



## MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, MAY 10, 2016

The Council of the City of San José convened in Regular Session at 9:35 p.m. in the Council Chambers at City Hall.

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

Absent: Councilmembers - All Present.

### STRATEGIC SUPPORT SERVICES

#### 3.2 Accept Labor Negotiations Update.

There was no report.

### CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:40 p.m. to a Closed Session in Room W133; (A) to confer with Legal Counsel pursuant to subsection (c) of Section 54956.9 of the Government Code with respect to anticipated litigation in one (1) matter; (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9(d)(1) with respect to existing litigation; (1) 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; Amount of Money or Other Relief Sought: Damages According to Proof; (2) 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; (3) American Federation of State, County & Municipal Employees, et al. v. City; Names of Partie(s) Involved: American Federation of

## CLOSED SESSION (Cont'd.)

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; (4) 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; (5) 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; (6) 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. (7) 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. (8) 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. (9) 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. (10) 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; (11) People of the State of California, et al. v. City of San José, et al.; Names of Partie(s) Involved: The 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; (12) 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

## CLOSED SESSION (Cont'd.)

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; (C) 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.

By unanimous consent, Council recessed from the Closed Session at 11:00 a.m. and reconvened to Regular Session at 1:30 p.m. in the Council Chambers.

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

Absent: Councilmembers - All Present.

## INVOCATION

Father Jon Pedigo of Our Lady of Guadalupe provided the Invocation.

## PLEDGE OF ALLEGIANCE

Mayor Sam Liccardo led the Pledge of Allegiance.

## ORDERS OF THE DAY

Upon motion by Councilmember Rose Herrera, seconded by Councilmember Tam Nguyen and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Items 4.4 and 4.5 to be heard jointly, and Item 3.3 “Measure B Settlement Discussions – *Quo Warranto*” added. (11-0.)

## CEREMONIAL ITEMS

### **1.1 Presentation of a proclamation to the Jewish Federation of Silicon Valley honoring May as Jewish American Heritage Month in the City of San José. (Herrera)**

Mayor Sam Liccardo and Vice Mayor Rose Herrera presented a proclamation to the Jewish Federation of Silicon Valley honoring May as Jewish American Heritage Month in the City of San José.

### **1.2 Presentation of a proclamation declaring May as Asian American and Pacific Islander Heritage Month in the City of San José. (Kalra)**

Mayor Sam Liccardo and Councilmembers Ash Kalra, Manh Nguyen and Tam Nguyen declared the month of May as Asian American and Pacific Islander Heritage Month in the City of San José.

### **1.3 Presentation of a proclamation for Ao Dai Day in San José, in recognition of the local Vietnamese-American community. (Kalra)**

Mayor Sam Liccardo and Councilmembers Ash Kalra, Manh Nguyen and Tam Nguyen declared Ao Dai Day in San José, in recognition of the local Vietnamese-American community.

## CONSENT CALENDAR

Upon motion by Councilmember Rose Herrera, seconded by Councilmember Tam Nguyen and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (11-0.)

### 2.1 Approval of minutes:

None provided.

### 2.2 Final adoption of ordinances.

- (a) **ORD. NO. 29633 – An ordinance of the City of San José granting a Commercial Solid Waste and Recyclables Collection Franchise to Bay Area Dumpsters. CEQA: Not a Project, File No. PP10-068(c), Municipal Code or Policy Change that involves no changes to the physical environment.**

Action: Ordinance No. 29633 was adopted. (11-0.)

### 2.3 Approval of Council Committee Minutes.

- (a) **Rules and Open Government Committee Minutes of April 13, 2016. (Mayor)**  
(b) **Public Safety, Finance & Strategic Support Committee Minutes of April 21, 2016. (Oliverio)**

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

Documents Filed: (1) Rules and Open Government Committee Minutes dated April 13, 2016. (2) Public Safety, Finance & Strategic Support Committee Minutes dated April 21, 2016. (11-0.)

