

## MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, NOVEMBER 05, 2013

The Council of the City of San José convened in Regular Session at 9:34 a.m. in the Council Chambers at City Hall.

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

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

### STRATEGIC SUPPORT SERVICES

#### 3.2 Accept Labor Negotiations Update.

Documents Filed: Proposal from the Association of Building, Mechanical and Electrical Inspectors dated November 1, 2013 regarding Wages and Special Pay.

Deputy Director of Employee Relations Jennifer Schembri offered a brief report on current labor negotiations.

### CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:35 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code Section 54956.9(d)(1) with respect to potential initiation of litigation in two (2) matters. (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9(d)(1) with respect to existing litigation: (1) In re: Claim of Hom; Amount of Money or Other Relief Sought: Administrative Appeal. (2) California Building Industry Association v. City, et al; Names of Parties Involved: California Building Industry Association, A California Nonprofit Corporation, City of San José, a California Municipal Corporation, City Council and the Mayor of the City of San José, Does 1-200; Court: Supreme Court of California; Case No: S212072; Amount of Money or Other Relief Sought: Declaratory and Injunctive Relief. (C) to confer with Real Property Representatives pursuant to Government Code Section 54956.8: Property: Agnews, 3500 Zanker Road, San Jose;

## CLOSED SESSION (Cont'd.)

APN #097-04-028 and 097-04-040; Negotiating Parties: Julie Edmonds-Mares and Matt Cano for the City of San José and Gerald McLaughlin, Senior Real Estate Officer for the State of California, Department of General Services; Under Negotiation: The direction will concern price and terms of payment; Likely Range of Value of Property: Negotiated price based on appraisal and comparable property values. (D) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (2) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (3) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP. (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP. (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO. (6) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW. (8) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (9) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3. (10) San José Police Officers' Association (SJPOA); Nature of Negotiations: Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc. Web: <http://www.sanjoseca.gov/?nid=186>; Telephone for Employee Relations: 408-535-8150. (E) to confer with Legal Counsel with respect to Public Employment/Public Employee Evaluation pursuant to Government Code Section 54957: Department: Office of the City Manager; Title: City Manager.

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

(F) to confer with Legal Counsel pertaining to the Successor Agency to the Redevelopment Agency of the City of San José pursuant to Government Code Section 54956.9(d)(1) with respect to potential initiation of litigation in two (2) matters.

By unanimous consent, Council recessed from the Closed Session at 11:58 a.m. and reconvened to Regular Session at 1:36 p.m. in the Council Chambers.

Present: Council Members - Campos, Chu (1:38 p.m.), Constant, Herrera, Kalra, Khamis, Liccardo (1:45 p.m.), Nguyen, Oliverio, Rocha; Reed.

Absent: Council Members - All Present.

## **INVOCATION**

Brad Abley, Pastor, South Hills Community Church offered the Invocation. (District 10)

## **PLEDGE OF ALLEGIANCE**

Mayor Reed led the Pledge of Allegiance.

## **ORDERS OF THE DAY**

Upon motion by Council Member Herrera, seconded by Council Member Khamis and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (10-0-1. Absent: Liccardo.)

Council recessed to Closed Session in Room W133 at 1:45 p.m. and reconvened at 3:44 p.m. in the Council Chambers.

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

Absent: Council Members - All Present.

## CLOSED SESSION REPORT

City Attorney Richard Doyle disclosed the following Closed Session actions of November 5, 2013:

A. Public Employee Appointment Pursuant to Government Code Section 54957:

Title: City Manager  
Name: Edward K. Shikada

Council Vote:

Ayes: Chu, Constant, Herrera, Khamis, Liccardo, Nguyen, Oliverio;  
Reed.  
Noes: Campos, Kalra, Rocha.  
Abstain: None.  
Not Present: None.

## CONSENT CALENDAR

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

### 2.1 Approval of Minutes.

- (a) **Regular Minutes of June 4, 2013**
- (b) **Special Minutes of June 10, 2013**
- (c) **Regular Minutes of June 11, 2013**
- (d) **Regular Minutes of June 18, 2013**
- (e) **Joint Council/San José Diridon Development Authority/Successor Agency to the Redevelopment Agency Minutes of June 18, 2013**

Documents Filed: (1) The Regular Minutes dated June 4, 2013, June 11, 2013 and June 18, 2013. (2) The Special Minutes dated June 10, 2013. (3) The Joint Council/San José Diridon Development Authority/Successor to the Redevelopment Agency Minutes dated June 18, 2013.

Action: The City Council Minutes were approved. (11-0.)

## 2.2 Final adoption of ordinances.

- (a) **ORD. NO. 29324** - Amending Title 23 of the San José Municipal Code by adding new Sections 23.02.125 and 23.02.494 and amending Section 23.04.020 to add a new type of allowable sign on corner buildings of large shopping center sites and to allow additional attached signs for second-story retail tenant spaces within certain buildings on large shopping center sites; adding Section 23.02.805 (authority for Title 23); amending Section 23.02.1370 to establish provisions for sign variances for signs on historic buildings; amending Section 23.02.870 to clarify the city departments with administrative authority for implementation of sign regulations; amending Sections 23.02.920 and 23.04.120 to delete references to time and temperature signs; amending definitions in Sections 23.02.160 (Erection of a Sign), 23.02.410 (Programmable Electronic Sign), 23.02.460 (Relocation of a Sign), and 23.02.560 (Traffic Control Device); adding definitions in new Sections 23.02.502 (Sign Area) and 23.02.505 (Sign Ordinance); repealing Section 23.02.1130 (Master Sign Program); and making other nonsubstantive, ministerial, technical, or typographical changes to Title 23 of the San José Municipal Code.

