



MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, DECEMBER 10, 2013

The Council of the City of San José convened in Regular Session at 9:32 a.m. in the Council Chambers at City Hall.

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

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

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

There was no report.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:33 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel with respect to Public Employment/Public Employee Appointment pursuant to Government Code Section 54957: (1) Department: Police Department; Title: Police Chief. (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9(d)(1) with respect to existing litigation: (1) City of San José v. County of Santa Clara; Names of Parties Involved: City of San José, a municipal corporation, as Successor Agency to the Redevelopment Agency of the City of San José, Vinod K. Sharma, individually, and in his official capacity as Santa Clara County Director of Finance, County of Santa Clara; Court: Superior Court of California, County of Sacramento; Case No: 34-2012-80001190; Amount of Money or Other Relief Sought: Damages According to Proof. (2) Deisenroth v. City; Names of Parties Involved: Lorie Deisenroth, City of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-224197; (3) San José Police Officers' Association v. City, et al. Names of Parties Involved: San José Police Officers' Association, City of San José, Board of Administration for Police and Fire Department Retirement Plan of City of San José and Does 1-100; Court: Superior Court of California, County of Santa Clara;

CLOSED SESSION (Cont'd.)

Case No: 1-12-CV-225926; Amount of Money or Other Relief Sought: Declaratory and injunctive relief. (4) San José Retired Employees Association, et al. v. City, et al; Names of Parties Involved: San José Retired Employees Association, Howard E. Fleming, Donald S. Macrae, Frances J. Olson, Gary J. Richert and Rosalinda Navarro, City of San José Does 1 – 50, Board of Administration for the Federated City Employees Retirement System; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-233660; Amount of Money or Other Relief Sought: Declaratory Relief and Verified Petition for Writ of Mandate. (5) Sapien, et al. v. City of San José, et al. Names of Parties Involved: Robert Sapien, Marty Kathleen McCarthy, Thanh Ho, Randy Sekany, Ken Heredia, City of San José, Debra Figone in her official as City Manager of the City of San José, Does 1-15, The Board of Administration for the 1961 San José Police and Fire Department Retirement Plan; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-225928; Amount of Money or Other Relief Sought: Challenge to Measure B. (6) Harris, et al. v. City of San José, et al. Names of Parties Involved: Teresa Harris, Jon Reger, Moses Serrano, Suzann Stauffer, City of San José, Debra Figone in her official as City Manager of the City of San José, The Board of Administration for the 1975 Federated City Employees' Retirement Plan, Does 1-15; Court: Superior Court of California, County of Santa Clara; Case: 1-12-CV-226570; Amount of Money or Other Relief Sought: Challenge to Measure B. (7) Mukhar, et al. v. City of San José, et al. Names of Parties Involved: John Mukhar, Dale Dapp, James Atkins, William Buffington, Kirk Pennington, City of San José, Debra Figone in her official as City Manager of the City of San José, The Board of Administration for the 1975 Federated City Employees' Retirement Plan, Does 1-15; Court: Superior Court of California, County of Santa Clara; Case: 1-12-CV-226574; Amount of Money or Other Relief Sought: Challenge to Measure B. (8) AFSCME, et al. v. City of San José, et al. Names of Parties Involved: American Federation of State, County and Municipal Employees, Local 101 on behalf of its members, City of San José, The Board of Administration for the Federated City Employees' Retirement Plan; Court: Superior Court of California, County of Santa Clara; Case: 1-12-CV-225928; Amount of Money or Other Relief Sought: Challenge to Measure B. (C) 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

CLOSED SESSION (Cont'd.)

Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO. (6) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW. (8) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (9) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3. (10) San José Police Officers' Association (SJPOA); Nature of Negotiations: Salaries, Hours, Working Conditions, etc; Name of Existing Wages Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc. Web: <http://www.sanjoseca.gov/?nid=186>; Telephone for Employee Relations: 408-535-8150.

(D) 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 existing litigation: (1) City of San José v. County of Santa Clara; Names of Parties Involved: City of San José, a municipal corporation, as Successor Agency to the Redevelopment Agency of the City of San José, Vinod K. Sharma, individually, and in his official capacity as Santa Clara County Director of Finance, County of Santa Clara; Court: Superior Court of California, County of Sacramento; Case No: 34-2012-80001190; Amount of Money or Other Relief Sought: Damages According to Proof.

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

Present: Council Members - Campos, Chu, Constant, Herrera, Kalra, Khamis, Liccardo, Nguyen, Oliverio (1:55 p.m.), Rocha, Reed.

Absent: Council Members - All Present.

INVOCATION (MAYOR)

Pat Mitchell, Executive Director, Silicon Valley FACES, presented the Invocation.

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Vice Mayor Nguyen, seconded by Council Member Herrera and carried unanimously, the Orders of the Day and the Amended Agenda were approved, and Item 2.9 was dropped. (10-0-1. Absent: Oliverio.)

CLOSED SESSION REPORT

City Attorney Richard Doyle disclosed the following Closed Session actions of December 10, 2013:

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

- (1) Title: Chief of Police
Name: Larry Esquivel

Council Vote:

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

CEREMONIAL ITEMS

- 1.1 Presentation of a commendation to the “Santa Visits Alviso Foundation” in recognition of their commitment to serving the Alviso community for the past 30 years through its annual holiday program, scholarship program, and support of community events. (Chu)
(Rules Committee referral 12/4/13)**

Mayor Reed and Council Member Chu recognized and commended the “Santa Visits Alviso Foundation” for their dedication to serving the Alviso community for the past 30 years.

- 1.3 Presentation of a commendation to Ken and Farrell Podgorsek for their work in organizing the annual Bark in the Park festival, one of the largest outdoor celebrations dedicated to dogs in the Bay Area, and raising funds for the Campus Community Association, the Humane Society of Santa Clara Valley and the San Jose Animal Care Center. (Liccardo)
(Rules Committee referral 12/4/13)**

Mayor Reed and Council Member Liccardo recognized and commended Ken and Farrell Podgorsek for their dedication.

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) Study Session Minutes on Service Restoration and Revenue Measures of September 03, 2013**
- (b) Regular Minutes of September 10, 2013**
- (c) Minutes of the Joint Council/Successor Agency to the Redevelopment Agency of September 10, 2013**
- (d) Regular Minutes of September 17, 2013**
- (e) Regular Minutes of September 24, 2013**

Documents Filed: (1) The Study Session Minutes on Service Restoration and Revenue Measures dated September 03, 2013. (2) The Regular Minutes dated September 10, 2013 and September 17, 2013. (3) The Joint Council/Successor Agency to the Redevelopment Agency dated September 10, 2013.

