



# CITY COUNCIL AGENDA

**MAY 13, 2014**

## **SYNOPSIS**

PETE CONSTANT  
ASH KALRA  
SAM LICCARDO  
KANSEN CHU  
XAVIER E. CAMPOS

DISTRICT 1  
DISTRICT 2  
DISTRICT 3  
DISTRICT 4  
DISTRICT 5

CHUCK REED MAYOR

PIERLUIGI OLIVERIO  
MADISON NGUYEN, VICE MAYOR  
ROSE HERRERA  
DONALD ROCHA  
JOHNNY KHAMIS

DISTRICT 6  
DISTRICT 7  
DISTRICT 8  
DISTRICT 9  
DISTRICT 10

*The City of San José is committed to open and honest government and strives to consistently meet the community's expectations by providing excellent service, in a positive and timely manner, and in the full view of the public.*

Welcome to the San José City Council meeting!

This Agenda contains both a Consent Calendar section for routine business items that require Council approval, and general business items arranged to correspond with San José's City Service Areas (CSAs). City Service Areas represent the policy-making level for strategic planning, policy setting, and investment decisions in the critical functions the City provides to the community. They are:

- ***Strategic Support Services*** — The internal functions that enable the CSAs to provide direct services to the community in an effective and efficient manner.
- ***Community & Economic Development*** — Manage the growth and change of the community in order to create and preserve healthy neighborhoods and ensure a diverse range of employment and housing opportunities.
- ***Neighborhood Services*** — Serve, foster, and strengthen community by providing access to lifelong learning and opportunities to enjoy life.
- ***Transportation & Aviation Services*** — A safe and efficient transportation system that contributes to the livability and economic health of the City; and provide for the air transportation needs of the community and the region at levels that is acceptable to the community.
- ***Environment and Utility Services*** — Manage environmental services and utility systems to ensure a sustainable environment for the community.
- ***Public Safety Services*** — Commitment to excellence in public safety by investing in neighborhood partnerships as well as prevention, enforcement, and emergency preparedness services.

You may speak to the City Council about any discussion item that is on the agenda, and you may also speak during Open Forum on items that are not on the agenda and are within the subject matter jurisdiction of the City Council. If you wish to speak to the City Council, please refer to the following guidelines:

- **Fill out a Yellow Speaker's Card and submit it to the City Clerk seated at the front table. Do this before the meeting or before the item is heard.** This will ensure that your name is called for the item(s) that you wish to address, and it will help ensure the meeting runs smoothly for all participants.
- When the Council reaches your item on the agenda, Mayor Reed will open the public hearing and call your name. Please address the Council from the podium, which is located to the left of the City Clerk's table.
- Each speaker generally has two minutes to speak per item. The amount of time allotted to speakers may vary at the Mayor's discretion, depending on the number of speakers or the length of the agenda.
- To assist you in tracking your speaking time, there is a display on the podium. The green light turns on when you begin speaking; the yellow light turns on when you have 30 seconds left; and the red light turns on when your speaking time is up.

Please be advised that, by law, the City Council is unable to discuss or take action on issues presented during Open Forum. According to State Law (the Brown Act) items must first be noticed on the agenda before any discussion or action.

The San José City Council meets every Tuesday at 1:30 p.m. and Tuesday at 7 p.m. as needed, unless otherwise noted. If you have any questions, please direct them to the City Clerk's staff seated at the tables just below the dais. Thank you for taking the time to attend today's meeting. We look forward to seeing you at future meetings.

Agendas, Staff Reports and some associated documents for City Council items may be viewed on the Internet at <http://www.sanjoseca.gov/index.aspx?NID=3549>. Council Meetings are televised live and rebroadcast on Channel 26.

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the Office of the City Clerk at San José City Hall, 200 E. Santa Clara Street, Council Wing, 2<sup>nd</sup> Floor, San José, CA 95113 at the same time that the public records are distributed or made available to the legislative body. Any draft contracts, ordinances and resolutions posted on the Internet site or distributed in advance of the Council meeting may not be the final documents approved by the City Council. Contact the Office of the City Clerk at (408) 535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for the final document.

To request an accommodation or alternative format under the Americans with Disabilities Act for City-sponsored meetings, events or printed materials, please call (408) 535-1260 or (408) 294-9337 as soon as possible, but at least three business days before the meeting.

On occasion the City Council may consider agenda items out of order.