Documents Filed: Proof of Publication of the Title of Ordinance No. 29324 executed on October 28, 2013, submitted by the City Clerk.

Action: Ordinance No. 29324 was adopted. (11-0.)

- (b) **ORD. NO. 29327** – Rezoning certain real property situated on the southwest corner of Guadalupe Mines Road and Camden Avenue, from R-1-1 single-family residence zoning district to the A(PD) Planned Development Zoning District.

Documents Filed: Proof of Publication of the Title of Ordinance No. 29327 executed on October 28, 2013, submitted by the City Clerk.

Action: Ordinance No. 29327 was adopted. (11-0.)

- (c) **ORD. NO. 29328** – Rezoning certain real property situated on the easterly side of Camden Avenue, approximately 210 feet northerly of Kooser Road, from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District.

Documents Filed: Proof of Publication of the Title of Ordinance No. 29328 executed on October 28, 2013, submitted by the City Clerk.

Action: Ordinance No. 29328 was adopted. (11-0.)

- 2.2 (d) **ORD. NO. 29329 – Rezoning certain real property of approximately 72 acres situated on both sides of Alum Rock Avenue, between King Road and Highway 680 From A(PD) Planned Development, CG Commercial General, CP Commercial Pedestrian, LI Light Industrial, and HI Heavy Industrial Zoning Districts to the MS – C Main Street Commercial and MS – G Main Street Ground Floor Commercial Zoning Districts.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29329 executed on October 28, 2013, submitted by the City Clerk.

Action: Ordinance No. 29329 was adopted. (11-0.)

2.3 **Approval of Council Committee Reports.**

- (a) **Rules and Open Government Committee Report of October 16, 2013. (Mayor)**  
(b) **Public Safety, Finance, and Strategic Support Committee Report of October 17, 2013. (Constant)**

Documents Filed: (1) The Rules and Open Government Committee Report dated October 16, 2013. (2) The Public Safety, Finance and Strategic Support Committee Report dated October 17, 2013.

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

2.4 **Mayor and Council Excused Absence Requests.**

There were none.

2.5 **City Council Travel Reports.**

There were none.

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

There were none.

- 2.7 **Approve an ordinance amending various Sections of Chapter 3.36 of Title 3 of the San José Municipal Code (the 1961 Police and Fire Retirement Plan) to require members to pay the employee's share of contributions when receiving supplemental military pay from the City during military service and to make changes in compliance with federal laws. CEQA: Not a Project; File No. PP10-068(b), Municipal Code or Policy. (City Attorney's Office)**

**2.7 (Cont'd.)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated October 23, 2013, recommending approval of an ordinance.

Action: Upon motion by Vice Mayor Nguyen, seconded by Council Member Oliverio and carried, Ordinance No. 29332, entitled: “An Ordinance of the Council of the City of San José Amending Sections 3.36.610, 3.36.620 and 3.36.1600 of Chapter 3.36 The 1961 Police and Fire Retirement Plan of Title 3 of the San José Municipal Code to Require Members to Pay the Member’s Share of Contributions When Receiving Supplemental Military Pay from the City”, was passed for publication. (10-1. Noes: Chu.)

**2.8 Adopt a resolution authorizing the City Manager to execute the Second Amendment to the Storage Area Network Agreement with Systems Technology Associates of Tustin, CA, to extend the term of the agreement by twelve months from November 4, 2013 to November 3, 2014, an amount not to exceed \$282,119, from \$1,984,262 to \$2,266,381 in order to provide maintenance and support on the City’s Storage Area Network. CEQA: Not a Project, File No. PP10-066(a), Agreements and Contracts. (Finance)**

Documents Filed: City Council Action Request from Director of Finance Julia H. Cooper, dated October 25, 2013, recommending adoption of a resolution to execute the second amendment to the agreement.

Action: Resolution No. 76835, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Execute the Second Amendment to the Agreement With Systems Technology Associates, To Extend the Term of the Agreement by Twelve Months from November 4, 2013 to November 3, 2014 in An Amount Not To Exceed \$282,119”, was adopted. (11-0.)

**2.9 (a) Adopt a resolution:**

- (1) Approving the partnership with Santa Clara Unified School District (“SCUSD”) to submit a response to the State of California’s Request for Proposals for a joint purchase of 81 acres of land located at 3500 Zanker Road. Santa Clara County Assessor parcel numbers 097-04-028 and 097-04-040.**
- (2) Authorizing the City Manager or designee to execute the purchase agreement and all other documents needed to conclude the transaction with the State of California if this joint proposal is selected by the State.**
- (3) Authorizing the City Manager or designee to commence discussions with SCUSD staff regarding the potential joint use of the Agnews property in the event that the joint proposal is selected by the State.**

**2.9 (b) Adopt the following Appropriation Ordinance amendments in the Subdivision Park Trust Fund:**

- (1) Decrease the Future PDO / PIO Projects Reserve by \$150,000.**
- (2) Establish the Agnews Property Preliminary Studies appropriation to the Parks, Recreation and Neighborhood Services Department in the amount of \$150,000.**

**CEQA: Not a Project, File No. PP10-069(a), Staff Reports. Council District 4. (Parks, Recreation and Neighborhood Services/City Manager's Office)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares and Budget Director Jennifer Maguire, dated October 15, 2013, recommending adoption of a resolution and appropriation ordinance amendments.