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

2.2 Final adoption of ordinances.

- (a) ORD. NO. 29348 - Amending Section 20.85.020 of Chapter 20.85 of Title 20 of the San José Municipal Code to adopt maximum allowable building height restrictions within geographical employment centers including the Norman Y. Mineta San José International Airport, and to make other technical, non-substantive or formatting changes.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29348 executed on December 6, 2013, submitted by the City Clerk.

Action: Ordinance No. 29348 was adopted. (11-0.) (First Reading: 9-1-1. Noes: Oliverio. Absent: Constant.)

- 2.2 (b) **ORD. NO. 29349 - Amending Chapter 17.12 of Title 17 of the San José Municipal Code to adopt the 2013 California Fire Code with local amendments relating to fire flow, sprinkler and fire alarm systems and standards, access control devices, large battery charging systems and continuous gas detection systems and to maintain existing fire protection and regulatory authority.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 29349 executed on December 6, 2013, submitted by the City Clerk.

Action: Ordinance No. 29349 was adopted. (11-0.) (First Reading: 8-2-1. Noes: Kalra, Nguyen. Absent: Constant.)

2.3 **Approval of Council Committee Reports.**

- (a) **Rules and Open Government Committee Report of November 13, 2013. (Mayor)**

Documents Filed: The Rules and Open Government Committee Report dated November 13, 2013.

Action: The Council Committee Report was approved. (11-0.)

- (b) **Neighborhood Services and Education Committee Report of November 14, 2013. (Nguyen)**
(c) **Community and Economic Development Committee of November 18, 2013. (Herrera)**

Action: Deferred to December 17, 2013 per City Clerk.

- 2.4 (a) **Request for an excused absence for Council Member Constant from the Closed Session and Regular Meeting of the City Council on December 3, 2013 and the Regular Meeting of the Rules and Open Government Committee on December 4, 2013, due to the death of a close family member. (Constant)**
(Rules Committee referral 12/4/13)

Documents Filed: Memorandum from Council Member Constant, dated December 2, 2013, requesting excused absences due to the death of a close family member.

Action: The absences for Council Member Constant were excused. (11-0.)

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 Authorize City Manager Designee Ed Shikada's travel to Fort Lauderdale, Florida on January 16 – 17, 2014, to participate in the Large Cities Executive Forum. City Manager's Non Personal Services Appropriation. (City Manager's Office)

Documents Filed: Memorandum from Assistant City Manager Edward K. Shikada, dated November 25, 2013, requesting approval to travel.

Action: The travel request from Assistant City Manager Edward K. Shikada was approved. (11-0.)

2.8 Adopt a resolution:

- (a) **Accepting the 2014-2015 Hazardous Vegetation Commencement Report compiled by the Santa Clara County Department of Agriculture and Environmental Management.**
- (b) **Declaring that those certain noxious or dangerous seasonal and recurrent weeds, growing or likely to be growing, and refuse, situated or likely to be situated, on those properties identified in the report are a nuisance.**
- (c) **Directing the Santa Clara County Department of Agriculture and Environmental Management to mail notices of a public hearing before the City Council, on January 14, 2014 at 1:30 p.m., on the report to property owners of affected real properties, pursuant to Chapter 9.12 of Title 9 of the San José Municipal Code and the Weed Abatement Agreement between the City of San José and the County of Santa Clara.**

CEQA: Exempt, File No. PP13-097. (Planning, Building and Code Enforcement)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 18, 2013, recommending adoption of a resolution.

Action: Resolution No. 76875, entitled: "A Resolution of the Council of the City of San José Accepting and Confirming the 2014-2015 Hazardous Vegetation Commencement Report Compiled by the Santa Clara County Department of Agriculture and Environment Management; Declaring Certain Noxious or Dangerous Seasonal and Recurrent Weeds Growing or Likely To Be Situated on Those Properties Identified in the Report Are a Public Nuisance and Directing That Notice of This Resolution and a Public Hearing on the Report on December 10, 2013 at 1:30 p.m. Be Given Pursuant to Chapter 9.12 of the San José Municipal Code", was adopted. (11-0.)

2.9 As recommended by the Rules and Open Government Committee on December 4, 2013:

- (a) Approve the District 10 Beautiful Neighborhoods Initiative as a City Council sponsored Special Event and authoring expenditure of City Funds.**
- (b) Approve and accept donations from various individuals, businesses or community groups to support the event.**

CEQA: Not a Project. (Khamis)

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated November 4, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: Dropped per Orders of the Day.

2.10 Adopt a resolution approving forgiveness of predevelopment loans totaling \$100,000 made to Satellite Housing Inc. for the development of the Willow Glen Woods affordable housing site owned by the City, located at 2900 Evans Lane. CEQA: Not a Project, File No. PP10-066, Contracts/Agreements. Council District 6. (Housing)

Item 2.10 was renumbered from Item 4.3.

Documents Filed: City Council Action Request from Director of Housing Leslye Corsiglia, dated November 25, 2013, recommending adoption of a resolution.

City Manager Debra Figone and Assistant Director of Housing Jacky Morales-Ferrand responded to Council questions and concerns.

Council Member Khamis voiced opposition citing that it did not seem right to forgive the debt especially when the City was strapped for money.

Council Member Constant disagreed with the final statement in the Staff memorandum and pointed out that there is an impact because the City will not be receiving the \$100,000 back.

Council Member Liccardo asked Staff for background information on Satellite Housing. Assistant Director of Housing Jacky Morales-Ferrand replied that Satellite Housing is a nonprofit housing provider which planned to offer special needs for the blind and unfortunately was not able to move forward because of the economic conditions that occurred. She added that the funds that were being utilized are for housing funds and cannot be used for any other use.

City Attorney Richard Doyle provided additional clarification and pointed out that it was a business call as to whether the Council approves the Staff recommendation and forgives the predevelopment loan.

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

2.10 (Cont'd.)

Council Member Kalra voiced support to the Staff recommendations.

Action: On a call for the question, the motion carried, Resolution No. 76876, entitled: “A Resolution of the Council of the City of San José Approving the Forgiveness of a Predevelopment Loan Made to Satellite Housing Inc. for the Development of the Willow Glen Woods Affordable Housing Site”, was adopted. (8-3. Noes: Constant, Khamis, Oliverio.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

3.1 Report of the City Manager, Debra Figone (Verbal Report)

City Manager Debra Figone reported that during the Combined Shared Giving Campaign City employees contributed \$104,186.76 and 723 volunteer hours which will provide benefits to social services and nonprofit agencies.