### 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 **Adopt a resolution authorizing the City Manager to:**
- (a) **Amend Purchase Order 51371 with Siemens Industry, Inc. (Hayward CA) for the Inspection, Maintenance and Repairs of the Fire Life Safety Systems (Systems) at the Norman Y. Mineta International Airport, to increase compensation by \$117,232, for a revised maximum compensation not to exceed \$381,101, for the current term ending June 30, 2016;**
  - (b) **Amend the Purchase Order as required to purchase additional parts and services subject to the appropriation of funds; and**
  - (c) **Execute four additional annual purchase orders, ending in June 2020, for parts, ongoing inspection, and maintenance and repair services, subject to the same terms and the annual appropriation of funds.**

**CEQA: Not a Project, File No. PP10-066(a), Agreements and Contracts for purchase orders/cooperative purchase of supplies that involve no changes to the physical environment. (Finance)**

Documents Filed: City Council Action Request from Director of Finance Julia H. Cooper, dated May 10, 2016, recommending adoption of a resolution.

Action: Resolution No. 77739, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to (1) Amend Open Purchase Order 51371 with Siemens Industry, Inc. for Inspection, Maintenance and Repairs of the Fire Life Safety Systems at the Norman Y. Mineta International Airport, to Increase Compensation by \$117,232 for a Revised Maximum Compensation Not to Exceed \$381,101, for the Current Term Ending June 30, 2016; (2) Amend the Purchase Order as Required to Purchase Additional Parts and Services, Subject to the Appropriation of Funds; and (3) Execute Four Additional Annual Purchase Orders Ending in June 2020 for Parts, Ongoing Inspection, and Maintenance and Repair Services, Subject to the Same Terms and the Annual Appropriation of Funds", was adopted. (11-0.)

- 2.8 **Approve an Amendment to the Master Service Agreement between the City of San José and Langham Consulting Services dated May 21, 2014, extending the term originally set to expire on May 20, 2016, to December 31, 2016, to provide continued support to the City related to the implementation of the Customer Information System and the Business Tax System. CEQA: Not a Project, File No. PP10-066, Agreements and Contracts. (Finance/Environmental Services)**

Documents Filed: City Council Action Request from Director of Finance Julia H. Cooper and Director of Environmental Services Kerrie Romanow, dated May 10, 2016, recommending approval of an Amendment to a Master Service Agreement.

Action: An Amendment to the Master Service Agreement between the City of San José and Langham Consulting Services dated May 21, 2014, extending the term originally set to expire on May 20, 2016, to December 31, 2016, to provide continued support to the City related to the implementation of the Customer Information System and the Business Tax System, was approved. (11-0.)

- 2.9 Approve a Grant Agreement between the City of San José and The Health Trust as fiscal agent of Destination: Home in the amount of \$100,000 to provide two years of funding to support coordination efforts on the new community-wide Campaign to End Veteran Homelessness. CEQA: Not a Project, File No. PP10-066(e), Agreements and Contracts for services that involve not physical change to the environment.**

Documents Filed: Memorandum from Director of Housing Jacky Morales-Ferrand, dated April 27, 2016, recommending approval of a Grant Agreement.

Action: A Grant Agreement between the City of San José and The Health Trust as fiscal agent of Destination: Home in the amount of \$100,000 to provide two years of funding to support coordination efforts on the new community-wide Campaign to End Veteran Homelessness was approved. (11-0.)

- 2.10 Report on bids and award of contract for the 8009 – Sanitary Sewer Repairs and Rehabilitation FY2015-2016 Project to the low bidder, Southwest Pipeline & Trenchless Corp., in the amount of \$1,347,022 and approve a 10% contingency in the amount of \$134,700. CEQA: Exempt, Section 15282(h) Other Statutory Exemptions and Public Resources Code Section 21080.21(a) (b), File No. PP13-076.**

Documents Filed: Memorandum from Director of Public Works Barry Ng, dated April 27, 2016, recommending acceptance of a report on bids and award of a contract.

Action: A report on bids and award of contract for the 8009 – Sanitary Sewer Repairs and Rehabilitation FY2015-2016 Project to the low bidder, Southwest Pipeline & Trenchless Corp., in the amount of \$1,347,022 and approve a 10% contingency in the amount of \$134,700, was approved. (11-0.)