- **Call to Order and Roll Call**  
9:37 a.m. - Closed Session, Call to Order in Council Chambers  
**Absent Council Members: All Present.**  
  
1:32 p.m. - Regular Session, Council Chambers, City Hall  
**Absent Council Members: All Present.**  
  
7:03 p.m. - Public Hearings, Council Chambers, City Hall  
**Absent Council Members: All Present.**
- **Invocation (District 5)**  
Sikh Guadwara Sahib offered the Invocation.
- **Pledge of Allegiance**  
Mayor Reed, accompanied by Third Grade Students from John Muir Elementary, led the Pledge of Allegiance.
- **Orders of the Day**  
The Orders of the Day and the Amended Agenda were approved, with Item 3.4, the Public Hearing on Fiscal Year 2014-2015 Proposed Operating and Capital Budgets and Fees and Charges were heard in the afternoon and the evening.

- Closed Session Report  
No Report.

## 1. CEREMONIAL ITEMS

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- 1.1 Presentation of a proclamation declaring the month of May 2014 as “Older American Month” in the City of San José. (Constant)  
**Mayor Reed and Council Member Constant recognized the month of May 2014 as “Older American Month” in San José.**
- 1.2 Presentation of a proclamation declaring the second week of May 2014 as “National Women’s Lung Health Week” in the City of San José. (Herrera)  
**Heard in the Evening.**  
**Mayor Reed and Council Member Herrera recognized the second week of May 2014 as “National Women’s Lung Health Week” in San José.**
- 1.3 Presentation of a commendation to HomeFirst in providing shelter to more than 5,600 community members annually including veterans, families, and youth for more than 20 years. (Nguyen)  
**Mayor Reed, Vice Mayor Nguyen and Council Members Liccardo and Kalra recognized and commended HomeFirst for their exemplary endeavors in providing shelter.**
- 1.4 Presentation of a commendation for teachers who have received National Board Certification. (Liccardo)  
(Rules Committee referral 5/7/14)  
**Heard in the Evening.**  
**Mayor Reed and Council Member Liccardo recognized and commended the teachers who have received National Board Certification.**
- 1.5 Presentation of commendation to Sikh Guadwara Sahib for their work in the community, including the distribution of over 1,000 meals a week for those in need. (Campos)  
(Rules Committee referral 5/7/14)  
**Mayor Reed and Council Members Campos, Herrera and Kalra recognized and commended Sikh Guadwara Sahib for their outstanding efforts in the community.**

## 2. CONSENT CALENDAR

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### 2.1 Approval of Minutes.

**Recommendation:** Approval of minutes.

(a) Regular Minutes of January 14, 2014.

(b) Regular Minutes of January 28, 2014.

**Approved.**

## 2. CONSENT CALENDAR

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### 2.2 Final Adoption of Ordinances.

**Recommendation:** Final adoption of ordinances.

- (a) ORD. NO. 29408 – Amending Title 4 of the San Jose Municipal Code to amend Chapter 4.86 to extend the use tax allocation incentive under the Business Cooperation Program for an additional five years through October 15, 2019, and extending its application to businesses that establish points of sale in San José by changing their business operations for business-to-business transactions.

**Ordinance No. 29408 adopted.**

### 2.3 Approval of Council Committee Reports.

**Recommendation:** Approval of Council Committee Reports.

- (a) Rules and Open Government Committee Report of April 23, 2014. (Mayor)
- (b) Community and Economic Development Committee Report of April 28, 2014. (Herrera)
- (c) Committee on Economic Competitiveness Report of April 7, 2014. (Mayor)
- (d) Public Safety, Finance, and Strategic Support Committee Report of April 17, 2014. (Constant)

**Approved.**

### 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.

**There were none.**

### 2.7 Appointment of City Staff Member as Alternate to the Implementation Board of the Santa Clara Valley Habitat Agency.

**Recommendation:** Adopt a resolution appointing Jason Rogers, Division Manager, to serve as the non-elected alternate member on the Implementation Board. CEQA: Not a Project, File No. PP10-069, City Organizational and Administrative Activities. (Planning, Building and Code Enforcement)

**Resolution No. 76965 adopted.**

## 2. CONSENT CALENDAR

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### 2.8 District 1 Candidate Forum.

**Recommendation:** As recommended by the Rules and Open Government Committee on May 7, 2014:

- (a) Approve the District 1 Candidate Forum as a City Council sponsored Special event scheduled for May 10, 2014 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. (Constant)

[Rules Committee referral 5/7/14 – Item G(2)]

**Approved.**

### 2.9 June 3, 2014 California Primary Election Ballot – Proposition 41 and 42.

**Recommendation:** As recommended by the Rules and Open Government Committee on May 7, 2014, approve the recommended City positions for Propositions 41 and 42 on the June 3, 2014 California Primary Election Ballot.

