County of Santa Clara; Case: 1-12-CV-226570; Amount of Money or Other Relief Sought: Challenge to Measure B. (12) Mukhar, et al. v. City of San José, et al; Names of Parties Involved: City of San José, John Mukhar, Dale Dapp, James Atkins, William Buffington, Kirk Pennington, Debra Figone in her official capacity as City Manager of the City of San José, The Board of Administration for the 1975 Federated City Employees' Retirement Plan, Does 1-15; Court: Superior Court of California, County of Santa Clara; Case: 1-12-CV-226574; H040979; H042074; Amount of Money or Other Relief Sought: Challenge to Measure B. (13) AFSCME, et al. v. City of San José, et al; Names of Parties Involved: American Federation of State, County and Municipal Employees, Local 101 on behalf of its members, City of San José, The Board of Administration for the Federated City Employees' Retirement Plan; Court: Superior Court of California, County of Santa Clara; Case: 1-12-CV-225928; H040979; H042074; Amount of Money or Other Relief Sought: Challenge to Measure B; (14) People of the State of California, et al. v. City of San José, et al.; Names of Partie(s) Involved: The

## CLOSED SESSION (Cont'd.)

People of the State of California ex rel. San José Police Officers Association, City of San José, City Council of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-13-CV-245503; Amount of Money or Other Relief Sought: Verified Complaint In Quo Warranto; (15) San José Retired Employees Association, et al. v. City of San José, et al; Names of Partie(s) Involved: San José Retired Employees Association, Kirk Pennington, David Armstrong, Donna Jewett, Dorothy McGinley, City of San José, the Board of Administration for the Federated City Employees Retirement Plan; Court: Superior Court of California, County of Santa Clara; Case No: 1-14-CV-268085; Amount of Money or Other Relief Sought: Change to City medical plan; (D) to Confer with Labor Negotiator Pursuant to Government Code Section 54957.6: City Negotiator: Jennifer Schembri, Director of Employee Relations; 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: Salaries, Hours, Working Conditions, etc.; Name of Existing Wages 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/?nid=186>; Telephone for Employee Relations: 408-535-8150.

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

By unanimous consent, Council recessed from the Closed Session at 11:45 p.m. and reconvened to Regular Session at 1:31 p.m. in the Council Chambers.

Present: Councilmembers - Carrasco, Herrera, Jones, Kalra, Khamis, M. Nguyen, T. Nguyen, Oliverio, Peralez; Liccardo.

Absent: Councilmembers - Rocha. (Excused)

## **INVOCATION**

Universal Grammar Founder, Tommy Aguilar, recited "Short Speech to My Friends" by Amiri Baraka for the Invocation.

## **PLEDGE OF ALLEGIANCE**

Mayor Liccardo led the Pledge of Allegiance.

## **ORDERS OF THE DAY**

Upon motion by Vice Mayor Rose Herrera, seconded by Councilmember Tam Nguyen and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (10-0-1. Absent: Rocha.)

## **CLOSED SESSION REPORT**

City Manager Norberto Dueñas announced the City Council's ratification of the appointment of Eddie Garcia as Police Chief of the City of San José.

## **CEREMONIAL ITEMS**

### **1.1 Presentation of proclamation recognizing March 2016 as National Women's History Month in the City of San José. (Herrera)**

Mayor Liccardo and Vice Mayor Rose Herrera presented a proclamation recognizing March 2016 as National Women's History Month in the City of San José and honored the American Association of University Women.

### **1.2 Presentation of a proclamation for "American Red Cross Month" in the City of San José. (Kalra)**

Mayor Sam Liccardo and Councilmember Ash Kalra recognized "American Red Cross Month" in the City of San José and honored American Red Cross of Silicon Valley.

## CONSENT CALENDAR

Upon motion by Vice Mayor Rose Herrera, seconded by Councilmember Tam Nguyen and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (10-0-1. Absent: Rocha.)

### 2.1 Approval of Minutes.

None provided.