- 2.11 Approve a Master Consultant Agreement with HDR Engineering, Inc. to provide engineering services for the 7731 – Nitrification Clarifiers Rehabilitation Project at the San José-Santa Clara Regional Wastewater Facility from the date of execution through December 31, 2023, in a total amount not to exceed \$5,000,000, subject to the appropriation of funds. CEQA: Statutory Exempt, File No. PP10-066(d), Section 15262, Feasibility and Planning Studies with respect to the scope of work that is limited to this action. Any future activities resulting in a change to the physical environment would require approval of CEQA review. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services Kerrie Romanow, dated April 4, 2016, recommending approval of a Master Consultant Agreement. (2) Letter from Treatment Plant Advisory Committee Chair, Sam Liccardo, dated May 10, 2016, expressing concurrence with the staff recommendations.

Action: A Master Consultant Agreement with HDR Engineering, Inc. to provide engineering services for the 7731 – Nitrification Clarifiers Rehabilitation Project at the San José-Santa Clara Regional Wastewater Facility from the date of execution through December 31, 2023, in a total amount not to exceed \$5,000,000, subject to the appropriation of funds, was approved. (11-0.)

- 2.12 **Approve travel for Councilmember Tam Nguyen to Portland, Oregon from May 27, 2016 to May 28, 2016 to visit and tour Right To Dream Too (R2DToo), a nonprofit organization that provides refuge for the homeless. Source of Funds: Council District 7. CEQA: Not a Project, File No. PP10-069(c), City Administrative Activities. (T. Nguyen)**

Documents Filed: Memorandum from Councilmember Tam Nguyen, dated April 28, 2016, requesting authorization to travel.

Public Comment: Robert Aguirre applauded Councilmember Nguyen's willingness to tour R2DToo and address needs of the homeless population.

Action: Upon motion by Councilmember Tam Nguyen, seconded by Councilmember Rose Herrera and carried unanimously, travel for Councilmember Tam Nguyen to Portland, Oregon from May 27, 2016 to May 28, 2016 to visit and tour Right To Dream Too (R2DToo), a nonprofit organization that provides refuge for the homeless, was approved. (11-0.)

- 2.13 (a) **Approve the Option to Purchase Agreement with the State of California, Department of Transportation, in the amount of \$850,000, for the purchase of approximately 1.655 acres of land located along the western side of South 31<sup>st</sup> Street between Alum Rock Avenue and East San Antonio Street, San José, CA, Assessor Parcel Numbers 481-14-130 for the future construction of a Neighborhood Park at South 31<sup>st</sup> Street.**
- (b) **Adopt a resolution authorizing the City Manager to execute the Option to Purchase Agreement and all other documents necessary to complete the transaction.**

**CEQA: Exempt, Section 15061(b)(3) No potential for causing a significant effect on the environment and Section 15262 Feasibility and Planning Studies, File No. PP16-024. Council District 5. (Economic Development / Parks, Recreation and Neighborhood Services)**

Documents Filed: Joint memorandum from Deputy City Manager/Director of Economic Development Kim Welsh and Director of Parks, Recreation and Neighborhood Services Angel Rios, Jr., dated May 4, 2016, recommending approval of an option to purchase real property.

Action: Resolution No. 77740, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute the Option to Purchase Agreement with the State of California, Department of Transportation, in the Amount of \$850,000, for the Purchase of Approximately 1.655 Acres of Land Located Along the Western Side of South 31<sup>st</sup> Street Between Alum Rock Avenue and East San Antonio Street, San José, CA for the Future Construction of a Neighborhood Park at South 31<sup>st</sup> Street, and All Other Documents Necessary to Complete the Transaction", was adopted. (11-0.)

- 2.14 As recommended by the Rules and Open Government Committee meeting on May 4, 2016, adopt a position of support for AB 1928 (Campos). CEQA: Not a Project, File No. PP10-069(d), Legislative Positions. (Environmental Services)  
[Rules Committee referral 5/4/16 – Item G(2)]**

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated May 6, 2016, providing recommendations of the Rules and Open Government Committee.