#### Propositions

#### Recommended City Position

Proposition 41 – Veterans Housing and Homeless  
Prevention Board Act of 2014

Support

Proposition 42 – Public Records. Open Meetings.  
State Reimbursement to Local Agencies.  
Legislative Constitutional Amendment.

Support

(City Manager)

[Rules Committee referral 5/7/14 – Item G(4)]

**Support Positions Approved.**

## 3. STRATEGIC SUPPORT SERVICES

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### 3.1 Report of the City Manager, Edward Shikada (Verbal Report). No Report.

### 3.2 Labor Negotiations Update.

**Recommendation:** Accept Labor Negotiations Update.

**Heard at 9:30 a.m.**

**No Report.**

### **3. STRATEGIC SUPPORT SERVICES**

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#### **3.3 Actions Related to the Agreement with Google Fiber for Future Installation of Google Fiber Network.**

**Recommendation:**

- (a) Accept status report on the City's efforts to submit information requested by Google Fiber for its consideration of selecting San José for the future installation of a Google Fiber network.
- (b) Adopt a resolution authorizing the City Manager or his designee to execute a master Network Hut License Agreement with Google Fiber, and to execute Network Hut Site Terms thereunder for individual sites following City Council approval of such individual sites.

CEQA: Not a Project, File No. PP10-066, Agreements and Contracts. (City Manager)  
(Deferred from 4/29/14 – Item 3.4 and 5/6/14 – Item 3.3)

**Deferred to May 20, 2014 per Administration.**

#### **3.4 Public Hearing on the Proposed Operating and Capital Budgets for the Fiscal Year 2014-2015 Including the Proposed Departmental Fees and Charges for the City of San José.**

**Recommendation:** Conduct a Public Hearing on the City's Proposed Operating and Capital Budgets for the Fiscal Year 2014 -2015, the Proposed Five-Year Capital Improvement Program for 2015-2019, and the Proposed Fees and Charges Report for the Fiscal Year 2014-2015. (City Manager)

**The Public Hearing was held in the afternoon and in the evening, per Orders of the Day.**

### **4. COMMUNITY & ECONOMIC DEVELOPMENT**

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#### **4.1 Agreement with Prospect Silicon Valley for the Sublease of San José Environmental Innovation Center.**

**Recommendation:**

- (a) Conduct a Public Hearing concerning an economic development subsidy to be provided to Prospect Silicon Valley or "Prospect SV," in connection with a below-market lease, pursuant to California Government Code Section 53083; and
- (b) Adopt a resolution authorizing the City Manager, or his designee, to execute a below-market sublease, for an initial term of five (5) years, plus two (2) three (3) year extension options, with Prospect SV, for approximately 23,492 square feet of space in real property located at 1608 Las Plumas Avenue, known as the San José Environmental Innovation Center, or "EIC," for purposes of operating a clean technology demonstration center.

CEQA: Negative Declaration for the San José Environmental Innovation Center, File No. PP09-138. (Economic Development)

**Deferred to June 3, 2014 per Administration.**

## 4. COMMUNITY & ECONOMIC DEVELOPMENT

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### 4.2 Actions Related to the Agreement with San José Fairmont Lessee, LLC for Catered Event Management Services.

**Recommendation:** Adopt resolutions:

- (a) Authorizing the City Manager to negotiate and execute a continuation agreement to the Catering Management Services Agreement at the Fourth Street Garage Banquet Center with San José Fairmont Lessee, LLC, the successor in interest to Light Tower Associates, L.P. (aka the Fairmont) for an additional term through May 14, 2014, and making other changes thereto including but not limited to reducing the minimum guarantee due the City for the additional term from \$212,000 to \$101,200, and reducing the minimum guarantee currently owed the City for the term that expired on February 28, 2013, by an amount not to exceed \$36,125.

**Resolution No. 76966 adopted.**

- (b) Authorizing the City Manager to negotiate and execute an agreement with the San José Fairmont Lessee, LLC as the exclusive contractor to provide catering management services at the Fourth Street Garage Banquet Center and City Hall, for a term of two years, with the option of up to four additional two-year terms at the City's discretion, commencing on May 15, 2014.

**Resolution No. 76967 adopted.**

- (c) Revising the Schedule of Fees for Use of City Hall and the Plaza and superseding section 3C, 3H, 3I, 4A(2d), 4G, and 4H in Resolution No. 75379, to be effective May 15, 2014.