3.3 As recommended by Public Safety, Finance, and Strategic Support Committee on November 21, 2013, accept the Audit of Indirect Cost Allocation. CEQA: Not a Project, File No. PP10-069(a), Staff Reports. (City Auditor) [Public Safety, Finance, and Strategic Support Committee referral 11/21/13 – Item d(4)]

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated January 25, 2013, transmitting the recommendations of the Rules and Open Government Committee.

City Auditor Sharon W. Erickson and Director of Finance Julia H. Cooper offered the report on the Audit of Indirect Cost Allocation and responded to Council questions.

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

Brief Council discussion ensued.

Action: On a call for the question, the motion carried unanimously, and the Audit of Indirect Cost Allocation was accepted. (11-0.)

- 3.4 (a) **Adopt a resolution to approve the terms of a tentative agreement between the City and the San José Police Officers' Association (POA), and authorizing the City Manager to execute an agreement with a term of July 1, 2013, through December 31, 2015.**
- (b) **Adopt the following Appropriation Ordinance amendments in the General Fund:**
- (1) **Increase the Police Department Personal Services appropriation in the amount of \$6,507,777.**
 - (2) **Increase the City Attorney's Office Personal Services appropriation in the amount of \$13,817.**
 - (3) **Increase the 2014-2015 Future Deficit Earmarked Reserve in the amount of \$4,567,406.**
 - (4) **Decrease the San José Police Officers' Association Employee Compensation Planning Earmarked Reserve in the amount of \$11,089,000.**

CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (City Manager's Office)

Documents Filed: (1) Memorandum from Council Member Rocha, dated December 9, 2013, recommending direction to the City Manager as described below in "Action". (2) Memorandum from Deputy City Manager Alex Gurza and Budget Director Jennifer A. Maguire, dated November 26, 2013, recommending adoption of a resolution and appropriation ordinance amendments.

City Manager Debra Figone provided introductory comments and acknowledged the memorandum from Council Member Rocha. City Manager Debra Figone remarked that she will issue an information memorandum shortly that will address many of questions outlined by Council Member Rocha.

Mayor Reed expressed his support for this effort and restoration.

Motion: Council Member Constant moved approval of the Staff recommendations and the memorandum from Council Member Rocha. Council Member Oliverio seconded the motion.

Council Member Constant requested more information as described below in "Action" indicated under Items (1)-(3).

Brief discussion followed.

City Attorney Richard Doyle presented clarifications.

3.4(b) (Cont'd.)

Action: On a call for the question, the motion carried unanimously, Resolution No. 76877, entitled: “A Resolution of the Council of the City of San José Approving an Agreement Between the City of San José and the San José Police Officers’ Association With a Term of July 1, 2013 to December 31, 2015” and Ordinance No. 29350, entitled: “An Ordinance of the Council of the City of San José Amending Ordinance No. 29271 to Appropriate Monies in the General Fund for the City Attorney’s Office Personal Services, For the Police Department Personal Services and for the 2014-2015 Future Deficit Earmarked Reserve; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”, were adopted. Staff was directed to include the following in the information memorandum coming to Council in January 2014: (1) An outline of what happens now when officers have injuries that exceed one year and run out of their time, including running out of their 48/50 time, and what they may have on the books i.e. vacation, sick and comp time. Include a copy of the voluntary resignation letter. (2) Include a “word for word definition of disability” in the CALPERS System: “cannot normally perform the usual duties of their position or the usual duties of the position for any other CALPERS Employers including State Agencies, schools and local public agencies.” (3) Include several clear examples and scenarios of representations of disability retirements, and incorporating comparisons with other cities. The memorandum from Council Member Rocha, dated December 9, 2013, was referred to the City Manager and City Attorney, outlining the following direction: (1) The City Manager and City Attorney was directed to review the assertions made in the letter from the San José Police Officer’s Association dated December 3, 2013 (see attachment online), regarding the Tier 2 disability retirement benefits established by Measure B. Specifically the letter asserts that newly hired officers feel that the Tier 2 disability benefits is inadequate and as a result are purchasing their own disability insurance out of pocket. It further asserts that inadequate benefits are hampering retention efforts. Staff requested to return to Council in either closed or open session, as appropriate, with a response to these concerns. Staff may wish to address the following questions: (a) Are newly hired officers within the Tier 2 system purchasing their own long term disability insurance? Are there any long disability insurance plans that could offset the salary gap if a disabled Tier 2 officer were placed in a position that provided a lower salary than the police officer position? (b) How do the City’s Tier 2 disability retirement benefits compare to those provided by other cities, in particular, the Bay Area or California Cities that may be competing with San José to hire officers? (c) Is there evidence that the Tier 2 disability retirement benefits are contributing to the City’s Police Officer retention problem? (d) What is Staff’s understanding of how the Tier 2 definition of “disability” will be interpreted and applied, and how does it differ from the Tier standard? Can Staff provide real or hypothetical examples as to when the two standards would yield different determinations? What are the “other jobs described in the City’s classification plan” in the Police Department that would be available to a disabled Tier 2 officer? (2) Offer the Police and Fire Retirement Board an opportunity to provide any feedback on the implementation of Tier 2 disability retirement benefits that they may wish to provide, including any information from their outside counsel as to how the definition and benefit standards should be interpreted. (11-0.)

**3.5 Accept the report on the results of the 2013 Revenue Ballot Measures Public Opinion Survey. (City Manager's Office)
(Rules In-Lieu referral 11/26/13)**

Documents Filed: (1) Memorandum from Mayor Reed, Vice Mayor Nguyen and Council Member Herrera, dated December 6, 2013, recommending setting the Library Parcel Tax Renewal as the highest priority for either a June or November election and to defer consideration of the sales tax revenue increase until February 2014. (2) Memorandum from Council Member Rocha, dated December 6, 2013, recommending acceptance of the Staff report with further direction. (3) Memorandum from Director of Communications David Vossbrink, dated November 27, 2013, recommending acceptance of the report.

City Manager Debra Figone presented introductory comments.

David Metz, Fairbank, Maslin, Maullin, Metz and Associates provided brief highlights of the report on the findings of the November survey and responded to Council questions.

Public Comments: Speaking in support to the Library Parcel Taxes for the November ballot were Sue Williams, Peter Allen, Jean Lee, Dave Truslow, Trixie Johnson and Mary McLane, San José Public Library Foundation.

Motion: Vice Mayor Nguyen moved approval of the Staff report and the memorandum she cosigned with Mayor Reed and Council Member Herrera with direction to Staff as described below in "Action". Council Member Herrera seconded the motion.

Council discussion ensued.