### 2.2 Final Adoption of Ordinances.

None provided.

### 2.3 Approval of Council Committee Minutes.

(a) Rules and Open Government Committee Minutes of January 20, 2016.  
(Mayor)

(b) Rules and Open Government Committee Minutes of January 27, 2016.  
(Mayor)

(c) Rules and Open Government Committee Minutes of February 3, 2016.  
(Mayor)

**CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities.**

Documents Filed: Rules and Open Government Committee Minutes, dated January 20, 2016, January 27, 2016 and February 3, 2016.

Action: The Council Committee Minutes were approved. (10-0-1. Absent: Rocha.)

### 2.4 Mayor and Council Excused Absence Requests.

None provided.

### 2.5 City Council Travel Reports.

None provided.

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

None provided.

2.7 Approve the First Amendment to the Master Agreement with Cornerstone Earth Group, for environmental consulting services, increasing the amount of compensation by \$200,000, for a total agreement not to exceed \$550,000, with no extension on the term of the agreement, which expires on March 1, 2017. **CEQA: Not a Project, File No. PP10-066(d), Agreements and Contracts for Consultant Services with no change in the physical environment. (Environmental Services)**

Action: Deferred to March 8, 2016 per Administration.

- 2.8 **Adopt a resolution authorizing the City Manager to:**
- (a) **Amend Open Purchase Order 51392 with Valley Crest Landscape Maintenance, Inc. (San José, CA), for Landscape Management and Maintenance Services for Community Facility District 8 located in a special district area, to increase compensation by \$160,000 for a revised amount not to exceed \$400,000, for the first year of the initial two-year period, first year term ending on June 30, 2016;**
  - (b) **Execute purchase order year two of the initial two-year period, term ending June 30, 2017, subject to appropriations of funds; and**
  - (c) **Exercise options to extend the term for up to five additional one-year periods, subject to the annual appropriation of funds.**

**CEQA: Exempt, File No. PP13-057, Citywide Landscape Maintenance on Public Properties and Right-of-Way. (Finance)**

Documents Filed: City Council Action Request from Director of Finance Julia H. Cooper dated March 1, 2016, requesting amendment of an Open Purchase Order.

Action: Resolution No. 77678, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to (1) Amend Open Purchase Order 51392 with Valley Crest Landscape Maintenance, Inc. for Landscape Management and Maintenance Services for Community Facility District 8 to Increase Compensation by \$160,000 for a Revised Total Amount Not to Exceed \$400,000 for the First Year of the Initial Two-Year Period, Ending June 30, 2016; (2) Execute Purchase Order Year 2 of the Initial Two-Year Period, Ending June 30, 2017, Subject to the Annual Appropriation of Funds; and (3) Exercise Options to Extend the Term for Up to Five Additional One-Year Periods, Subject to the Annual Appropriation of Funds", was adopted. (10-0-1. Absent: Rocha.)

- 2.9
- (a) **Report on bids and award of contract for the 7187 – Lake Cunningham Bike Park to the low bidder, Grade Tech, for the base bid of \$2,208,300 and approval of a five percent contingency in the amount of \$110,415.**
  - (b) **Adopt the following 2015-2016 Appropriation Ordinance Amendments in the Subdivision Park Trust Fund:**
    - (1) **Increase the Lake Cunningham Bike Park project appropriation to the Parks, Recreation and Neighborhood Services Department in the amount of \$60,000; and**
    - (2) **Decrease the Future PDO/PIO Project Reserve appropriation in the amount of \$60,000.**

**CEQA: Lake Cunningham Master Plan – 2006 Amendment Mitigated Negative Declaration, File No. PP06-043. Council District 8. (Public Works/City Manager)**

Documents Filed: Memorandum from Director of Public Works Barry Ng and Senior Deputy City Manager/Budget Director Jennifer Maguire, dated February 8, 2016, recommending acceptance of a report and adoption of appropriation ordinance amendments.