CEQA: Not a Project, File No. PP10-066(a), Purchase of Supplies, Equipment & Professional Services with no changes in the physical environment. Council District 3. (Public Works)

(Deferred from 5/6/14 – Item 4.2)

**Resolution No. 76978 adopted.**

### 4.3 Public Hearing on the Reorganization/Annexation of Alum Rock No. 15.

**Recommendation:** Conduct a Public Hearing and consider the adoption of a resolution ordering the Reorganization/Annexation to the City of San José of an approximately 1.78 gross acre County pocket consisting of 2 parcels located on the south side of Alum Rock Avenue, approximately 150 feet east of Sunnyslope Avenue. Implementation of the annexation would result in the detachment of properties within the annexation area from County Sanitation District No. 2-3, Central Fire Protection, Lighting, and Area No. 01 (Library Services) County Service (Nancy Le, Owner). CEQA: Exempt, File No. PDC11-008. Council District 5. (Planning, Building and Code Enforcement)

**The Public Hearing was held.**

**Resolution No. 76969 adopted.**

## 4. COMMUNITY & ECONOMIC DEVELOPMENT

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### 4.4 Proposed Formation of Zone C (Innovation Drive) in Maintenance District 19 (River Oaks Area Landscaping).

**Recommendation:** Conduct a Public Meeting to receive public comment on the proposed formation of Zone C (Innovation Drive) in Maintenance District 19 (River Oaks Area Landscaping). CEQA: North San José Development Policy Update EIR, Resolution No. 72768. Council District 4. (Public Works)

**The Public Hearing was held.**

### 4.5 Intent to Form Community Facilities District No. 15.

**Recommendation:** Adopt a resolution of intention to form Community Facilities District No. 15 (Berryessa - Sierra) to:

- (a) Authorize the levy of a special tax pursuant to the City of San José Community Facilities District Financing Procedure.
- (b) Set a Public Hearing on June 17, 2014 at 1:30 p.m. regarding the formation of the District.
- (c) Hold an Election immediately following the close of the public hearing and authorize other related actions.

CEQA: San José Flea Market EIR (File No. PDC03-108), Resolution No. 73956. Council District 4. (Public Works)

**Resolution No. 76970 adopted.**

## 5. NEIGHBORHOOD SERVICES

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## 6. TRANSPORTATION & AVIATION SERVICES

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### 6.1 Request for Installation of All-Way Stop Signs at the Intersection of Di Salvo Avenue and Bailey Avenue.

**Recommendation:** Conduct a Public Hearing pursuant to Section 11.18.060 of the San José Municipal Code and adopt a resolution to affirm the decision of the Appeals Hearing Board to uphold the denial by the Department of Transportation of the request for installation of all-way stop signs at the intersection of Di Salvo Avenue and Bailey Avenue located in the City of San José. CEQA: Exempt, File No. PP10-113. Council District 6. (Transportation)

(Deferred from 4/15/14 – Item 6.1)

**Heard in the Evening.**

**The Public Hearing was held.**

**Resolution No. 76972 adopted to uphold the appeal for the installation of all way stop signs at the intersection of Di Salvo Avenue and Bailey Avenue.**

## 7. ENVIRONMENTAL & UTILITY SERVICES

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### 7.1 Setting Commercial Solid Waste Customer Service Rates.

#### **Recommendation:**

- (a) Conduct a Public Hearing to confirm that the proposed Maximum Commercial Solid Waste Services Rates are consistent with the terms of the Commercial Solid Waste and Recyclable Materials Collection Franchises Agreements between the City of San José and Allied Waste Services of North America, LLC, dba Republic Services.

**The Public Hearing was held.**

- (b) Set a date to adopt a resolution setting Maximum Commercial Solid Waste Services Rates in the City of San José pursuant to the Commercial Solid Waste and Recyclable Materials Collection Franchises Agreements between the City of San José and Allied Waste Services of North America, LLC, dba Republic Services, including the total processing costs for organic processing services.

CEQA: Not a Project, File No. PP10-067(a), Increase or Adjustment to Fees, Rates & Fares. (Environmental Services)

**May 20, 2014 was set by Council to adopt the resolution setting Maximum Commercial Solid Waste Service Rates.**

### 7.2 Actions Related to the Increase of Recycle Plus Rates for Single-Family and Multi-Family Services.

#### **Recommendation:**

- (a) Conduct a Public Hearing on proposed 2014-2015 Recycle Plus rates and proposed maximum possible rate increases in 2015-2016 and 2016-2017, and direct staff to return during the 2015-2016 budget cycle with recommendations that are consistent with the proposed maximum rate for 2015-2016.