Action: On a call for the question, the motion carried unanimously, the report was accepted, the memorandum from Mayor Reed, Vice Mayor Nguyen and Council Member Herrera, dated December 6, 2013, was approved, with the following direction to Staff: (1) Set the Library Parcel Tax Renewal as the highest priority for either a June or November election which will be determined after additional polling is presented to Council in February. (2) Defer consideration of the Sales Tax increase until February when the date of the election of the Library Parcel Tax Renewal is determined and other election factors can be established for a proposed sales tax increase such as: establishing organized support, neutralizing opposition, determining financial support for a campaign and development of a spending plan. (11-0.)

- 3.6 As recommended by the Rules and Open Government Committee on October 30, 2013, approve an ordinance amending Chapter 12.06 of Title 12 of the San José Municipal Code to amend Section 12.06.810 and to add a new Part 11 related to Officeholder/Candidate Legal Defense Funds. CEQA: Not a Project, File No. PP10-068(b), Municipal Code or Policy. (City Attorney)**

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated November 7, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: Item 3.6 was dropped. To Be Renoticed.

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 (a) Hold a Tax Equity and Fiscal Responsibility Act (“TEFRA”) Hearing for the issuance of \$35,000,000 of tax-exempt 501(c)(3) revenue bonds by the California Municipal Finance Authority (“CMFA”) on behalf of Launchpad Development Company, for the Si Se Puede Academy, Brilliant Minds Elementary and RS-Jackson Ave. School Project.**
- (b) Consider a resolution approving the issuance of tax-exempt revenue bonds, by the CMFA, on behalf of Launchpad Development Company, in an aggregate principal amount not to exceed \$35,000,000 (the “Bonds”), allocated as such:**
- (1) Approximately \$10,000,000 in Bonds to finance and refinance the acquisition, construction, improvements, and equipping of certain charter school educational facilities in San José, identified as the Si Se Puede Academy (2249 Dobern Avenue); pay certain expenses incurred in connection with the issuance of the Bonds; and fund all or a portion of a reserve fund deposit and capitalized interest.**
 - (2) Approximately \$14,000,000 in Bonds to finance and refinance the acquisition, construction, improvements, and equipping of certain charter school educational facilities in San José, identified as the Brilliant Minds Elementary (2962 Story Road); pay certain expenses incurred in connection with the issuance of the Bonds; and fund all or a portion of a reserve fund deposit and capitalized interest.**
 - (3) Approximately \$11,000,000 in Bonds to finance and refinance the acquisition, construction, improvements and equipping of certain charter school educational facilities in San José, identified as the RS-Jackson Avenue School (70 S. Jackson St.); pay certain expenses incurred in connection with the issuance of the Bonds; and fund all or a portion of a reserve fund deposit and capitalized interest.**

CEQA: Not a Project, File No. PP10-069, Organizational and administrative activities. Council District 5. (Finance)

4.1 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Finance Julia H. Cooper, dated November 26, 2013, recommending holding a TEFRA Hearing and adoption of a resolution. (2) Statement and Declaration of Conflict of Interest Form from Council Member Liccardo, dated December 10, 2013, disclosing that his wife is employed by Rocketship Education. (3) Letter from David Kuizenga, Vice President, Rocketship Education, dated December 12, 2013, requesting that Council approve the rezoning and Conditional Use Permit for a Rocketship School at the 70 South Jackson. (4) Signed petition containing 180 signatures, dated December 10, 2013, expressing support for the rezoning and Conditional Use Permit for a Rocketship School at 70 South Jackson.

Council Member Liccardo recused himself from participating in the Council discussion and action, and disclosed that his wife is employed by Rocketship Education.

Mayor Reed opened the Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing.

City Attorney Richard Doyle provided clarifications for the Public Hearing process.

Motion: Council Member Campos moved approval of the Staff recommendations on Items 4.1(a), (b)(1) and (b)(2), with 4.1(b)(3) continued to the evening session. Council Member Rocha seconded the motion.

Eric Schoennauer, representing Launchpad Development and Rocketship Education, the Applicant, expressed support to the motion by Council Member Campos and spoke to the merits of the project.

Public Comments: Brett Bymaster, Washington Neighborhood, expressed opposition to the Staff recommendations.

Mayor Reed continued the TEFRA Hearing to Item 11.3 in the evening.

Action: On a call for the question, the motion carried, Resolution No. 76880, entitled: "A Resolution of the Council of the City of San José Approving the Issuance of the California Municipal Finance Authority Tax Exempt Revenue Bonds, On behalf of Launchpad Development Company, In An Aggregate Principal Amount Not To Exceed \$35,000,000 For the Purpose of Financing and Refinancing the Acquisition, Construction, Improvement, Equipping and Leasing of Certain Charger School Education Facilities in the City of San José and Certain Other Matters Relating Thereto", was adopted. (9-1-0-1. Noes: Oliverio. Abstain: Liccardo.) *Note: Item 4.1(b)(3) was heard in the evening after Item 11.3 and approved, with the vote as indicated herein. There was no additional public testimony.*

4.2 Adopt a resolution of the City Council in connection with the issuance of multifamily housing revenue bonds:

- (a) Authorizing the issuance of tax-exempt multifamily housing revenue bonds designated as City of San José Multifamily Housing Revenue Bonds, Series 2013B-1 and Series 2013B-2 (“Charlotte Drive Apartments”) in an aggregate principal amount not to exceed \$31,643,000 (the “Bonds”).**
- (b) Approving a loan of Bond proceeds to Charlotte Drive Apartments, L.P., a California limited partnership created by Eden Housing, Inc., to finance the construction of the Charlotte Drive Apartments located at 5600 Cottle Road in San José (the “Project”), immediately south of Charlotte Drive.**
- (c) Approving in substantially final form an Indenture of Trust, a Loan Agreement and Regulatory Agreement and Declaration of Restrictive Covenants (the “Documents”).**
- (d) Authorizing and directing the City Manager, Director of Finance, Assistant Director of Finance and Director of Housing, or their designees, to execute and, deliver these Documents and other related Bond documents as necessary.**

CEQA: EIR Resolution No. 72772 adopted June 21, 2005, File No. PDC04-031, as cited in the Project’s Planned Development Permit, PD12-039. Council District 2. (Finance/ Housing)

Action: Item 4.2 was dropped per Administration.

4.3 Adopt a resolution approving forgiveness of predevelopment loans totaling \$100,000 made to Satellite Housing Inc. for the development of the Willow Glen Woods affordable housing site owned by the City, located at 2900 Evans Lane. CEQA: Not a Project, File No. PP10-066, Contracts/Agreements. Council District 6. (Housing)

Action: Item 4.3 was renumbered to Item 2.10. See Item 2.10 for action.