Council Member Chu thanked the Staff for collaborating with the Santa Clara Unified School District to build a Kindergarten through 12th Grade School, as well as an opportunity to provide a park, 21 acres of open space and the potential of a joint use agreement.

Action: Upon motion by Council Member Chu, seconded by Council Member Herrera and carried unanimously, Resolution No. 76836, entitled: "A Resolution of the Council of the City of San José (A) Approving the Partnership with Santa Clara Unified School District (SCUSD) To Submit a Response to the State of California's Request for Proposals (RFP) for a Joint Purchase of 81 Acres of Land Located at 3500 Zanker Road, Santa Clara County Assessor Parcel Numbers 097-04-028 and 097-04-040; (B) Authorizing the City Manager or Designee to Execute the Purchase Agreement and All Other Documents Needed to Conclude the Transaction with the State of California if the Joint Proposal is Selected by the State and (C) Authorizing the City Manager or Designee to Commence Discussions with SCUSD Staff Regarding the Potential Use of the Agnews Parcel in the Event That the Joint Proposal is Selected by the State" and Ordinance No. 29333, entitled: "An Ordinance of the Council of the City of San José Amending Ordinance No. 29271 to Appropriate Monies in the Subdivision Park Trust Fund for the Agnews Property Preliminary Studies; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", were adopted. (11-0.)

**2.10 Adopt a resolution summarily vacating a portion of Hoppe Street adjacent to Assessor's Parcel Number 015-03-013. CEQA: Exempt, File No. PP12-086. Council District 4. (Public Works)**

Documents Filed: Memorandum from Director of Public Works David Sykes, dated October 15, 2013, recommending adoption of a resolution.

Action: Resolution No. 76837, entitled: "A Resolution of the Council of the City of San José Summarily Vacating a Portion of Hoppe Street Adjacent to Assessor's Parcel Number 015-03-013", was adopted. (11-0.)

**2.11 As recommended by the Rules and Open Government Committee on October 30, 2013:**

- (a) Approve the Westfield Oakridge Winter Walk as a City Council sponsored Special Event.**
- (b) Approve and accept donations from various individuals, businesses or community groups to support the event.**

**CEQA: Not a Project. (Rocha)**

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated October 31, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: The Westfield Oakridge Winter Walk as a City Council sponsored Special Event was approved and acceptance of donations from various individuals, businesses or community groups to support the event was authorized. (11-0.)

**2.12 As recommended by the Rules and Open Government Committee on October 30, 2013, adopt the following resolutions:**

- (a) A resolution approving the updated campaign contribution limits in accordance with San José Municipal Code 12.06.210 C.**
- (b) A resolution approving the updated voluntary campaign expenditure limits in accordance with San José Municipal Code 12.06.530 D.**

**(City Clerk)**

**[Rules Committee referral 10/30/13 – Item G(3)]**

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated October 31, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: Resolution No. 76838, entitled: “A Resolution of the Council of the City of San José Approving the Updated Campaign Contribution Limits in Accordance with San José Municipal Code Section 12.06.210C” and Resolution No. 76839, entitled: “A Resolution of the Council of the City of San José Approving Voluntary Expenditure Limits in Accordance with San José Municipal Code Section 12.06.530D”, were adopted. (11-0.)

## **END OF CONSENT CALENDAR**

### **STRATEGIC SUPPORT SERVICES**

**3.3 As recommended by the Public Safety, Finance, and Strategic Support Committee on October 17, 2013, accept the 2012 Annual Performance Audit of Team San José Management of the City’s Convention and Cultural Facilities. (City Auditor)**

**[Public Safety, Finance and Strategic Support Committee referral 10/17/13 – Item D(7)]**

Action: Deferred to December 03, 2013 per Administration.

**3.4 Report on Request for Proposal for Various Fuels; and adopt a resolution authorizing the City Manager to:**

- (a) **Issue Purchase Orders for the purchase of fuel and petroleum products for a total aggregate amount not to exceed \$6,000,000 for the period August 1, 2013 through July 31, 2014 with the following vendors:**
  - (1) **Western States Oil (San José, CA) not to exceed \$5,000,000**
  - (2) **Golden Gate Petroleum (Martinez, CA), not to exceed \$500,000**
  - (3) **Valley Oil (Mountain View, CA), not to exceed \$500,000**
- (b) **Amend the not-to exceed amount for each Purchase Order as required based on the City's demand and the volatility in fuel prices, subject to the appropriation of funds.**
- (c) **Repeal Resolution No. 67770, and issue subsequent Purchase Orders for fuel and petroleum products after the initial period in a manner consistent with the process as described herein, subject to the appropriation of funds.**

**CEQA: Not a Project, File No. PP10-066(a), Purchase order of supplies, equipment and professional services with no changes to the physical environment. (Finance)**

Documents Filed: Memorandum from Director of Finance Julia H. Cooper, dated October 15, 2013, recommending adoption of a resolution.