Action: A position of support for AB 1928 Water Efficiency: Landscape Irrigation Equipment (Campos) was adopted. (11-0.)

- 2.15 As recommended by the Rules and Open Government Committee meeting on May 4, 2016, adopt a position of support for SB 1213 (Wieckowski).**

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated May 6, 2016, providing recommendations of the Rules and Open Government Committee.

Action: A position of support for SB 1213 (Wieckowski) – Renewable Energy: Biosolids: Matching Grants was adopted. (11-0.)

## **END OF CONSENT CALENDAR**

### **STRATEGIC SUPPORT SERVICES**

- 3.1 Report of the City Manager, Norberto Dueñas (Verbal Report).**

City Manager Norberto Dueñas promoted tours of the San José Wastewater Plant, applauding the vital role the Plant plays in protecting the City's water supply, and he announced an open house hosted by the Planning, Building and Code Enforcement Department on May 25, 2016 to familiarize residents with the permit and inspection process.

- 3.3 Direct City staff to take the necessary steps to implement the Writ of Quo Warranto and Judgment in the San José Police Officers' Association's (POA) Quo Warranto action (Case No. 1-13-CV-245503). CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (City Manager)**

Documents Filed: Memorandum from City Manager Norberto Dueñas, dated May 6, 2016, regarding the Measure B Settlement.

Motion: Council Member Raul Peralez moved approval to declare Resolution 76158 null and void and not properly adopted for the reasons set forth in the Writ and, as such, Measure B was not properly placed before the electorate as set out in the Writ. The motion was seconded by Councilmember Rose Herrera.

### 3.3 (Cont'd.)

Public Comment: Offering comments and support to the City Manager's recommendations and implementation of the Writ of *Quo Warranto*, were Safwan Siddiqi, Yolanda Cruz, Sean Kaldor, Paul Kelly, David Printy, Jon Max Reger, and Jara Capaldo.

Action: On a call for the question, the motion carried unanimously, and due to the City of San José having been commanded by the Superior Court by Writ in *Quo Warranto* to comply with the Stipulated Facts and Proposed Findings, Judgement and Order in the *Quo Warranto* proceeding, the City Council declared that Resolution 76158 was not properly adopted for the reasons set forth in the Writ and, as such, Measure B was not properly placed before the electorate as set out in the Writ. Staff was directed to take all necessary steps to implement the Writ and Judgement in the *Quo Warranto* Action. (11-0.)

## COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 **As recommended by the Rules and Open Government Committee on April 6, 2016, accept the staff report regarding the scope, workload assessment and budget for the potential establishment of a Business Development Commission (BDC). CEQA: Not a Project, File No. PP10-069(a), Staff Reports that involve no approvals of any City Actions. (Economic Development)**

Action: Deferred to May 17, 2016 per Rules and Open Government Committee.

- 4.2 **Consideration of an ordinance for a Planned Development Conforming Rezoning to redistribute the locations of the residential and public park land uses and eliminate the school land use on the northern portion of the previously approved Land Use Map (File No. PDC09-006), located on an approximately 9.0 gross acre site, on the North side of Berryessa Road on the northern portion of the parcel just west of Union Pacific Railroad tracks (Flea Market, Owner). Director of Planning, Building and Code Enforcement recommends approval of the Conforming Rezoning as proposed with the condition requiring the property owner to rezone the south side of Berryessa Road to include a minimum of 315,022 square feet and up to a maximum of 2.2 million square feet of commercial/retail/industrial space if no significant improvements have been constructed on the south side of Berryessa Road under the existing entitlements by November 1, 2016 consistent with the San José 2040 General Plan. CEQA: Determination of Consistency with the Flea Market General Plan Amendment and Planned Development Rezoning Project Final EIR and Addenda thereto (Resolution No. 73956). (Planning, Building and Code Enforcement)**  
**PDC16-001 – Council District 4**

Documents Filed: (1) Memorandum from Councilmember Manh Nguyen dated April 19, 2016, recommending deferral of this item to May 17, 2016. (2) Memorandum from Councilmember Manh Nguyen dated May 9, 2016 recommending conforming rezoning with additional recommendations. (3) City Council Staff Report dated May 10, 2016, recommending approval of the Conforming Rezoning.