**The Public Hearing was held.**

- (b) Adopt a resolution to amend the current Recycle Plus rate resolution as follows:
- (1) Increase rates for single-family households by 3%, effective July 1, 2014;
  - (2) Increase rates for multi-family households by 5%, effective July 1, 2014

CEQA: Not a Project, File No. PP10-067(a), Increase or Adjustment to Fees, Rates & Fares. (Environmental Services)

**Resolution No. 76971 adopted.**

**Staff directed to report back to the Transportation and Environment Committee on the effort of the scavenger issue.**

**Noes: Campos.**

## 7. ENVIRONMENTAL & UTILITY SERVICES

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### 7.3 Report on Bids and Award of Contract for the 6967 – Pine Avenue Sanitary Sewer Replacement Project.

**Recommendation:** Report on bids and award of contract for the 6967-Pine Avenue Sanitary Sewer Replacement Project to the low bidder, JMB Construction, Inc., in the amount of \$1,649,884, and approval of a contingency in the amount of \$164,988. CEQA: Exempt, File No. PP13-076. Council District 6. (Public Works)

**Approved.**

## 8. PUBLIC SAFETY SERVICES

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### 8.1 Amendments to Title 20 and to Title 6 to Establish Medical Marijuana Regulations.

**Recommendation:**

- (a) Approve an ordinance of the City of San José repealing suspended ordinance no. 28958 except for those Sections of Title 20 of the San José Municipal Code related to Zoning Code Verification Certificates previously unsuspending by Ordinance No. 29089, and amending Title 20 by amending Section 20.10.040 of Chapter 20.10, amending Section 20.40.100 of Chapter 20.40; amending Section 20.50.100 of Chapter 20.50, amending Section 20.70.100 of Chapter 20.70, adding a new Part 9.75 to Chapter 20.80, and adding new Sections 20.100.1530, 20.100.1535 and 20.100.1540 to Part 13 of Chapter 20.100, all to establish Land Use regulations pertaining to medical marijuana collectives.
- (b) Approve an ordinance of the City of San José amending Title 6 of the San José Municipal Code to add a new Chapter 6.88 to establish a registration process pertaining to medical marijuana collectives; and, to establish regulations pertaining to medical marijuana collectives and to the individual cultivation and use of medical marijuana.
- (c) Discussion of regulating campaign contributions by medical marijuana establishments, and other regulated businesses, to political candidates.

CEQA: Addendum to Negative Declaration File No. PP11-039 as previously addended; File No. PP14-030. Planning Commission recommends approval with modifications described in the transmittal memo. (City Manager/Planning, Building and Code Enforcement/Police)

**Heard in the Evening. No Council Action Was Taken.**

**Action was continued to May 20, 2014. Final Public Testimony was heard on May 13, 2014. The following motions were made for consideration on May 20, 2014:**

- (1) **The memorandum from Mayor Reed, Vice Mayor Nguyen and Council Members Liccardo and Oliverio, dated May 9, 2014 was moved: approving the Administration’s recommendations outlined in the Staff Report dated April 29, 2014, to amend Title 20 to establish Land Use Regulations pertaining to medical marijuana collectives and cultivation with the following modifications:**

*(Action Continued on the Next Page)*

## **8. PUBLIC SAFETY SERVICES**

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### **8.1 Amendments to Title 20 and to Title 6 to Establish Medical Marijuana Regulations. (Action Cont'd.)**

- (1)
  - (a) Allow marijuana dispensaries and growing operations in IP Industrial Park Zoning Districts and HI Heavy Industrial Zoning Districts, while expressly prohibiting marijuana dispensaries and growing operations in the employment centers covered by the North San José Area Development Policy, the International Business Park and the Edenvale Area Development Policy.
  - (b) Add “adult daycare centers” to the 150 foot minimum distance category.
  - (c) Place religious assembly uses in the 150 foot category with residential uses.
  - (d) Replace the word “schools” with “preschools, elementary schools and secondary schools”.
- (2) The memorandum from Mayor Reed, Vice Mayor Nguyen and Council Members Liccardo and Oliverio, dated May 9, 2014, was moved, approving the recommendations outlined in the Staff Report dated April 29, 2014, to amend Title 6 with the additions and changes as outlined:
  - (a) Amend Title 6.88.010, Purpose and Intent (Page 2 of the draft ordinance) by replacing with content of Exhibit A.
  - (b) Add to Part 2, Definitions (Page 3): definitions for Manufacturing and Processing. The definition for Processing should include reference to the ban on chemical processing in the California Code.
  - (c) Add to Title 6.88.380, Fees and Charges (Page 28): fees for inspection.
  - (d) Amend Title 6.88.420, Security, Item J (Page 33) to: require 24 hour security at offsite cultivation facilities and to include sidewalks adjacent to the collective.
  - (e) Amend Title 6.88.440, Collective Operations, Item F, (Page 37) to read: “No persons under the age of twenty one (21) shall be allowed at the location”.
  - (f) Increase the distance in Title 6.88.440, Collective Operations, Item J (Page 37) to read: “within 300 feet of the Premises and/or Location on the public-right-of-way”.
  - (g) Add to Title 6.88.450, Owner, Manager, Membership Requirements (Page 39): “Each member of a collective operating in San José must provide a valid Medical Marijuana State Identification Card issued by the Santa Clara County Department of Public Health”.
  - (h) Amend Title 6.88.450, Owner, Manager, Membership Requirements (Page 39) to read: “Be under the age of twenty one (21) and more clearly reflect that dispensing marijuana to minors is prohibited”.
  - (i) Amend Title 6.88.460, Dispensing and Packaging of Medical Marijuana, Item C (Page 42): to clarify that not only shall packaging not imitate candy, but the medical marijuana product itself shall not imitate candy.