Council Member Rocha requested clarification about the firm given local preference. Purchasing Officer Mark Giovannetti confirmed that the State of California has an office located in the County of Santa Clara.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, Resolution No. 76840, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Purchase Petroleum Fuel Supplies from Fuel Vendors Selected Through a Periodic Request for Proposal Process, To Benchmark Fuel Prices Through the Oil Price Information Service and To Amend Purchase Orders to Various Vendors Subject to the Appropriation of Funds", was adopted. (11-0.)

## **COMMUNITY & ECONOMIC DEVELOPMENT**

- 4.1 (a) **As recommended by the Public Safety, Finance, and Strategic Support Committee on September 19, 2013 and the Community and Economic Development Committee on September 23, 2013, approve an ordinance amending Title 24 of the San José Municipal Code to:**
  - (1) **Adopt the 2013 editions of the California Building Code (CBC), California Residential Code (CRC), California Electrical Code (CEC), California Mechanical Code (CMC), California Plumbing Code (CPC), California Historical Building Code (CHBC), California Existing Building Code (CEBC), California Green Building Standards Code (CALGreen) and the 2012 edition of the International Existing Building Code Appendix Chapters A2, A3 and A4.**

- 4.1 (a) (2) **Adopt local amendments regarding certain structural design requirements, fire sprinkler regulations, and other building and fire safety requirements.**

**CEQA: Exempt, File No. PP13-082.**

- (b) **As recommended by Community and Economic Development on September 23, 2013 and referred by the Public Safety, Finance, and Strategic Support Committee on October 17, 2013 without a recommendation, approve an ordinance amending Chapter 17.12 of the San José Municipal Code to:**

(1) **Adopt the 2013 edition of the California Fire Code (CFC), and the Standards referenced in 2013 CFC.**

(2) **Approve an ordinance to adopt the 2013 California Fire Code with the local amendments regarding fire suppression and alarm requirements, firefighter breathing air replenishment system/elevator requirements for high-rise buildings, and the requirements relating to the design and installation of fire protection and special systems and hazardous material systems.**

**CEQA: Not a Project.**

**(Planning, Building and Code Enforcement/Fire)**

Documents Filed: (1) Memorandum from Council Members Herrera, Campos, Khamis and Chu, dated November 1, 2013, recommending approval of the Staff recommendations with amendments. (2) Memorandum from City Clerk Toni J. Taber, CMC, dated October 24, 2013, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee and the Community and Economic Committee. (3) Supplemental memorandum from City Attorney Richard Doyle, dated October 31, 2013, recommending additions to the proposed ordinance which was not addressed in the redlined draft of the ordinance.

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

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

Public Comments: Anthony Turiello, Rescue Air Systems, provided information about the air systems.

Council Member Herrera requested to amend the motion to include the memorandum she cosigned with Council Members Campos, Khamis and Chu, dated November 1, 2013, with amendments to the Staff recommendations. Council Member Liccardo respectfully declined to accept the memorandum as written and expressed concerns about safety.

Substitute Motion: Council Member Herrera moved approval of the she cosigned with Council Members Campos, Khamis and Chu, dated November 1, 2013, with amendments to the Staff recommendations. Council Member Campos seconded the motion.

City Attorney Richard Doyle clarified that with respect to buildings over 120 feet it is State Law that there has to be a minimum of two elevators.

#### 4.1 (Cont'd.)

Council discussion ensued.

Mayor Reed expressed his opposition to the substitute motion on the floor.

Vice Mayor Nguyen and Council Members Constant and Campos expressed support to the substitute motion.

Action: On a call for the question, the substitute motion carried, Ordinance No. 29334, entitled: “An Ordinance of the City of San José Amending Various Sections of Title 24 of the San Jose Municipal Code To Adopt the 2013 California Building, Residential, Plumbing, Mechanical, Electrical Codes, California Existing Building Code, California Historical Building Code, California Green Building Standards Code and 2012 International Existing Building Code With Certain Exceptions, Modifications and Additions”, was passed for publication; the memorandum from Council Members Herrera, Campos, Khamis and Chu, dated November 1, 2013, was approved and the Staff recommendations were approved with the following amendments: (1) Adopt Item 4.1 Ordinance Implementing 2013 California Building and Fire Code Standards requiring a Firefighter Air Replenishment System in addition to the requirements for the Fire Service Access Elevators for all high rise buildings in San José. (2) Remove exception language in Section 901.4.4.1.1 subsection 1 and under General in Section 901.4.4.2.1 respectively, as follows: ~~“Exception: Where Firefighter designated elevator is provided per Section 901.4.4.2 or as required by the California Building Code Section 403.6.1” and “Except where required elsewhere in this Code, a designated firefighter elevator may be installed in lieu of a firefighter breathing air replenishment system as required in Section 901.4.4.1 of California Fire Code”.~~ and ~~When a Firefighter Elevator is installed according to this section, the building will be considered to meet the Fire Service Access Elevator requirement of the California Building Code.~~ (3) Explore opportunities to partner with a manufacturer to install a Firefighter Air Replenishment System in the City of San José Fire Training Facility at no cost to the City of San José and institute a comprehensive training program. (4) Staff directed to return with the findings related to the State Fire Code for buildings 75 feet to 120 feet which require either the air replenishment system or an elevator; for buildings above 120 feet State Fire Code requires a minimum of two elevators. Additional findings must be made with respect to local climatic, geological or topographical conditions that affect the health and welfare of the citizenry and require an additional system. (5) Staff was directed to explore opportunities for incentives to help building owners develop and adopt the requirements. The Ordinance was approved, as amended and will return to Council on November 19, 2013 for the first reading. (8-3. Noes: Liccardo, Oliverio; Reed.)