Vice Mayor Rose Herrera pulled Item 2.9 to offer comments on the Lake Cunningham Bike Park.

2.9 (Cont'd.)

Action: Upon motion by Vice Mayor Rose Herrera, seconded by Councilmember Magdalena Carrasco and carried unanimously, Ordinance No. 29700, entitled: "An Ordinance of the City of San José Amending Ordinance No. 29589 to Appropriate Monies in the Subdivision Park Trust Fund for the Lake Cunningham Bike Park; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. (10-0-1. Absent: Rocha.)

2.10 As recommended by the Rules and Open Government Committee on February 17, 2016:

- (a) Approve the Village Square Library Grand Opening scheduled on ~~March 26, 2016~~ April 16, 2016 as a City Council sponsored Special Event and approve the expenditure of funds; and
- (b) Approve and accept donations from various individuals, businesses or community groups to support the event.

**CEQA: Not a Project, File No. PP15-077, Temporary Special Events. (Herrera)**

Documents Filed: Memorandum from City Clerk Toni J. Taber, dated February 18, 2016, transmitting the recommendations of the Rules and Open Government Committee.

Vice Mayor Rose Herrera pulled Item 2.10 to indicate that the event date has been changed to April 16, 2016.

Action: Upon motion by Vice Mayor Rose Herrera, seconded by Councilmember Tam Nguyen and carried unanimously, the Village Square Library Grand Opening as a City Council Sponsored Special Event was approved, and expenditure of funds and authorization to accept donations from various individuals, businesses or community groups to support the event, was approved. (10-0-1. Absent: Rocha.)

2.11 As recommended by the Rules and Open Government Committee on February 17, 2016:

- (a) Approve the Boards and Commissions Resource Fair scheduled on April 13, 2016 as a City Council sponsored Special Event and approve the expenditure of funds; and
- (b) Approve and accept donations from various individuals, businesses or community groups to support the event.

**CEQA: Not a Project, File No. PP15-077, Temporary Special Events. (Herrera)**

Documents Filed: Memorandum from City Clerk Toni J. Taber, dated February 18, 2016, transmitting the recommendations of the Rules and Open Government Committee.

Action: The Boards and Commissions Resource Fair as a City Council Sponsored Special Event was approved, and expenditure of funds and authorization to accept donations from various individuals, businesses or community groups to support the event, was approved. (10-0-1. Absent: Rocha.)

**END OF CONSENT CALENDAR**

## STRATEGIC SUPPORT SERVICES

### 3.3 Initiative Ordinance Amending Title 6 and Title 20 of the San José Municipal Code Regarding Medical Marijuana Collectives.

- (a) Adopt a resolution superseding Council Resolution No. 77207, restating the Council's November 4, 2014 vote to call and give notice, on its own motion, of a Special Municipal Election to be held on June 7, 2016 to submit to the electors of the City of San José the Medical Marijuana Initiative, as required by Elections Code Section 9215 and San José City Charter, Article 16, Section 1603(a)(2);
- (b) Council discussion and consideration of whether the full text of the proposed ordinance should be printed in the Voter's Sample Ballot, pursuant to Elections Code 12111, to be incorporated in the resolution restating the calling of the election;
- (c) Council discussion and consideration of whether to adopt provisions to permit rebuttal arguments, pursuant to Elections Code Section 9285, and if rebuttal arguments are permitted, then permitting any member or members of the City Council to submit a rebuttal argument, to be incorporated in the resolution restating the calling of the election;
- (d) Council discussion and consideration of whether to authorize the City Council or any member or members of the City Council to submit arguments, pursuant to Elections Code Section 9282, to be incorporated in the resolution restating the calling of the election; and
- (e) Direct the City Clerk to take all other actions necessary to place this measure for a June 7, 2016, Special Municipal Election, if needed, to be incorporated in the resolution restating the calling of the election.