4.4 Report on bids and award of contract for the 5939 – Del Monte Park Project to the low bidder, Calstate Construction, Inc., in the amount of \$2,219,000, and approval of a contingency in the amount of \$177,520. CEQA: Exempt, File No. PP08-094. Council District 6. (Public Works)

Documents Filed: (1) Memorandum from Director of Public Works David Sykes, dated November 12, 2013, recommending taking appropriate action based on the evaluation of the bids. (2) Supplemental memorandum from Director of Public Works David Sykes, dated December 6, 2013, providing additional information after the bids were opened.

Council Member Oliverio presented brief comments and pointed out that the award for the construction of the Del Monte Park project is totally grant funded.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Constant and carried unanimously, the report on bids and award of contract for the 5939 – Del Monte Park Project to the low bidder, Calstate Construction, Inc., in the amount of \$2,219,000, with related contingency, was approved. (11-0.)

NEIGHBORHOOD SERVICES

- 5.1 (a) **Direct City Staff to: (i) Accept the property insurance claim settlement of \$1,960,594 from the City of San José's property insurance carrier, Lexington, which assumes the demolition of the remaining Kelley House structure; and (ii) Develop a plan for re-use of this location which references the Kelley House significance.**
- (b) **Adopt the following 2013-2014 Appropriation Ordinance and Funding Sources Resolution Amendments in the General Fund:**
- (1) **Increase the revenue estimate for Other Revenue by \$1,960,594.**
 - (2) **Establish a capital improvements appropriation to the Parks, Recreation and Neighborhood Services Department for the Kelley House Demolition project in the amount of \$425,000.**
 - (3) **Increase the 2014-2015 Future Deficit reserve by \$1,535,594.**

CEQA: Exempt, File No. PP13-107. Council District 7. (Finance/Parks, Recreation and Neighborhood Services/City Manager's Office)

Documents Filed: (1) Memorandum from Director of Parks, Recreation and Neighborhood Services Julie Edmonds-Mares, Director of Finance Julia H. Cooper and Budget Director Jennifer A. Maguire, dated November 18, 2013, recommending direction to Staff and adoption of appropriation ordinance and funding sources resolution amendments. (2) Two emails from members of the public both dated December 10, 2013, suggesting adding a park next to the Kelley House.

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

Assistant Director of Parks, Recreation and Neighborhood Services Angel Rios responded to Council questions.

Action: On a call for the question, the motion carried unanimously, Staff was directed to: (1) Accept the property insurance claim settlement of \$1,960,594 from the City of San José's property insurance carrier, Lexington, which assumes the demolition of the remaining Kelley House structure. (2) Develop a plan for re-use of this location which references the Kelley House significance, Ordinance No. 29351, entitled: "An Ordinance of the Council of the City of San José Amending Ordinance No. 29271 to Appropriate Monies in the General Fund for the Kelley House Demolition Project and for the 2014-2015 Future Deficit Reserve; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption" and Resolution No. 76878, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 76677 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2013-2014 to Adjust Revenues in the General Fund", were adopted. (11-0.)

TRANSPORTATION & AVIATION SERVICES

6.1 Approve an ordinance:

- (a) **Amending Chapter 6.64 of Title 6 of the San José Municipal Code to amend Sections 6.64.130, 6.64.150, and 6.64.465 to suspend the license and permit requirements for taxicab businesses and persons whose principal place of business is located outside the City of San José that only drop off passengers in the City.**
- (b) **Amending Chapter 25.08 of Title 25 of the San José Municipal Code to amend Sections 25.08.700 and 25.08.750 to suspend the permit requirements for ground transportation providers of taxicab services whose principal place of business is located outside the City of San José that only drop off passengers at the Norman Y. Mineta San José International Airport.**

CEQA: Not a Project, File No. PP10-068(c), Municipal Code or policy change that involves no changes in the physical environment. (Airport)

Documents Filed: (1) Memorandum from Mayor Reed and Council Members Liccardo and Rocha, dated November 14, 2013, recommending direction to Staff. (2) Memorandum from Director of Aviation Kim Becker Aguirre, dated December 6, 2013, recommending approval of an ordinance.

Director of Aviation Kim Becker Aguirre and City Attorney Richard Doyle responded to Council questions and concerns.

Motion: Council Member Liccardo moved approval of the Staff recommendations and the memorandum he cosigned with Mayor Reed and Council Member Rocha, with direction to Staff to suspend the prosecution and collection of fines issued since May 2013 for “drop offs” at San José Mineta International Airport (SJC) and other venues throughout the City. Council Member Rocha seconded the motion.

Public Comments: The following speakers expressed opposition to charging drop off fees, Dave Logan, Yellow Cab; Lashkar Singh, Amarjit Singh, Silicon Valley Cab; Varinder Kumar, Classic Cab; Ibrahim Mohamed, Karan Deep, Dimitrix Vorik, Rainbow Cab and Shakur Buni.

Council discussion ensued.

Council Member Liccardo withdrew his motion.

Second Motion: Council Member Constant moved approval of the Staff recommendations with the following direction to Staff: (1) Eliminate any fees and/or permit requirements for taxis relating to “drop offs” at the San José Mineta International Airport (SJC) and other venues throughout the City. (2) Suspend the prosecution and collection of fines issued since May 2013 for “drop offs” at SJC and other venues throughout the City. (3) Return with a workable system. Council Member Rocha seconded the motion.

6.1 (Cont'd.)

Council Member Liccardo expressed his support to the motion on the floor.

Council Member Khamis requested to amend the motion to direct Staff to report back with the amount of administrative time being spent on this effort. Council Members Constant and Rocha accepted the amendment.

Action: On a call for the question, the second motion carried unanimously, Ordinance No. 29352, entitled: “An Ordinance of the Council of the City of San José Amending Sections 6.64.130, 6.64.150 and 6.64.465 of Chapter 6.64 of Title 6 of the San José Municipal Code To Suspend the License and Permit Requirements for Taxicab Businesses and Persons That Only Drop Off Passengers in the City; and Amending Sections 25.08.700 and 25.08.750 of Chapter 25.08 of Title 25 of the San José Municipal Code to Suspend the Permit Requirements for Ground Transportation Providers of Taxicab Services That Only Drop Off Passengers at the Norman Y. Mineta San José International Airport”, was passed for publication, as amended, with direction to Staff as follows: (1) Eliminate any fees and/or permit requirements for taxis relating to “drop offs” at the San José Mineta International Airport (SJC) and other venues throughout the City. (2) Suspend the prosecution and collection of fines issued since May 2013 for “drop offs” at SJC and other venues throughout the City. (3) Return with a workable system. (4) Report back with the amount of administrative time being spent on this effort. (11-0.)