#### 4.2 (Cont'd.)

Director of Planning, Building and Code Enforcement Harry Freitas provided a presentation.

Public Comments: (1) Erik Schoennauer, representing the Applicant, offered a presentation regarding community benefits of the flea market development proposal. (2) Will Ector suggested enhanced facility for school use. (3) David Cohen, Berryessa Union School District, offered support. (4) Farris Johnson recommended the property be used for housing seniors and veterans. (5) Shaunn Cartwright lamented that this action would displace residents and force out poor and minority community members.

Motion: Councilmember Manh Nguyen moved approval of the staff recommendations, including his memorandum dated May 9, 2016. Councilmember Rose Herrera seconded the motion.

Action: On a call for the question, the motion carried unanimously, and Ordinance No. 29729, entitled "An Ordinance of the City of San José Rezoning Certain Real Property of Approximately 120 Gross Acres Situated on Both Sides of Berryessa Road, East of the Coyote Creek, West of the Former Union Pacific Railroad Tracks and North of Mabury Road (The San José Flea Market), From the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District", was passed for publication, including direction as outlined in Councilmember Manh Nguyen's memorandum dated May 9, 2016, approving the Conforming Rezoning as outlined by staff for a 1.9-acre area located on the North side of Berryessa Road, with additional direction for the Administration to: (1) Continue efforts to engage the community in the planning of the parks and public spaces beyond the initial \$5 million park improvements contribution by the developer; (2) Formulate a strategy to mitigate speeding & pedestrian safety issues on the segment of Sierra Road between Berryessa Road and Lundy Avenue for which the developer has agreed to contribute \$10,000, and return to the Transportation & Environment Committee in September with an update; and (3) Work closely with the VTA and the County of Santa Clara to explore the creation of an Enhanced Infrastructure Financing District (EIFD) that encompasses the Berryessa Flea Market site and Berryessa BART station area; and report back to Council in the Fall with recommendations on potential formation of an EIFD in the Berryessa Area.

Additionally, to add a condition to approve, subject to previous Council approval from June 2015, that \$7.1M in 101/Oakland/Mabury Traffic Impact Fees are due, prior to the issuance of the 738 residential building permits for the entire Flea Market development. The \$7.1M is to be escalated in accordance with the policy to date payment is made. (11-0.)

- 4.3 As recommended by the Community and Economic Development Committee on April 25, 2016, accept the staff report on the Development Services Process Improvement Workplan and Development Services Staffing. CEQA: Not a Project, File No. PP10-069(a), Staff Reports that involve no approvals of any City Actions. (Planning, Building and Code Enforcement)

Action: Deferred to May 17, 2016 per Rules and Open Government Committee.

- 4.4 (a) Direct staff to return with an Ellis Act ordinance to address the process to be followed for owners of ARO apartments subject to the ARO (ARO apartments) seeking to remove their building from the rental business.
- (b) Direct staff to review the City's demolition provisions in the zoning code and to coordinate with PBCE as needed regarding updating those provisions in order to address the demolition of ARO apartments.
- (c) Direct staff to review the City's condominium conversion provisions in Chapter 20.170 to and coordinate with PBCE as needed regarding updating those provisions in order to address the conversion of ARO apartments.

*Note: Continued from 4/19/16 – Item 4.1(d), (e), (f) and (h)*

*Heard jointly with Item 4.5.*

*Item bifurcated: Item 4.4 (d) heard separately.*

Documents Filed: (1) Memorandum from Council Member Raul Peralez, dated May 10, 2016, offering direction regarding modifications to the ordinance. (2) Two letters from members of the public dated April 14, 2016 and May 10, 2016, providing input regarding renters' rights.

Director of Housing Jacky Morales-Ferrand provided a presentation and responded to questions from Council.