**CEQA: Not a Project, File No. PP10-069(c), Code or Policy change that involves no changes to the physical environment. (City Attorney/City Clerk)**

Documents Filed: (1) Joint memorandum from Mayor Sam Liccardo, Vice Mayor Rose Herrera and Councilmembers Pierluigi Oliverio, Donald Rocha and Johnny Khamis, dated March 1, 2016, accepting Staff recommendations with additional provisions. (2) Memorandum from City Clerk Toni J. Taber, CMC, dated February 17, 2016, providing recommendations regarding adoption of a resolution. (3) Supplemental memorandum from Assistant to the City Manager, Angelique Gaeta, dated February 25, 2016, providing Council with additional background regarding an amendment to Title 6 of the San José Municipal Code. (4) Proof of Publication of Notice of Public Hearing executed on March 16, 2016, submitted by the City Clerk.

Motion: Councilmember Pierluigi Oliverio moved approval of the memorandum he cosigned with Mayor Sam Liccardo, Vice Mayor Rose Herrera and Councilmembers Rocha and Khamis, dated March 1, 2016. Vice Mayor Rose Herrera seconded the motion.

Assistant to the City Manager, Angelique Gaeta responded to questions regarding litigation against collectives that are operating illegally.



### 3.3 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, and Resolution No. 77679, entitled: "A Resolution of the Council of the City of San José Calling and Giving Notice of the Submission to the Electors of the City of San José, at a Special Municipal Election to be Consolidated with the Next General Election to Be Held on June 7, 2016, an Initiative to Amend Title 6 and Title 20 of the San José Municipal Code to Include Medical Marijuana Collectives as an Allowed Land Use in Agricultural, Commercial Pedestrian, Commercial Neighborhood, Industrial Park, Light Industrial and Heavy Industrial Zoning Districts, and to Establish a Registration Process and Zoning Code Verification Certificate Process; and Superseding Resolution No. 77207", was adopted, including direction as outlined in the memorandum from Mayor Sam Liccardo, Vice Mayor Rose Herrera and Councilmembers Oliverio, Rocha and Khamis, dated March 1, 2016 to: (1) Accept Staff recommendations adopting a resolution for a Special Municipal Election to be held on June 7, 2016 to submit to the electors of the City of San José the Medical Marijuana Initiative, with the following provisions: (a) Include an impartial analysis prepared by the City Attorney; (b) Do not include the full text of the initiative; (c) Allow rebuttal arguments; (2) Authorize the Mayor to author and submit the argument and rebuttal in opposition to the Medical Marijuana Initiative.

### 3.4 **Actions Related to the Request for Proposal for the Integrated Permitting System.**

- (a) **Accept the report on the Request for Proposal for an Integrated Permitting System and adopt a resolution authorizing the City Manager to:**
  - (1) **Negotiate and execute an Agreement with CSDC Systems Inc. (Spartanburg, SC) for the purchase of an Integrated Permitting System, including software cloud subscription services, hosting, third party software, configuration, data migration/conversion, testing, training, maintenance and related professional services, for an initial term of approximately seven-years ending 2023, with a maximum compensation not-to-exceed \$7,854,035 including \$4,124,340 for the estimated 28-month implementation, subject to the appropriation of funds, and five year hosting services post-implementation;**
  - (2) **Execute amendments and/or change orders to the proposed agreement to cover any unanticipated changes or requirements or for future enhancements for a not-to-exceed contingency amount of \$413,000 (10% of first year compensation) as may be required, subject to the appropriation of funds; and**
  - (3) **Execute ten one-year options to extend the term of the agreement, after the initial seven-year term through 2033, subject to the appropriation of funds.**
- (b) **Adopt the following 2015-2016 Appropriation Ordinance amendments in the General Fund:**
  - (1) **Establish a City-Wide Appropriation to the Planning, Building and Code Enforcement Department for the Development Fee Program Integrated Permitting System project in the amount of \$4,200,000.**

3.4 (Cont'd.)