*(Action Continued on the Next Page)*

## 8. PUBLIC SAFETY SERVICES

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### 8.1 Amendments to Title 20 and to Title 6 to Establish Medical Marijuana Regulations. (Action Cont'd.)

- (2)
  - (j) Amend Title 6.88.700, Inspection and Enforcement, Item C (Page 48) to include provisions that samples obtained by the Police will be logged and recorded in accordance with departmental standards.
  - (k) Add to Title 6.88.820, Violation and Enforcement, Item A (Page 50): a provision “any and all remedies” may include the immediate closure of the collective by the City Manager or Chief of Police for violations threatening the health and safety of patients, caregivers, employees and/or the public.
  - (l) Add sections for Property Maintenance and Performance Standards, as outlined in Exhibit B.
  - (m) Add a provision, that in compliance with California law, the chemical processing of concentrated cannabis is prohibited. Should State law change in the future, chemical processing will continue to be prohibited in collectives and will only be considered in offsite cultivation locations with a Hazardous Materials permit and appropriate chemical safety plan.
  - (n) Add a provision that collective employees shall be at least twenty one (21) years of age.
  - (o) Add a provision that live or recorded performances, or any other entertainment uses, incidental or otherwise require an Entertainment Permit.
  - (p) Add a provision that transfers may only occur inside the premises of the collective.
  - (q) Add a provision that no self-illuminated advertising of medical marijuana shall be located on buildings or windows.
  - (r) Add a provision that the use of human or mechanical sign “wavers” to advertise medical marijuana collectives is prohibited.
- (3) The memorandum from Mayor Reed, dated May 12, 2014, was moved, with the following amendments:
  - (a) Amend the draft ordinance Title 20.80.775, Restrictions and Conditions, Item D to read: At the time of issuance of a Zoning Code Verification Certificate, no Medical Marijuana Collective or Medical Marijuana Collective, Cultivation Site Only shall be located on a parcel of real property that is closer than a minimum of one hundred and fifty (150) feet from any residential use as measured ~~by the foot path of travel~~ *in a straight line between the boundary lines of the parcels that are closest to one another.*
  - (b) Establish the effective date of each ordinance regulating Medical Marijuana Collectives and Cultivation to be *30 days* after the second reading of the ordinance.
  - (c) A collective that is:
    - (1) In possession of a valid receipt for payment of Marijuana Business tax.

*(Action Continued on the Next Page)*

## 8. PUBLIC SAFETY SERVICES

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### 8.1 Amendments to Title 20 and to Title 6 to Establish Medical Marijuana Regulations. (Action Cont'd.)

- (3) (c) (2) Has no outstanding code compliance orders.
- (3) Is eligible to register.
- (4) Is not disqualified from registration.
- (5) That meets the distance requirements from schools and other uses outlined in Title 20.80.775, Items A and B.
- (6) That meets the distance requirements from residential uses in Title 20.80.775, Item D.

Shall have: *90 days from the effective date of the ordinance* to apply for Zoning Verification and Registration needed to complete its registration, whether for its existing site or a new site; and *one year from the effective date of the ordinance* to obtain Zoning Verification and Registration and move, if necessary.