Public Comments Items 4.4 and 4.5: Offering comments regarding a rent control proposal, relocation benefits, a proposed registry and the City's actions regarding the housing crisis, were: Susan Price-Jang, Shelley Leiser, Shevlin de la Rosa, Christian Ollan, Carol Stephenson and Martha Orellana (PACT); Bob Brownstein, Mathew Reed, Farris Johnson, Jill Borders, Roger Pennington, Melissa Morris (Law Foundation of Silicon Valley), Milt Krantz, Marco, David Eisbach, Dan Pan, Jenny Zhao, Gustavo Gonzalez, Isaac Agaer, Maria E., Anil Babbar, Jim Chen, David Wong, Shashi Jaggia, Carlos Padilla, Daniel Lee, David Down, Anna, James Welsh, Malcolm Lee, Anna Ling, Adeles Fan, Quan He, Shaunn Cartwright, Ben O'Hara, Robert Aguirre, Andrew Lui, John Olson (SHACK), Sheila Kay, Javier Vega (Prestige Real Estate), Mary Priedger, Gary Driedger, Peggy Elwell (Low Income Self Help Center), Roger Pennington, Sandy Perry (Affordable Housing Network), Roberta Moore, Ron Johnson, Farris Johnson, Horacio Figarella, Marc Boyd (Boyd Properties) and Anthony King (Silicon Valley De-Bug).

Motion: Councilmember Raul Peralez moved approval of Staffs' recommendations addressing Ellis Act evictions, including his memorandum dated May 10, 2016 "Modifications to the Apartment Rent Ordinance". Councilmember Donald Rocha seconded the motion.

#### 4.4 (Cont'd.)

Substitute Motion: Councilmember Johnny Khamis moved approval to place this item as a Study Session item to 'vet out'. Councilmember Rose Herrera seconded the motion.

Action: On a call for the question, the substitute motioned failed. (5-6. Noes: Carrasco, Jones, Kalra, Peralez, Rocha, Liccardo.)

Action: On a call for the question, the original motion carried, with (a) Staff directed to return with an Ellis Act ordinance to address the process to be followed for owners of ARO apartments subject to the ARO (ARO apartments) seeking to remove their building from the rental business; (b) Staff directed to review the City's demolition provisions in the zoning code and to coordinate with PBCE as needed regarding updating those provisions in order to address the demolition of ARO apartments; (c) Staff directed to review the City's condominium conversion provisions in Chapter 20.170 and to coordinate with PBCE as needed regarding updating those provisions in order to address the conversion of ARO apartments; (d) Staff directed to return with a plan to increase staffing to sufficiently administer, monitor, and enforce requirements of ARO; and including Councilmember Raul Peralez' memorandum, dated May 10, 2016, to "Direct Staff to return with an ordinance or ordinances addressing Ellis Act evictions from ARO apartments, demolition of ARO units, and conversion of ARO apartments to condominiums, with the following direction: (1) Ordinance must cover the following: (a) Displacement of tenants for demolition of rental properties under ARO; (b) Displacement of tenants for major rehabilitation of rental properties under ARO; (c) Displacement of tenants by conversion of rental properties under ARO to condominiums; (2) The requirements should apply to all rental housing of 4 units or more, as highlighted under recommendation number 8 on Councilmember Jones' memo; (3) Staff should analyze relocation benefits provided in other cities and compare with recommendations suggested for implementation in San José. The benefits should include the following: (a) 3 months of monthly median rent for a unit of comparable size/number of bedrooms; (b) Mandate to return deposit made on rental unit; (c) Mandate a right to return for displaced tenants; (d) Low income households (at 80% of AMI or lower), people with disabilities, seniors and families with minor children will receive additional relocation benefits of at least \$3,000 per household, as recommended by Councilmember Jones", was approved. (7-4. Noes: Herrera, Khamis, M. Nguyen, Oliverio.)

**(d) Direct staff to return with a plan to increase staffing to sufficiently administer, monitor, and enforce requirements of ARO.**

**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 actions requires Council approval. (Housing)**

Motion: Councilmember Donald Rocha moved approval of Staff recommendations. Vice Mayor Rose Herrera seconded the motion.