## **PUBLIC SAFETY SERVICES**

### **8.1 Consideration by the City Council of an urgency ordinance and regular ordinance to amend Section 10.32.010 of the San José Municipal Code to exclude any person authorized by the California Department of Fish and Wildlife pursuant to a depredation permit from the prohibition of the shooting of firearm in the City of San José. (Khamis/Constant) (Rules Committee referral 10/30/13)**

Documents Filed: (1) Memorandum from City Attorney Richard Doyle, dated November 1, 2013, providing background for the urgency ordinance to amend the San José Municipal Code. (2) Memorandum from Director of Public Works David Sykes, dated November 4, 2013, providing information in preparation for the Council Meeting at which an urgency ordinance has been proposed to allow for the discharge of a weapon within City limits for the purpose of trapping and euthanizing wild pigs. (3) Two emails from members of the public both dated November 5, 2013 recommending support to the urgency ordinance.

Director of Public Works David Sykes pointed out that the Management of Wildlife is actually under the purview of the California Department of Fish and Wildlife.

City Attorney Richard Doyle clarified that the urgency ordinance requires eight votes of the City Council.

Council Member Khamis commented that he has received many complaints from Almaden residents related to property damage, safety issues for children and the entire community.

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

Deputy Director of Animal Care and Services Jon Cicirelli, Director of Planning, Building and Code Enforcement Joseph Horwedel, Director of Public Works David Sykes and City Attorney Richard Doyle responded to Council questions and concerns.

Public Comments: Roland LeBrun spoke in support to the Staff recommendations.

Council Member Khamis moved approval to amend the motion to include an expiration date of February 5, 2014. The amendment was accepted by Council Member Constant.

Action: On a call for the question, the motion carried, Ordinance No. 29336, entitled: "An Urgency Ordinance of the City of San José To Amend Section 10.32.010 of Chapter 10.32 of Title 10 of the San José Municipal Code to Allow Persons With Duly Issued and Approved Trapping License and Wild Pig Depredation Permit from the California Department of Fish and Wildlife to Discharge Firearms Within the Limits of the City Under Specified Circumstances and Setting Forth the Facts Constituting Such Urgency", was adopted, with an expiration date of February 4, 2014. A regular ordinance was not required and Ordinance No. 29337 was not used. (8-3. Noes: Herrera, Kalra, Rocha.)

## **OPEN FORUM**

Richard Calhoun expressed grave concerns that a 75-year-old woman, resident of San José, was overcharged \$15,000 by the Office of the Public Guardian.

Mayor Reed referred Mr. Calhoun to speak with Assistant City Manager Edward K. Shikada after the Council Meeting.

## **ADJOURNMENT**

The Council of the City of San José adjourned the afternoon session at 5:59 p.m.

## **RECESS/RECONVENE**

The City Council recessed at 5:59 p.m. from the afternoon Council Session and reconvened at 7:02 p.m. in the Council Chambers, City Hall.

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

Absent: Council Members - All Present.

City Clerk Toni J. Taber, CMC read the requests for continuance of the applications. Upon motion by Council Member Liccardo, seconded by Vice Mayor Nguyen and carried unanimously, the below noted continuances and actions were taken as indicated. (11-0.)

## **NEIGHBORHOOD SERVICES**

- 5.1 (a) Accept the Measure P Bond funded Softball Facility Site Selection Study (“Study”).**
- (b) Direct staff to proceed with next steps toward implementing recommendations outlined in the Study as follows:**
- (1) Pursue negotiations with the owners of the Arcadia site for the development of a softball facility at that site with a minimum of three adult sized lighted softball fields.**
  - (2) Return to the City Council in 2014 with recommendations on how to use any remaining reserves in the park bond funds.**

**CEQA: Not a Project, File No. PP10-069(a), Staff Reports. (Parks, Recreation and Neighborhood Services)**

Documents Filed: (1) Memorandum from Mayor Reed, Council Members Herrera and Liccardo, dated October 30, 2013, recommending acceptance of the Staff recommendations of the Arcadia site, with further direction to Staff. (2) Memorandum from Council Members Rocha and Campos, dated October 31, 2013, recommending that Council defer making a final decision for the softball complex, including direction to Staff. (3) Memorandum from Council Members Khamis and Constant, dated October 31, 2013, recommending deferring action, with direction to Staff. (4) Memorandum from Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares, dated October 15, 2013, recommending acceptance of the study with direction to Staff as outlined above. (5) Supplemental memorandum from Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares, dated November 5, 2013, providing a potential scenario to place four adult sized softball fields at the Arcadia site. (6) Petition dated November 1, 2013 containing 68 signatures against building a softball park at the Old Singleton Road disposal site. (7) Fifteen letters of support all dated November 5, 2013 for the Arcadia site in District 8. (8) Six letters of support all dated November 5, 2013 for the Fairgrounds.

## 5.1 (Cont'd.)

Mayor Reed presented introductory remarks.

Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares provided introductory comments. Deputy Director of Parks, Recreation and Neighborhood Services Matt Cano offered the report.

Motion: Council Member Herrera moved approval of the memorandum from Mayor Reed, Council Members Herrera and Liccardo, dated October 30, 2013, recommending acceptance of the Staff recommendations of the Arcadia site, with further direction to Staff. Council Member Liccardo seconded the motion.

Mayor Reed opened the floor for public testimony.

Public Comments: The following speakers expressed support to proceed with the Measure P Bond funded Softball Facility Site at Arcadia in District 8, Santa Clara County Fairgrounds location, and Alviso; Several speakers expressed opposition to the Old Singleton Road disposal site and Shady Oaks as potential softball facility sites and one speaker submitted a petition signed by 68 residents in opposition of the softball facility at the Old Singleton Road disposal site: Rose Amador, La Raza Roundtable; Steve Soto II, Autumn Juhl-McNeil, Richard Santos, Steve Soto, Andrea Fedona, Brad Durga, Arcadia Development Company; Darrel Ospring, Sandy Bowman, Eugen Castillo, Jackie Padgett, Emma Ramirez, Coyote Creek Neighborhood Association; Bob Perales, San José Tin Club Softball; Kevin Nguyen, Diana John, Steve Navarro, Christian Wong, Bao Nguyen, Joshua Barousse, Jeremy Barousse, District 8 Community Roundtable; Pat Pizzo, Barinder Ahluwalia, Jerry Soriano, Michael Gross, Zanker Road Resource; Christian Lopez, Sterling Presley, Francisco Valenzuela, Angela Nguyen, Huan Quaeh, Nathan Bao, Angela Tirado, Alex Tirado, Eastridge Little League; R. Gross, PhD., Lonnie Gross, Jon Garside, Westcoast Aquatics; Aurelia Sanchez, Toby Strite, Evergreen Little League; Linhchi Nguyen and Nichole Edroas.

Deputy Director of Parks, Recreation and Neighborhood Services Matt Cano, City Attorney Richard Doyle, Director of Planning, Building and Code Enforcement Joseph Horwedel, Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares and Deputy Director of Economic Development Nanci J. Klein responded to Council questions and concerns.

Extensive Council discussion ensued.

Substitute Motion: Council Member Rocha moved approval of the memorandum from Council Members Khamis and Constant, dated October 31, 2013, recommending (1) deferring action on this item; (2) requesting Staff to explore the option of locating a softball complex at the Santa Clara County Fairgrounds location, (3) reagentizing Item 5.1 upon completion of an evaluation of the Santa Clara County Fairgrounds location and (4) providing clear Council direction that, regardless of which site is ultimately selected, the softball complex constructed should have at least six softball fields. Council Member Constant seconded the motion.

## 5.1 (Cont'd.)

Council Member Constant requested to amend the substitute motion to include a time frame for the County to respond and to direct Staff to return to Council by February 1, 2014. The amendment was accepted by Council Members Rocha and Campos.

Council Member Liccardo requested to amend the substitute motion to direct Staff to return to Council February 1, 2014 with clear terms of expectations after conversations with the County of Santa Clara about the Santa Clara County Fairgrounds location. The amendment with accepted by Council Members Rocha and Campos.

Action: On a call for the question, the substitute motion carried, the memorandum from Council Members Khamis and Constant, dated October 31, 2013, was approved including the following direction to Staff: (1) Action on Item 5.1 on the November 05, 2013 Agenda was deferred. (2) Staff was directed to explore the option of locating a softball complex at the Santa Clara Fairgrounds location. (3) Agendize Item 5.1 upon completion of an evaluation of the Santa Clara County Fairgrounds location. (4) Provide clear Council direction that, regardless of which site is ultimately selected, the softball complex constructed should have at least six softball fields. (5) Staff directed to report back to Council by February 1, 2014, with clear terms of expectations after conversations with the County of Santa Clara about the Santa Clara County Fairgrounds location. (6-5. Noes: Herrera, Kalra, Liccardo, Nguyen; Reed.)

## PUBLIC HEARINGS ON CONSENT CALENDAR

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

- 11.1 (a) Consideration of an ordinance rezoning the real property located at the northeast corner of Klein Road and Groesbeck Hill Drive (2560 Klein Road) from A Agricultural to R-1-5 Zoning District to allow residential use on a .562 gross acre site (Nguyen Dylan Hung T, Owner). CEQA: Envision San José 2040 General Plan Update EIR, Resolution Number 76041. (Planning, Building and Code Enforcement)  
C13-029 – District 8**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C13-029, dated October 15, 2013, on the subject rezoning. (2) Proof of Publication of Notice of Public Hearing, executed on October 4, 2013, submitted by the City Clerk.

Mayor Reed opened the Public Hearing.

Public Comments: There was no public testimony from the floor. Mayor Reed closed the Public Hearing.

11.1 (a) (Cont'd.)

Action: The recommendation of the Planning Director was approved, Ordinance No. 29338, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Northeast Corner of Klein Road and Groesbeck Hill Drive on a 0.56 Gross Acre Site (2560 Klein Road) to the R-1-5 Single Family Zoning District”, was passed for publication. (11-0.)