- (d) From the effective date of the ordinance, all collectives must comply with all other operational regulations (such as the prohibition of consumption onsite, in parking lots, or at neighboring properties or public right of way, enforcement of age limits, etc.) outlined in Title 6.
- (4) Paragraphs (1) and (7) from the memorandum from Council Member Rocha, dated May 12, 2014, were moved for approval as follows:
  - (a) Prohibit collectives from locating in CG Commercial General Zoning District.
  - (b) Direct Staff to analyze the concerns listed below, raised in a letter from Roberts & Elliott, LLP, dated May 9, 2014, and return to Council before or at the same time as the final ordinance text comes forward with (1) an explanation as to whether each concern is valid and (2) alternative ordinance language that would resolve the concern:
    - (1) Leases: The letter asserts that the ordinance's provisions around leases would make it impossible for collectives to find landlords willing to lease to them.
    - (2) Cash: It asserts that the prohibition on cash transactions will make it impossible for collectives to operate, given that they do not have bank accounts.
    - (3) Overhead: It asserts that the ordinance prohibits salaries.
    - (4) Paraphernalia: It asserts that prohibition on sale of paraphernalia is an unreasonable restriction on collective operations.
    - (5) Record Keeping: It asserts that the requirement to keep hard copies of all records is onerous given modern electronic record keeping practices.
    - (6) Packaging: It asserts that the packaging required by the ordinance does not exist.
    - (7) Transferability: It asserts that the provisions around transferability will eventually result in the closure of all collectives.

## **8. PUBLIC SAFETY SERVICES**

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### **8.1 Amendments to Title 20 and to Title 6 to Establish Medical Marijuana Regulations. (Action Cont'd.)**

**Staff directed to document the answers to the following questions and return to Council on May 20, 2014 in the afternoon:**

- (1) Considering the motion on the floor, and the zoning designations that are proposed in the motion, approximately how many how sites might be eligible for a collective's use.**
- (2) Approximately how many collectives are currently operating and how many of those are paying taxes. For the Police Department: more information about the current enforcement mechanism; and in moving forward with the current motion on the floor, what kinds of enforcement plans are in place.**
- (3) Update on the Senate Bill 1262, particularly the actions of the Senate Health Committee and the deletions they made in the provisions of the original bill and some of the determinations of the ABC as a licensing entity. How will Staff deal with legal nonconforming status and the sensitive uses that may arise within the zones after that, particularly around children, i.e. schools, daycares. Property line measurements: principally extremely large Industrial parcels with a number of buildings, if there are any options for measurements, i.e. straight line distances, pathway distances or distances to actual structures versus the property line.**
- (4) Follow up to Item (1) above, how many sites and the distance requirements between collectives of 1000 feet. Will there be adequate physical space for each of the collectives given the limitations of the motion.**
- (5) For Police Department: what are the Staffing requirements to enforce these regulations and further impact of the kinds of criminal activity associated with the collectives. What are the impacts and Staffing requirements for Code Enforcement; and the difference in the Staffing requirements if the City banned the collectives.**
- (6) Update on the zero lot line collectives previously requested. City Attorney: Legal understanding on the issue of age for medicinal uses. Information on the Sensible San José Proposal, including where it is aligned and where it is flawed. Commentary from Staff on a concept considering the aggregate sales of the top 20-25 collectives that are paying taxes, remove all collectives from list if they have created nuisances and what the final number of collectives would be; If those particular collectives were allowed to remain open and given the opportunity to move in the future, indicate what would be the good and bad points.**
- (7) How does Staff enforce or fine nuisance complaints. Request that Staff consider spelling out the fines, i.e. \$35,000 per violation. How accurate is the Eligible Parcels by Zoning Districts Map – noticed an eligible parcel between Mabury Road and North King Road where Independence High School is actually located. Limit the hours of hours of operation and specify the route of where outside cultivation occurs and delivery to the merchants.**

*(Action Continued on the Next Page)*

## **8. PUBLIC SAFETY SERVICES**

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### **8.1 Amendments to Title 20 and to Title 6 to Establish Medical Marijuana Regulations. (Action Cont'd.)**