Action: On a call for the question, the motion carried, with Staff directed to return with a plan to increase staffing to sufficiently administer, monitor, and enforce requirements of ARO. (10-1. Noes: Oliverio.)

**4.5 Amend Chapter 17.23 of Title 17 of the San José Municipal Code providing an interim reduction in annual rent increases to 5%, establish a deadline for cost pass-through petition filing under the current Apartment Rent Ordinance, and providing an interim fair return petition process, effective until January 1, 2017 or sixty days after the effective date of an Ordinance amending Chapter 17.23 consistent with Council direction, either by:**

- (a) Adopting an urgency ordinance adding Part 8 to Chapter 17.23 of Title 17 of the San José Municipal Code; or**
- (b) Approving an ordinance adding Part 8 to Chapter 17.23 of Title 17 of the San José Municipal Code.**

**CEQA: Exempt, Section 15061(b)(3) No potential for causing a significant effect on the environment, File No. PP16-051. (Housing)**

Documents Filed: (1) Memorandum from Council Member Raul Peralez, dated May 10, 2016, "Interim Apartment Rent Ordinance Related to Temporary Allowable Rent Increases and Cost Pass-Through Provisions"; (2) Memorandum from Director of Housing Jacky Morales-Ferrand, dated April 29, 2016, recommending an amendment to Chapter 17.23 of Title 17 of the San José Municipal Code.

Second Motion: Councilmember Raul Peralez moved approval of Staff's recommendation, including his memorandum dated May 10, 2016, specifically recommendations #1 and #3 with direction to Staff to implement a moratorium on "No Cause" evictions. Councilmember Magdalena Carrasco seconded the motion.

Action: On a call for the question, the second motion failed. (7-4. Noes: Herrera, Khamis, M. Nguyen, Oliverio.) *Note: 8 votes required for an Urgency Ordinance.*

Motion: Councilmember Ash Kalra moved approval of Staff's recommendation (2) to adopt an ordinance adding Part 8 to Chapter 17.23 of Title 17 of the San José Municipal Code. The motion was seconded by Councilmember Donald Rocha.

Action: On a call for the question, the motion carried, and Ordinance No. 29730 entitled "An Ordinance of the City of San José Adding Part 8 to Chapter 17.23 of Title 17 of the San José Municipal Code to Provide an Interim Reduction in Certain Rent Increases and a Pause in Filings for Pass Through Petitions", was passed for publication. (9-2. Noes: M. Nguyen, Oliverio.)

**4.6 As recommended by the Rules and Open Government Committee meeting on May 4, 2016, direct the City Manager to:**

- (a) Negotiate and execute new lease terms with the Office of Economic Development with the intent to share the space at the Shirakawa Community Center until June 30, 2018 as currently contemplated, and that may include future relocation(s) of the Work2Future program to other Re-Use sites in the City of San José;**
- (b) Approve the use of a portion of the Shirakawa Community Center for an interim Vietnamese American community center by October 2016, while exploring an option for gradual transition to full occupancy by June 30, 2018 or sooner;**

4.6 (Cont'd.)

- (c) Identify additional funding required for the initial operations for the Vietnamese American Community Center, with the City of San José as the lead operator and report back to the City Council as part of the 2016-2017 Budget process through a Manager's Budget Addendum;
- (d) Begin a Request for Qualifications (RFQ) process similar to the current PRNS Re-Use RFQ process that solicits interest from community based organizations that are interested in collaboratively providing services at the Center;
- (e) Conduct outreach to gather input on possible services and programs that the community would like to see at the Vietnamese American community center in parallel with the RFQ process;
- (f) Approve and accept donations from various individuals, business or community groups to support the effort; and
- (g) Develop a fundraising plan for improvements at the Lucretia Avenue location or for construction of a new center as part of the \$300,000 identified in the Mayor's March Budget Message.