- (b) (2) **Decrease the Development Fee Program Technology Reserve by \$4,200,000.**

**CEQA: Not a Project, File No. PP10-066(a), Agreements and Contracts for professional services with no changes in the physical environment. (Finance/Planning, Building and Code Enforcement/City Manager)**

Documents Filed: (1) Memorandum from Mayor Sam Liccardo, dated February 26, 2016, recommending approval of Staff recommendations with direction to the City Manager. (2) Joint memorandum from Director of Finance Julia H. Cooper, Director of Planning, Building and Code Enforcement, Harry Freitas and Senior Deputy City Manager/Budget Director Jennifer Maguire, dated February 18, 2016, recommending acceptance of a report and adoption of appropriation ordinance amendments.

Director of Planning, Building and Code Enforcement, Harry Freitas offered a presentation on the integrated permitting system and responded to questions.

Motion: Councilmember Johnny Khamis moved approval of Mayor Sam Liccardo's memorandum dated February 26, 2016. Councilmember Chappie Jones seconded the motion.

Mayor Sam Liccardo requested to include the words "and consultants" as indicated below in "Action". Councilmember Johnny Khamis and Jones agreed to the amendment to the motion.

Action: On a call for the question, the motion carried unanimously, and Resolution No. 77680, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to (1) Negotiate and Execute an Agreement with CSDC Systems Inc. for the Purchase of an Integrated Permitting System for an Initial Term of Approximately Seven Years Ending in 2023 with a Maximum Compensation Not-To-Exceed \$7,854,035; (2) Execute Amendments and/or Change Orders to the Proposed Agreement to Cover Any Unanticipated Changes or Requirements for a Not-To-Exceed Contingency Amount of \$413,000; and (3) Execute Ten One-Year Options to Extend the Agreement After the Initial Seven Year Term Ending 2033, Subject to the Appropriation of Funds", and Ordinance No. 29701, entitled: "An Ordinance of the City of San José Amending Ordinance No. 29589 to Appropriate Monies in the General Fund for the Development Fee Program Integrated Permitting System; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", were adopted, including direction as outlined in Mayor Sam Liccardo's memorandum dated February 26, 2016, as amended, to (1) Return to the Council through the 2016-2017 budget process to identify potential funding sources for dedicated staff positions *and consultants* to ensure effective implementation of this software, integration with CRM and other IT systems, and to assess compatible business process improvements; (2) Provide an Information

### 3.4 (Cont'd.)

Memorandum to Council prior to the execution of the agreement with a detailed scope of work, deliverables and performance metrics. In addition, the memorandum should answer the following questions: (a) As current processes become digitized and available online what is the strategy to inform and educate customers of these online tools? What tools and programs will be developed to train the public on how to use the tools? How will we work with customers to develop a user-centered design? (b) How will this project integrate with other large-scale IT projects in the City? (See Mayor Sam Liccardo's memorandum for examples of other large-scale IT projects). (10-0-1. Absent: Rocha.)

### 3.5 Actions Related to the Liquidated Damages for Late Payroll Records Policy.

- (a) **Adopt a resolution:**
- (1) **Amending the current prevailing wage enforcement mechanism for late submission of certified payroll records on City's Housing projects to assess liquidated damages in the amount of \$250.00 per day provided that the liquidated damages assessed do not exceed the total contract amount of the developer's, general contractor's or subcontractor's contract who failed to submit timely certified payroll records, and provided further there was no actual wage violation discovered in the late records and the late records were submitted to the City within one year from when they were due;**
  - (2) **Applying the amended prevailing wage enforcement mechanism for late submission of certified payroll records to all City's Housing project contracts entered into on or after January 1, 2013;**
  - (3) **Authorizing City staff to refund, subject to the appropriation of funds, the difference in the amount of liquidated damages between the prior enforcement mechanism without a cap and the amended enforcement mechanism with a cap for all City's Housing project contracts entered into on or after January 1, 2013 where full payment of liquidated damages was made to the City within one year from when they were due.**
- (b) **Adopt the following 2015-2016 Appropriation Ordinance amendments in the Low and Moderate Income Housing Asset Fund:**
- (1) **Increase the Loan Management appropriation to the Housing Department for Loan Management in the amount of \$100,680; and**
  - (2) **Decrease the Unrestricted Ending Fund Balance appropriation in the amount of \$100,680.**

**CEQA: Not a Project, File No. PP10-068(b), Municipal Code or Policy Change that involve no changes in the physical environment. (Public Works/City Manager)**

Action: Deferred to April 12, 2016 per Administration.