- (8) How many potential collectives on the Eligible Parcels by Zoning Districts Map included the 1000 foot restriction. Provide more clarification of the outside cultivation. Recommend that Staff cross reference databases across all collectives to prevent duplications of same prescriptions. Notification and outreach to the residents and neighborhoods before new collectives begin operations.**
- (9) Model of enforcement, Staffing, impacts and costs. Feedback on instances of path of travel applied. Analysis of how many collectives would still be in operation according to Mayor Reed's or Council Member Rocha's scenario, if not too labor intensive. Report back on the analysis of the Ballot initiative. Lay out a table of scenarios, if possible.**
- (10) Do an analysis of property line to property line path of travel, front door to front door line of travel and how restrictive would that be. Would there be any ability to "grandfather" any collectives in. Better definition of the intent of Proposition 215, i.e. Residential Grow: what kind of language would Staff consider to better define the number of plants that would be appropriate to grow outside in a backyard.**
- (11) Can Staff constrain sites and only allow dispensaries of cultivation to occur on sites using a route that is not a residential road but a major commercial road. Staff's position on allowing cultivation outside the City within the County with a strong agreement partnership with the County to ensure the Sheriff patrolling in those unincorporated areas where the growing might occur and using that as a means to reduce the risk of indoor cultivation in the City.**
- (12) The level of enforcement on a model of onsite and offsite cultivation. Development of a map inclusive to the direction suggested in the memorandum from Council Member Rocha, dated May 12, 2014, eliminating the North San José Industrial Core Area and New Edenvale, mapping versus the table.**
- (13) Regarding the recommendation that each member provide a valid Identification Card – what resources would be necessary if the County were to process that. Where would the County obtain the funds, and would that be an additional cost to the member or to the City.**
- (14) Whether or not any of the initiatives that have been filed, if any, comply with the Federal Guidelines for a strong and effective regulatory system. Staff requested to answer the questions from the memorandum from Council Member Rocha, dated May 12, 2014, as indicated on Page 12 of this document, Item (4)(b), Items (1)-(7).**
- (15) With regard to City tax revenue, Staff requested to analyze fiscal impacts and the real cost to the City and include feedback from the County, if possible; and whether some money should be dedicated to dealing with the affects and impacts that are being created by the dispensaries in the City, i.e. prevention, dealing with issues in schools, public safety, and other similar subjects.**

## **8. PUBLIC SAFETY SERVICES**

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### **8.2 Firefighter Breathing Air Replenishment Systems.**

**Recommendation:** As referred by the City Council on April 22, 2014, accept staff's report confirming San José Firefighters Local 230's position on the use of Firefighter Breathing Air Replenishment Systems in high-rise buildings; and regarding whether requiring the installation of a breathing air replenishment system in high-rise buildings limits the public to use of a proprietary system. CEQA: Exempt, File No. PP13-082. (Fire/City Attorney)

[Council referral 4/22/14 – Item 2.3(a), Rules and Open Government 4/2/14 – Item G(10)]

**Accepted.**

**Staff directed to return to Council and provide the necessary findings of the ordinance for the first reading.**

**Noes: Herrera, Liccardo, Oliverio; Reed.**

## **9. REDEVELOPMENT – SUCCESSOR AGENCY**

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### **9.1 Actions Related to the Agreement and General Release and New Lease of Patty's Inn.**

**Recommendation:**

- (a) Approve a Second Amendment to Settlement Agreement and General Release with Kenneth Solis and Bonnie Torrez, doing business as Patty's Inn (Tenant), to extend the date for Tenant to vacate the property located at 102 South Montgomery Street in San José (Property) and to allow for monthly rent payable by Tenant to be offset against the remaining relocation payment owed to Tenant;
- (b) Approve a five (5) year lease (Lease) with Tenant for the Property with the provision that each party shall have the right to terminate the Lease upon not less than ninety (90) days written notice to the other party.

CEQA: Exempt, CEQA Guideline Section 15301. (Successor Agency)

**Deferred to June 03, 2014 per Administration.**

- **Open Forum**

**There was no public testimony from the floor.**

- **Adjournment**

**The Council of the City of San José adjourned the afternoon session at 3:26 p.m. in memory of Naranji Patel. (Khamis/Kalra)**

## 10. GENERAL PLAN PUBLIC HEARINGS ON CONSENT CALENDAR

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No General Plan Public Hearing at this time.

## 11. PUBLIC HEARINGS

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### 11.1 Public Hearings on Consent Calendar.

No Public Hearings on Consent Calendar at this time

### 11.2 Rezoning the Real Property Located on the West Side of Almaden Expressway at the Southern Terminus of Brasilia Way.

#### **Recommendation:**

- (a) Adopt a resolution adopting the Mitigated Negative Declaration for the Brasilia Way Residential Development Project and a related Mitigation Monitoring and Reporting Program; and
- (b) Consideration of an ordinance rezoning the real property located on the west side of Almaden Expressway at the southern terminus of Brasilia Way (5827 Brasilia Way) from the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District to allow for the development of up to 10 single-family detached residences on an approximately 7.95 gross acre site (Brasilia LLC, Owner).

CEQA: Mitigated Negative Declaration to be considered for adoption. (Planning, Building and Code Enforcement)

PDC12-018 – District 10

**Deferred to June 10, 2014 in the Evening per Council Member Khamis.**

- **Open Forum**

**There was no public testimony from the floor.**

- **Adjournment**

**The Council of the City of San José was adjourned at 10:42 p.m. in memory of Naranji Patel. (Khamis/Kalra)**