- (b) **Consideration of an ordinance rezoning of a property located on the southeast corner of the intersection of Race Street and Parkmoor Avenue (1290 Parkmoor Avenue) from the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District to allow private elementary and secondary school and ancillary uses, subject to a Planned Development Permit, until such time that the property redevelops (Parkmoor Investors LLC, Owner). CEQA: Addendum to the Final Program EIR for the Race Street General Plan Amendments and Planned Development Rezonings, File No. PDC13-021. (Planning, Building and Code Enforcement) PDC13-021 – District 6**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC13-021, dated October 15, 2013, on the subject rezoning. (2) Proof of Publication of Notice of Public Hearing, executed on October 18, 2013, submitted by the City Clerk. (3) Seven letters from the public, all dated November 5, 2013, expressing support to the rezoning.

Mayor Reed opened the Public Hearing.

Public Comments: There was no public testimony from the floor. Mayor Reed closed the Public Hearing.

Action: The recommendation of the Planning Director was approved, Ordinance No. 29339, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Southeast Corner of Race Street and Parkmoor Avenue (APN: 264-06-096) From the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District”, was passed for publication. (11-0.)

**END OF PUBLIC HEARINGS ON CONSENT CALENDAR**

## **PUBLIC HEARINGS**

- 11.2 (a) Consideration of an ordinance rezoning the real property located at the southwest corner of West San Carlos and Sunol Streets extending to Auzerais Avenue (860 West San Carlos Street) from the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District for a previously approved development to allow the following: (1) a change in the range of multi-family residential units from 680-800 to 600-800 units; (2) a change in the range of commercial square footage from 24,000-30,000 to 12,500-30,000 square feet; and (3) a reduction in building height on Block C from 140-150 feet to 50-80 feet, on an 8.0 gross acre site [Santa Clara County Transit District (VTA), Owner]. CEQA: Ohlone Mixed Use EIR, File No. PDC08-061, Resolution No. 75192.**

**PDC13-004 – District 6**

- (b) Consideration of an ordinance approving a Development Agreement with Green Republic, LLLP, Valley Transportation Authority (VTA), Dianne Ryan Trust, 861 Auzerais Investment, Green Valley Corporation, and Carolyn Pahle Trust, to develop up to 800 multi-family attached residential units and a minimum of 14,000 square feet of ground floor commercial space on three blocks with a minimum of two tower structures and one structure with a minimum height of 70 feet, consistent with the proposed Planned Development Zoning (File No, PDC13-004), and subject to the performance by Green Republic, LLLP for the dedication of parkland, contribution of funds for public transportation improvements serving the development, accelerated construction of street and utility infrastructure, submittal of building permits for the first high rise and commencement of construction and subsequent occupancy per deadlines of performance included in this agreement, on an 8.0 gross acre site, located at the southwest corner of West San Carlos and Sunol Streets extending to Auzerais Avenue (860 W. San Carlos Street). CEQA: Ohlone Mixed Use EIR, File No. PDC08-061, Resolution No. 75192.**

**DA13-002 – District 6**

**(Planning, Building and Code Enforcement)**

**(Deferred from 8/20/13 – Item 11.3, 9/17/13 – Item 11.2 and 10/22/13 – Item 11.5)**

Action: Deferred to December 10, 2013 per Administration.

- 11.3 The projects being considered are located on an approximately 0.79 gross acre site at the northwest corner of Fallingtree Drive and North Capitol Avenue (2577 Fallingtree Drive), in the A(PD) Planned Development Zoning District (Escobar Nunes Emily Trustee, Owner).**

- (a) Adopt a resolution adopting the Mitigated Negative Declaration prepared for the Planned Development Zoning at Capitol and Falling Tree (File No. PDC13-005) as having been completed in compliance with the California Environmental Quality Act (CEQA) and reflecting the City's independent judgment and analysis, and adopting a mitigation monitoring and reporting program.**

- 11.3 (b) **Consideration of an ordinance to rezone the real property from A(PD) to A(PD) to allow up to seven (7) single-family detached residential units.**
- (c) **Consideration of a resolution approving the Planned Development Permit to allow the demolition of three (3) existing buildings and construction of seven (7) single-family detached residential units.**
- (d) **Consideration of a resolution approving a Tentative Map to subdivide one (1) parcel into seven (7) lots to allow seven (7) single-family detached residential units.**

**CEQA: Mitigated Negative Declaration Resolution to be adopted. (Planning, Building and Code Enforcement)**

**PDC13-005/PD13-029/PT13-040 – District 4**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC13-005/PD13-029/PT13-040, dated October 16, 2013, on the subject rezoning. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated October 24, 2013, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on October 4, 2013, submitted by the City Clerk.

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

Mayor Reed opened the Public Hearing.

Public Comments: Melissa Lander, HMH Engineering, Applicant, spoke to the merits of the project. Mayor Reed closed the Public Hearing.