- 3.6 As recommended by the Public Safety, Finance and Strategic Support Committee on February 18, 2016, accept report on the Measuring San José's Financial Condition. CEQA: Not a Project, File No. PP10-069(a), Staff Reports that involve no approval of City Actions. (City Auditor)**

Documents Filed: Memorandum from City Clerk Toni Taber, dated February 26, 2016, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee.

City Auditor Sharon Erickson provided an informational report.

Action: Upon motion by Councilmember Manh Nguyen, seconded by Councilmember Chappie Jones and carried unanimously, the report on Measuring San José's Financial Condition was accepted. (9-0-2. Absent: Khamis, Rocha.)

## **COMMUNITY & ECONOMIC DEVELOPMENT**

- 4.1 Adopt a resolution approving a City Council Policy for disposing of surplus property that includes provisions relating to affordable housing. CEQA: Not a Project, File No. PP10-068(c), Code or Policy change that involve no changes in the physical environment. (Economic Development/Housing)**

Action: Deferred to March 8, 2016 Per Rules and Open Government Committee.

- 4.2 (a) Adopt a resolution:**
- (1) Approving a new construction/permanent loan commitment of up to \$3,112,500 ("New Loan") to 2112 Monterey Road South, L.P., a limited partnership affiliated Charities Housing Development Corporation, for the development of The Metropolitan South Apartments ("Development") located at 2128 Monterey Road;**
  - (2) Approving a new predevelopment loan commitment of up to \$500,000 to be repaid from the New Loan proceeds at the closing of construction financing;**
  - (3) Extending the maturity of the Development's existing HOME-funded loan of \$3,043,290 ("Existing Loan") to be coterminous with the term of the New Loan;**
  - (4) Forgiving of \$753,402 in accrued interest on the Existing Loan through March 1, 2016;**
  - (5) Authorizing the Director of Housing to negotiate other changes to the Existing Loan if required by lenders and investors, and to execute all documents as may be needed to effectuate such changes and to facilitate the combination of the City's loans for streamlining purposes; and**
  - (6) Authorizing an aggregate Loan to Value amount in excess of 100%.**

4.2 (Cont'd.)

(b) **Adopt the following 2015-2016 Appropriation Ordinance amendments in the Low and Moderate Income Housing Asset Fund to:**

- (1) **Increase the Housing Loans and Grants appropriation to the Housing Department in the amount of \$3,112,500; and**
- (2) **Decrease the Housing Project Reserve appropriation in the amount of \$3,112,500.**

**CEQA: Markham Terrace Mitigated Negative Declaration, File Nos. GP08-07-04 and PDC09-015. Council District 7. (Housing/City Manager)**

Documents Filed: Memorandum from Director of Housing Jacky Morales-Ferrand and Senior Deputy City Manager/Budget Director Jennifer Maguire, dated February 18, 2016, recommending adoption of a resolution and ordinance.

Action: Upon motion by Vice Mayor Rose Herrera, seconded by Councilmember Pierluigi Oliverio and carried unanimously, Resolution No. 77681, entitled: "A Resolution of the Council of the City of San José Approving a New Loan Commitment and Forgiveness of Accrued Interest on an Existing Loan for the Metropolitan South Apartments; and Ordinance No. 29702, entitled: "An Ordinance of the City of San José Amending Ordinance No. 29589 to Appropriate Monies in the Low and Moderate Income Housing Asset Fund for Housing Loans and Grants; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", were adopted. (9-0-2. Absent: Khamis, Rocha.)