**CEQA: Not a Project, File No. PP10-066 (f) Agreements and contacts for lease of existing space for the same use and Not a Project, File No. PP10-068, General Procedure & Policy Making when eventual action required Council approval. (Mayor / M. Nguyen/ T. Nguyen)**

Documents Filed: (1) Memorandum from Councilmember Ash Kalra, dated May 10, 2016, providing support to the recommendations. (2) Memorandum from City Clerk Toni J. Taber, dated May 6, 2016, transmitting the recommendations of the Rules and Open Government Committee.

Public Comments: Offering support to the Vietnamese American Community Center were: Hien Nguyen, H.G. Nguyen, Tuyet Tran, Dan Do, Nga Nguyen, Loc Vu, Jenny Do, Quyen Vuong, Tina Thuy Hang Pham, Rosalie Nguyen Thi Hoac, Pham Hui Sou, Mylinh Pham Shani Kleinhaus, Truong Vu and Hai Ho Train.

Motion: Councilmember Manh Nguyen moved approval of the Vietnamese American Community Center with direction as outlined in the memorandum he coauthored with Mayor Sam Liccardo and Councilmember Tam Nguyen, dated April 28, 2016, and the memorandum from Councilmember Ash Kalra, dated May 10, 2016. Councilmember Tam Nguyen seconded the motion.

Action: On a call for the question, the motion carried unanimously, and (a) negotiation and new lease terms with the Office of Economic Development with the intent to share the space at the Shirakawa Community Center until June 30, 2018 as currently contemplated, and that may include future relocation(s) of the Work2Future program to other Re-Use sites in the City of San José, were approved, including (b) the use of a portion of the Shirakawa Community Center for an interim Vietnamese American community center by October 2016, while exploring an option for gradual transition to full occupancy by June 30, 2018 or sooner; (c) identification of additional funding required for the initial operations for the Vietnamese American Community Center, with the City of San José as

#### 4.6 (Cont'd.)

the lead operator and report back to the City Council as part of the 2016-2017 Budget process through a Manager's Budget Addendum; (d) Beginning a Request Qualifications (RFQ) process similar to the current PRNS Re-Use RFQ process that solicits interest from community based organizations that are interested in collaboratively providing services at the Center; (e) Conducting outreach to gather input on possible services and programs that the community would like to see at the Vietnamese American community center in parallel with the RFQ process; (f) approval and acceptance of donations from various individuals, business or community groups to support the effort; and including (g) development of a fundraising plan for improvements at the Lucretia Avenue location or for construction of a new center as part of the \$300,000 identified in the Mayor's March Budget Message, including the memorandum from Mayor Sam Liccardo and Councilmembers Manh Nguyen and Tam Nguyen, dated April 28, 2016, and the memorandum from Councilmember Ash Kalra, dated May 10, 2016. (11-0.)

### TRANSPORTATION AND AVIATION SERVICES

- 6.1 (a) **Report on bids and award of a construction contract for the 8083 – 2016 Arterial Resurfacing Project, to the low bidder, MCK Services, Inc. in the amount of \$13,703,110.**
- (b) **Approve a 10% contingency in the amount of \$1,370,311.**  
**CEQA: Exempt, Section 15301 (c) Existing Facilities, File No. PP14-069.**  
**(Transportation/Public Works)**

Documents Filed: Joint memorandum from Director of Transportation, Jim Ortbal and Director of Public Works Barry Ng, dated April 27, 2016, recommending award of a construction contract.

Action: Upon motion by Vice Mayor Rose Herrera, seconded by Council Member Pierluigi Oliverio and carried unanimously, the report on bids and award of a construction contract for the 8083 – 2016 Arterial Resurfacing Project, to the low bidder, MCK Services, Inc. in the amount of \$13,703,110, with related contingencies, was approved. (11-0.)

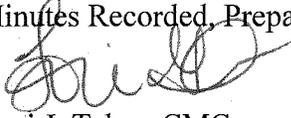
### OPEN FORUM

Blair Beekman offered comments on national security issues and urged more stringent government accountability.

**ADJOURNMENT**

The Council of the City of San José was adjourned at 6:59 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,



Toni J. Taber, CMC  
City Clerk

rmk/5-10-16MIN