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, Resolution No. 76841, entitled: “A Resolution of the Council of the City of San José Adopting the Capitol and Fallingtree planned Development Zoning Mitigated Negative Declaration, For Which an Initial Study Was Prepared, All in Accordance With the California Environmental Quality Act, As Amended and Adopting a Related Mitigation Monitoring and Reporting Program”, was adopted; Ordinance No. 29340, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Northwest Corner of Fallingtree Drive and North Capitol Avenue (APN: 24439042) From the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District”, was passed for publication; Resolution No. 76842, entitled: “A Resolution of the Council of the City of San José Approving a Planed Development Permit, Subject to Conditions, To Allow the Demolition of Three (3) Existing Buildings and Development of Seven (7) Single Family Detached Units Residential Units on a 0.79 Gross Acre Site Located on the Northwest Corner of Fallingtree Drive and North Capitol Avenue (2577 Fallingtree Drive)” and Resolution No. 76843, entitled: “A Resolution of the Council of the City of San José Approving a Tentative Map to Subdivide One (1) Parcel Into Seven (7) Lots to Allow Sven (7) Single Family Detached Residential Units on a 0.79 Gross Acre Site Located on the Northwest Corner of Fallingtree Drive and North Capitol Avenue (2577 Fallingtree Drive)”, were adopted. (11-0.)

**11.4 Consideration of an ordinance rezoning the real property located on the northeast corner of South De Anza Boulevard and Via Vico (1090 South De Anza Boulevard) from CP (PD) to CP (PD) to replace an existing gasoline service station with approximately 2,929 square foot retail store (convenience store) in conjunction with an existing carwash structure on a 0.61 gross acre site (Rubnitz James E And Teresa P, Owner). CEQA: Exempt. (Planning, Building and Code Enforcement)  
PDC13-022 – District 1**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC13-022, dated October 16, 2013, on the subject rezoning. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated October 24, 2013, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on October 4, 2013, submitted by the City Clerk.

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

Mayor Reed opened the Public Hearing.

Public Comments: Henry Cord expressed support to the rezoning.

Mayor Reed closed the Public Hearing.

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Commission and Planning Director was approved, Ordinance No. 29341, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Northeast Corner of South De Anza Boulevard and Via Vico (1090 South De Anza Boulevard, APN: 37225015) To CP(PD) Planned Development Zoning District”, was passed for publication. (11-0.)

**11.5 Consideration of a Conditional Use Permit and Determination of Public Convenience or Necessary request to all allow off-sale of the full range of alcoholic beverages at an existing neighborhood market (Walmart) situated within a retail center (Westgate Mall) on a nine (9) gross acre site in CG Commercial General Zoning District and located on the north-east corner of Saratoga Avenue and West Campbell Avenue (1600 Saratoga Avenue) (FR Westgate Mall LLC, Owner). CEQA: Exempt. Planning Commission recommends approval (6-1-0). (Planning, Building and Code Enforcement)  
CP13-036/ABC13-004 – District 1**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP13-036/ABC13-004, dated September 18, 2013, on the subject rezoning. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated October 15, 2013, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on October 18, 2013, submitted by the City Clerk.

## 11.5 (Cont'd.)

Mayor Reed opened the Public Hearing.

Public Comments: There was no public testimony from the floor. Mayor Reed closed the Public Hearing.

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

Action: Upon motion by Council Member Constant, seconded by Council Member Oliverio and carried, the recommendation of the Planning Commission was approved and Resolution No. 76844 was adopted. (10-1. Noes: Kalra.)

## 11.6 **Consideration of a Conditional Use Permit and Determination of Public Convenience or Necessity request to allow the off-sale of alcoholic beverages (beer and wine) at an existing specialty retail food store (Tana Market) in the CP Commercial Pedestrian Zoning District on a 0.21 gross acre site, located on the east side of South Winchester Boulevard, approximately 650 feet southerly of Payne Avenue (1358 S. Winchester Blvd.) (Johnson Faye T Trustee, Owner). CEQA: Exempt. (Planning, Building and Code Enforcement)** **CP11-010/ABC13-010 – District 1**

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on September 11, 2013, submitted by the City Clerk.

Action: Dropped per Administration.

## 11.7 **Conduct an Administrative Hearing and consider an Appeal of the Director of Planning's decision to deny a Tentative Map Application to subdivide one 10.85 gross acres lot into three lots for church and public/quasi-public uses within the R-1-8 Zoning District, the R-1-8 Single-Family Residence Zoning District, located at/on the West side of McLaughlin Avenue, approximately 110 feet northerly of Algiers Avenue (1523 McLaughlin Avenue) (Roman Catholic Bishop of San José, Owner). CEQA: Exempt. Director of Planning, Building and Code Enforcement recommends denial. (Planning, Building and Code Enforcement)** **T13-010 – District 7**

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on October 18, 2013, submitted by the City Clerk.

Action: Dropped per Administration.

## **OPEN FORUM**

Bill Adams described the problems he has encountered with the Building Department related to obtaining an inspection fee refund.

Mayor Reed directed Mr. Adams to speak with Director of Planning, Building and Code Enforcement Joseph Horwedel following the Council meeting.

## **ADJOURNMENT**

The Council of the City of San José was adjourned at 9:56 p.m. in memory of Philip J. Ringenberg, a City employee since 1996. Phil passed away peacefully on Wednesday, September 18, 2013 leaving a large void with his family, friends and colleagues in the City of San José.

Minutes Recorded, Prepared and Respectfully Submitted by,

Toni J. Taber, CMC  
Acting City Clerk

smd/11-05-13 MIN

Access the video, the agenda and related reports for this meeting by visiting the City's website at <http://www.sanjoseca.gov/civiccenter/v>. For information on any ordinance that is not hyperlinked to this document, please contact the Office of the City Clerk at (408) 535-1266.