4.3 **Extension of Temporary Moratorium on Closure or Conversion of Mobilehome Parks.**

- (a) **Adopt an ordinance, as an urgency measure (urgency ordinance), extending a temporary moratorium on the conversion or closure of mobilehome parks pending the review and possible amendment of the land use regulations applicable to such conversions and closures and setting forth the findings to support 1) The need for extending the temporary moratorium; and 2) the need for the urgency measure.**
- (b) **Direct staff to refer to the Planning Commission for its review and recommendation, at its earliest possible regular meeting, a substantially similar regular (non-urgency) ordinance extending a temporary moratorium on the conversion or closure of mobilehome parks pending the review and possible amendment of the land use regulations applicable to such conversions and closures.**

**CEQA: Not a Project, File No. PP10-068, General Procedure and Policy Making that involves no changes in the physical environment. Exempt, Guidelines Sections 15061(b)(3) No Significant Impact on the Environment and 15308 Actions by Regulatory Agencies for Protection of the Environment. (Planning, Building and Code Enforcement/Housing)**

#### 4.3 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Housing Jacky Morales-Ferrand and Senior Deputy City Manager/Budget Director Jennifer Maguire, dated February 26, 2016, recommending adoption of an emergency ordinance. (2) Letter from Diana Castillo, Fair Housing Law Project, dated March 1, 2016, in support of extension of the proposed moratorium.

Action: Upon motion by Vice Mayor Rose Herrera, seconded by Councilmember Pierluigi Oliverio and carried unanimously, Urgency Ordinance No. 29703, entitled: "An Urgency Ordinance of the City of San José Extending an Interim Ordinance of the City of San José Establishing a Temporary Moratorium on the Conversion or Closure of Mobilehome Parks Pending the Review and Possible Amendment or Adoption of Land Use Regulations Applicable to Such Conversions and Closures and Setting Forth Findings to Support Such Temporary Moratorium and the Effectiveness and Applicability of the Provisions of this Ordinance and Setting Forth the Facts Constituting Such Urgency", was adopted. (9-0-2. M. Nguyen, Rocha.)

### NEIGHBORHOOD SERVICES

- 5.1 (a) **Report on bids and award of contract for the 7882 – Coleman Soccer Field Complex to the low bidder, Robert A. Bothman, for the base bid of \$13,910,300 and approval of a ten percent contingency in the amount of \$1,391,030.**
- (b) **Adopt the following 2015-2016 Appropriation Ordinance Amendments in the Parks and Recreation Bond Fund:**
- (1) **Increase the Coleman Soccer Fields appropriation to the Parks, Recreation and Neighborhood Services Department in the amount of \$5,818,000; and**
  - (2) **Decrease the Parks and Recreation Bond Projects Contingency Reserve by \$5,818,000.**

**CEQA: Coleman Soccer Fields Mitigated Negative Declaration, File No. PP10-155. (Public Works/Parks, Recreation and Neighborhood Services/City Manager)**

Action: Deferred to March 15, 2016 Per Rules and Open Government Committee.

### ENVIRONMENTAL & UTILITY SERVICES

- 7.1 (a) **Accept the report regarding Community Choice Aggregation, an alternative model to provide energy to San José residents and businesses; and**
- (b) **Direct staff to develop a Request for Proposals for an entity to develop, finance, launch, and operate a Community Choice Aggregation program in San José and return to Council in fall 2016 to present recommendations.**

**CEQA: Not a Project, File No. PP10-069(a), Staff Reports that involve no approvals of any City actions; and Not a Project, File No. PP10-068(d), Preliminary direction to staff when eventual action requires Council approval. (Environmental Services)**

7.1 [Transportation and Environment Committee referral 2/1/16 – Item (d)(1)]  
(Cont'd.)