REDEVELOPMENT – SUCCESSOR AGENCY

9.1 **Approve the First Amendment to the Amended and Restated Lease with the Comedy Club of San José, LLC for the use of the José Theater located at 62 South Second Street. CEQA: Resolution No. 67721. (Successor Agency to the Redevelopment Agency)**

Documents Filed: Memorandum from Managing Director Richard A. Keit, dated November 18, 2013, recommending approval of the First Amendment to the Amended and Restated Lease.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Constant and carried unanimously, the First Amendment to the Amended and Restated Lease with the Comedy Club of San José, LLC for the use of the José Theater located at 62 South Second Street was approved. (11-0.)

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 5:14 p.m.

RECESS/RECONVENE

The City Council recessed at 5:14 p.m. from the afternoon Council Session and reconvened at 7:01 p.m. in the Council Chambers, City Hall.

Present: Council Members - Campos, Chu, Constant, Herrera, Kalra, Khamis, Liccardo, Nguyen, Oliverio (7:07 p.m.), Rocha; Reed.

Absent: Council Members - All Present.

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

CEREMONIAL ITEMS

- 1.2 Presentation of a commendation to Michael Burns for his dedicated service as the general manager of the Santa Clara Valley Transportation Authority. (Kalra) (Rules Committee referral 12/4/13)**

Mayor Reed, Vice Mayor Nguyen and Council Members Kalra, Liccardo, Khamis, Herrera and Rocha recognized and commended Michael Burns for his exemplary service.

- 1.4 Presentation of a commendation to Katrina Loera and Steve Gordy for organizing the 13th Street Chalk Art festival, thereby contributing to a vibrant and thriving City while promoting and assisting in raising funds for art programs in our public schools. (Liccardo) (Rules Committee referral 12/4/13)**

Mayor Reed and Council Member Liccardo recognized and commended Katrina Loera and Steve Gordy for their outstanding contributions.

PUBLIC HEARINGS

- 11.2 The following projects being considered are located on an 8.0 gross acre site, at southwest corner of West San Carlos and Sunol Streets and extending to Auzerais Avenue (860 W. San Carlos Street):**
- (a) **A rezoning from A(PD) to the A(PD) Planned Development Zoning District to allow the following changes: (1) range of multi-family units from 680-800 to 600-800 units. (2) range of commercial square footage from 24,000-30,000 sf. (3) building height on Block C from 140-150 ft to 50-80 ft.**

- 11.2 (b) **Consideration of an ordinance to approve a Development Agreement with Green Republic, LLLP VTA, G. Figone Trust, 861 Auzerais Investment, Green Valley Corp., and Carolyn Pahle Trust, to develop up to 800 MFA residential units and a min. of 14,000 sf of ground floor commercial space on three blocks with a min. of two tower structures and one structure with a min. height of 70 ft, consistent with the purposes Planned Development Zoning, 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.**

CEQA: EIR Resolution No. 09-064, File No. PDC08-061. (Planning, Building and Code Enforcement)

PDC13-004/DA13-002 – District 6

(Deferred from 8/20/13 – Item 11.3 et al and 11/5/13 – Item 11.2)

Documents Filed: Proof of Publication of Notice of Public Hearing executed on November 15, 2013, submitted by the City Clerk.

Action: Item 11.2 was dropped. To be renoticed.

- 11.3 **Consideration of an ordinance rezoning the real property located on the north of Minnesota Avenue, approximately 180 feet west of Lupton Avenue (1236 Minnesota Avenue) from the R-1-8 Single-Family Residence Zoning District to the R-1-8(PD) Planned Development Zoning District to allow a single-family residence on a new flag lot behind an existing single family residence on a 0.32 gross acre site (Cyrus L. Colburn III & Et Al, Owner). CEQA: Exempt. (Planning, Building and Code Enforcement)**

PDC13-030 – District 6

Documents Filed: (1) Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 25, 2013, transmitting the Planning Commission recommendation. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC13-030, dated November 8, 2013. (3) Proof of Publication of Notice of Public Hearing, executed on October 25, 2013, submitted by the City Clerk. (4) Letter from Monty Lucas, Designer, dated December 9, 2013, regarding the planned development at 1236 Minnesota Avenue.

Mayor Reed opened the Public Hearing

Monty Lucas, Designer, representing the Applicant, spoke to the merits of the project and acknowledged the efforts and willingness of the neighborhood to discuss the proposed planned development and home to be constructed.

11.3 (Cont'd.)

Public Comments: The following speakers expressed opposition to the proposed planned development citing that privacy will be affected, increased traffic congestion and traffic noise, inappropriate size of the home and other negative impacts: Dennis Menard, Susan Schmitt, Linda Menard, Phillip Verinsky, Anita Jeong, Melinda Gedryn, Jane Bevis and Marilyn Dion.

Teri Kane, Alex Song and David Dearborn voiced their support to the project.

Monty Lucas, Designer, representing the Applicant, provided closing remarks.

Council Member Oliverio remarked that he is in favor of preserving these types of neighborhoods and putting density where it is appropriate. Council Member Oliverio added that he does not support this action nor will he be making a motion.

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

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

Council discussion ensued.

Action: On a call for the question, the motion failed and there was no Council action. (5-6. Noes: Kalra, Khamis, Nguyen, Oliverio, Rocha; Reed.)

11.4 **Consideration of an ordinance rezoning the real property located at/on the easterly terminus of Skyway Drive, east of Monterey Road, near the southeast corner of the football field (100 Skyway Drive) from A(PD) Zoning District to the A(PD) Zoning District to allow: (1) Increase student population from 1,300 to 2,300 students. (2) Allow inbound school bus access on Diamond Heights Drive. (3) Remove a requirement for a transportation mitigation measure at Skyway Drive and Monterey Road and (4) Modify Santa Clara Valley dudleya plant mitigation measures on a 56.2 gross acres site (Valley Christian Schools, Owner). CEQA: Valley Christian Schools EIR. (Planning, Building and Code Enforcement) PDC12-012 – District 2**

Documents Filed: Proof of Publication of Notice of Public Hearing executed on November 15, 2013, submitted by the City Clerk.

Action: Deferred to January 28, 2014 per Administration.

- 11.5 (a) Adopt a resolution adopting a Mitigated Negative Declaration for the Rocketship Jackson rezoning and conditional use permit project, and a related Mitigation Monitoring and Reporting Program;**
- (b) Consideration of an ordinance rezoning real property located on the eastside of South Jackson Avenue, approximately 350 feet south of Alum Rock Avenue 70 South Jackson Avenue) from R-1-8 Single-Family Residence Zoning District (approximately 1.24 acres) and R-1-8(PD) Planned Development Zoning District (approximately 0.23 acres) to CP Commercial Pedestrian Zoning District.**

Documents Filed: (1) Memorandum from Council Member Campos, dated December 6, 2013, recommending deferring Item 11.5 to the next evening Council Meeting. (2) Statement and Declaration of Conflict of Interest Form from Council Member Liccardo, dated December 10, 2013, disclosing that his wife is employed by Rocketship.

Council Member Liccardo recused himself from participating in the Council discussion and action, and disclosed that his wife is employed by Rocketship Education.

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

Mayor Reed opened the Public Hearing.

Erik Schoennauer, representing the Applicant, Launchpad Development and Rocketship Education spoke to the merits of the project.

Public Comments: Speaking in support to Staff recommendations were Greg Lippman, Ace Charter School; John Glover, Martin Lwee, Jordan Wise, Juan Mateos, Rocketship Education; Karen Martinez, Alum Rock School Board; Clarissa Diaz, Nancy Ulloa, Matt Hammer, Innovate Public School and Jennifer Andaluz, Downtown College Preparatory.

Speaking in opposition to the Staff recommendations were Helen Garza, President, Plata Arroyo Neighborhood Association; Juan Estrada, Monica Zepulveda, Alex, Guadalupe Rodriquez, Gonzalez Guadalupe, Mayfair Neighborhood Action Committee and Roxana Marachi.

Mayor Reed closed the Public Hearing.

Motion: Vice Mayor Nguyen moved approval of the Staff recommendations for Item 11.5(a)(b). Council Member Herrera seconded the motion.

City Attorney Richard Doyle, Director of Planning, Building and Code Enforcement Joseph Horwedel, Assistant Director of Public Works Harry Freitas and Erik Schoennauer, representing the Applicant, Launchpad Development and Rocketship Education responded to Council questions and concerns.

Extensive Council discussion ensued.

11.5 (Cont'd.)

Mayor Reed and Council Member Constant expressed support to the motion on the floor.

Council Member Campos expressed concern about the land use.

Action: On a call for the question, the motion carried, Resolution No. 76879, entitled: “A Resolution of the Council of the City of San José Adopting the Rocketship Jackson 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, and Ordinance No. 29353, entitled: “An Ordinance of the Council of the City of San José Rezoning Certain Real Property Situated on the East Side of South Jackson Avenue On A 1.47 Gross Acre Site (70 South Jackson Avenue) to the CP Commercial Pedestrian Zoning District”, was passed for publication. (9-1-0-1. Noes: Oliverio. Abstain: Liccardo.) *Note: The second reading on Ordinance No. 29353 will be heard on December 17, 2013.*

- (c) **Consideration of adoption of a resolution approving Conditional Use Permit to allow the conversion of an existing post office and the addition of a new 12,295 square foot building for an elementary school use on an approximately 1.47 gross acre site, located on the eastside of South Jackson Avenue, approximately 350 feet south of Alum Rock Avenue at 70 South Jackson Avenue.**

**CEQA: Mitigated Negative Declaration to be adopted. (To An N, Angela K et al, and City of San José, Owner). (Planning, Building and Code Enforcement)
C13-049/CP13-085 – District 5**

Action: Continued to December 17, 2013.

PUBLIC SAFETY SERVICES

8.1 Direct the Administration to:

- (a) **Expand the priority enforcement areas to address Medical Marijuana establishments operating in San José as follows:**
- (1) **Within 1,000 feet of public and private schools, child daycare centers, churches with child daycare centers, community/recreation centers, parks, libraries and other Medical Marijuana establishments.**
 - (2) **500 feet from substance abuse rehabilitation centers.**
 - (3) **150 feet from residential uses.**
- (b) **Either:**
- (1) **Return within 90 days with a complete Medical Marijuana regulatory program or;**
 - (2) **Return in 30 days with a ban prohibiting the operation of Medical Marijuana establishments in San José.**

CEQA: Not a Project, File No. PP10-068, General Procedure and Policy Making. (City Manager's Office)

8.1 (Cont'd.)

Documents Filed: (1) Memorandum from Mayor Reed, dated December 9, 2013, recommending approving the memorandum from Council Member Rocha with additions. (2) Memorandum from Council Member Rocha, dated December 6, 2013, recommending approval of the Staff recommendations with additional direction. (3) Memorandum from Council Member Oliverio, dated December 9, 2013, recommending prohibiting medical marijuana collections near and in residential areas. (4) Memorandum from Council Member Chu, dated December 5, 2013, recommending additional direction to Staff. (5) Memorandum from Council Member Campos, dated December 9, 2013, recommending acceptance of the Staff recommendations with additional direction. (6) Memorandum from Council Member Herrera, dated December 9, 2013, recommending approval of Staff recommendation (b)(2). (7) Memorandum from Assistant to the City Manager Angelique Gaeta, dated November 18, 2013, recommending direction to Administration. (8) Supplemental memorandum from Assistant to the City Manager Angelique Gaeta, dated December 3, 2013, transmitting larger scale and color versions of the maps to facilitate better understanding of the geographic implications of different enforcement options. (9) Email from Sue Nelson, EdD, Department of Drug and Alcohol Services, dated December 6, 2013, transmitting information from the Santa Clara Valley Health and Hospital System about Marijuana. (10) Draft California Ordinance on Medical Cannabis, submitted by Dave Hodges, dated December 10, 2013.

City Attorney Richard Doyle and Assistant to the City Manager Angelique Gaeta provided a brief report.

Motion: Council Member Rocha moved approval of his memorandum dated December 6, 2013 and the memorandum from Mayor Reed, dated December 9, 2013. Council Member Khamis seconded the motion.

Mayor Reed opened the floor for public testimony.

Public Comments: Providing comments on Medical Marijuana were Adam Perez and Roxanna Marachi, Office of the Public Defender; Kymberli Brady, San José Downtown Residents Association; Esteffanie Alvarez Ceballo, Friday Night Live; Kelli Davis, David Coleman, Laurie Coleman, John Lee, Americans for Policy Reform; Rudy Ortega, Jonathan Hughes, Dave Hodges, Matt Lucero, Buddy's Cannabis; Bruce Copley and Dr. Susan Nelson, Santa Clara County Department of Alcohol and Drugs; Margarita Tran, Chris Funk, Garnetta Annable, Daren Casagrande and John T. Stobb, Advent Group Ministries; Connie Beard-Hayes, Cary Moll, Mariel Cabellero, Andrea Flores Shelton, Trustee, Alum Rock School District; Susan Landry, Carl Holtzclaw, Nancy Pena, PhD, County Mental Health; Gabrielle Antolovich, Voices United and Douglas Chloupek, Medmar Healing Center.