Documents Filed: (1) Joint memorandum from Mayor Sam Liccardo, Vice Mayor Rose Herrera, and Councilmembers Chappie Jones, Ash Kalra and Raul Peralez, dated February 26, 2016, recommending acceptance of the report with additional direction. (2) Memorandum from Councilmember Ash Kalra, dated February 29, 2016, recommending approval with additional direction. (3) Memorandum from City Clerk Toni J. Taber, CMC, dated February 18, 2016, providing recommendations from the Transportation and Environment Committee. (4) Supplemental memorandum from Environmental Services Director Kerrie Romanow, dated February 23, 2016, providing additional requested information and clarification. (5) Letters and Email correspondence from SolarCity, Almaden Group (TAG) Linda Hutchins-Knowles and Richard Zahner, all dated March 1, 2016, offering input regarding Community Choice Aggregation. (6) Letter from San José Community Energy, dated January 29, 2016, offering support.

Environmental Services Director Kerrie Romanow and Environmental Program Manager René Eyerly offered a presentation on Community Choice Aggregation.

Motion: Vice Mayor Rose Herrera moved approval of the memorandum she cosigned with Mayor Sam Liccardo and Councilmembers Jones, Kalra and Perez, dated February 26, 2016, including the memorandum from Councilmember Ash Kalra, dated February 29, 2016. Councilmember Magdalena Carrasco seconded the motion.

Councilmember Johnny Khamis expressed doubt regarding risks involved.

City Attorney Richard Doyle responded to questions regarding inherent conflicts and recommended close scrutiny in developing the Request for Proposals (RFP) and review prior to issuance to avoid any potential conflicts of interest.

Public Comment: Offering support to the Staff recommendations and ideas for renewable energy development in San José were: Ruth Merino (San José Community Energy), Ann Hancock (Center for Climate Protection), Michael Kutilek (Sustainable San José), Margaret Bruce (Businesses for Clean Energy), Jack Tibbets (California Clean Power), Cecilie Schulze (League of Women Voters), Michael Gross (Zanker Recycling); James Eggers, Sue Chow and Jan Butts (Sierra Club), and Anna Koster,

Substitute Motion: Councilmember Johnny Khamis moved approval of #1 from the Staff's recommendations to accept the report and complete the study. Councilmember Pierluigi Oliverio seconded the motion.

On a call for the question, the Substitute Motion failed. (3-7-1. Noes: Carrasco, Herrera, Jones, Kalra, T. Nguyen, Peralez; Liccardo. Absent: Rocha.)

## 7.1 (Cont'd.)

Action: On a call for the question, the original motion carried, and the report regarding Community Choice Aggregation, an alternative model to provide energy to San José residents and businesses was accepted, including the joint memorandum from Mayor Sam Liccardo, Vice Mayor Rose Herrera, Councilmembers Jones, Kalra and Peralez, dated February 26, 2016, to (1) Accept the report on Community Choice Aggregation and the Staff recommendation to develop a Request for Proposals for an entity to develop, finance, launch and operate a Community Choice Aggregation program in San José, and present recommendations to Council in Fall of 2016; (2) Using data from the technical study, conduct an analysis and comparison of the “public option” wherein the City would operate the Community Choice Aggregation Program.

Also including Councilmember Ash Kalra’s memorandum, dated February 29, 2016: (1) In addition to an analysis and comparison of “public option”, including a San José specific option, such option should be considered as a prospective recommendation for the City to pursue once results from a technical study are complete; (2) A reliable method to calculate the source of renewable energy should be determined as part of the analysis of a CCA program; and (3) If there is excess revenue through a CCA program, a commitment that those funds be used for local clean energy programs that help the City move towards its goal of reliance on a 100 percent renewable energy and that creates local jobs for the City’s residents.

Additionally, to avoid potential conflicts of interest, Staff was directed to return with a viable framework for the Request for Proposals (RFP) to Council for review prior to issuing any RFP on the street. (9-1-1. Noes: Khamis. Absent: Rocha.)

## ADOURNMENT

The Council of the City of San José adjourned at 5:11 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,



Toni J. Taber, CMC  
City Clerk

rmk/3-1-16MIN