Deputy District Attorney Chris Arriola provided comments on behalf of District Attorney Jeffrey F. Rosen, and responded to Council questions and concerns.

8.1 (Cont'd.)

Substitute Motion: Council Member Herrera moved approval of her memorandum dated December 9, 2013, directing the Administration to return to the Council in 30 days with a ban prohibiting the operation of Medical Marijuana establishments in San José. Council Member Oliverio seconded the motion.

Council Members Rocha and Kalra voiced opposition to the substitute motion on the floor.

Council Member Liccardo indicated that there should be a sensible approach to regulation with assistance from the District Attorney.

Vice Mayor Nguyen agreed that strict regulations are needed.

On a call for the question, the substitute motion failed. (4-7. Noes: Campos, Kalra, Khamis, Liccardo, Nguyen, Rocha; Reed.)

Discussion returned to the original motion.

Council Member Oliverio requested to amend the motion to direct Staff to begin immediate enforcement against collectives that share a “zero lot line” with residential uses. The amendment was accepted by Council Members Rocha and Khamis.

Council Member Liccardo requested to amend the motion to direct Staff to explore advertising restrictions, including looking at eliminating specific medical marijuana advertising signs. The amendment was accepted by Council Members Rocha and Khamis.

Council Member Khamis requested to amend the motion to direct Staff to replace the word “church” with “houses of worship” throughout the guidelines and include all houses of worship not just those with child daycare. The amendment was accepted by Council Member Rocha.

Council Member Herrera requested to amend the motion to direct Staff to explore advertising restrictions and eliminating signs such as people “waving” green crosses. Explore a prohibition for anyone seeking public office in the City of San José to receive any monies connected with marijuana collectives; and explore scenarios prohibiting medical marijuana collectives up to a mile from residential areas with regard to land uses and enforcement. The amendments were accepted by Council Members Rocha and Khamis.

Council Member Constant requested to amend the motion to: referring to the prohibition in shopping centers located on parcels over 40 acres in size stated in the memorandum from Council Member Rocha, direct Staff to explore options to make it congruent with other definitions. Direct Staff to explore scenarios for a prohibition around assembly uses, 1000 feet for all sensitive uses, i.e. residential and school uses. The amendments were accepted by Council Members Rocha and Khamis.

8.1 (Cont'd.)

Action: On a call for the question, the motion carried, the memorandum from Mayor Reed, dated December 9, 2013, was approved. Staff was directed to bring back the ordinances approved by the Council in 2011 with whatever changes may be necessary to be in compliance with State law and the U.S. Attorney General's Enforcement Memorandum and the following changes: (1) Prohibit on-site consumption as defined in the earlier ordinance section 6.88.440. (2) Develop an underage decoy program along the lines of the City's program to deal with sales of tobacco. (3) Ensure that all restrictions placed on smoking tobacco also apply to smoking marijuana. (4) Allow off-site cultivation, with sufficient controls to comply with the Enforcement Memorandum and protect existing uses from negative impacts. (5) Allow cultivation in the CIC, LI and HI industrial zones, subject to the same restrictions as wineries and breweries, with off-sales only as incidental uses and with sufficient controls to comply with the Enforcement memorandum and protect existing uses from negative impacts. (6) Disqualify from registration process any medical marijuana business, collective or dispensary when the business/collective/dispensary itself or any one of its owners or managers, have been the subject of three (3) or more documented and verified code violations and/or nuisance activities within one year of the time in which the business is being considered for approval under the regulatory scheme that is eventually passed by Council. (7) Prohibit the siting of any such medical marijuana business/collective/ dispensary on a parcel that has been the subject of three (3) or more documented and verified code violations and/or nuisance activities within one year of the time in which the site is being considered for approval under the regulatory scheme that is eventually passed by Council. The memorandum from Council Member Rocha, dated December 6, 2013, was approved as follows: (1) Staff recommendation (a) pertaining to expansion of priority enforcement areas and provide the following additional direction pertaining to enforcement: (a) Direct the City Attorney to identify the steps the City could take to increase its enforcement powers, such as having the City Attorney prosecute misdemeanor violations and to seek commitments for the District Attorney and the United States Attorney to prosecute serious violators of the regulatory program. (b) (1) (b) Direct the City Manager to bring back in the budget process an analysis of the cost of a multi-department task force to focus on getting compliance with the marijuana tax and a goal of doubling the annual total amount paid. (c) Direct the City Manager and City Attorney, in coordination with the Police Chief, to pursue discussions with the County Sheriff and District Attorney regarding potential enforcement efforts. (2) Staff recommendation (b)(1) was approved, to return within 90 days with a complete Medical Marijuana regulatory program, with the following additional direction: (a) The program should comply with the Guidance Regarding Marijuana Enforcement Memorandum to U.S. Attorneys dated August 29, 2013 (see attachment online) that identifies the need for a strong and effective regulatory and enforcement system to control the cultivation, distribution, sale and possession of medical marijuana and the necessary resources to enforce the City's laws and regulations in a manner that ensures they do not undermine the Federal enforcement priorities. (b) As detailed in the Enforcement Memorandum, include measures to ensure a tightly regulated market in which revenues are tracked and accounted for, effective measures to prevent diversion of marijuana outside of the regulated system and prohibition of access to marijuana to minors through the prohibition of: (1) Sales or transfer to minors.

8.1 (Action Cont'd.)

(2) Trafficking near areas associated with minors. (3) Marketing in a manner that appeals to minors. (4) Diversion, directly or indirectly, and purposefully or otherwise, to minors. (c) Staff should have the flexibility to recommend any regulatory program that complies with the above direction, but in the interest of testing out a variety of regulatory options: Staff was directed to return with a regulatory proposal based on the criteria set forth in the issues table in the memorandum, in addition to any other proposals that Staff wishes to recommend. Staff was additionally directed to: (1) Begin immediate enforcement against collectives that share a “zero lot line” with residential uses. (2) Explore advertising restrictions, including looking at eliminating specific medical marijuana advertising signs, i.e. people “waving” green crosses. (3) Replace the word “church” with “houses of worship” throughout the guidelines and include all houses of worship not just those with child daycare. (4) Explore a prohibition for anyone seeking public office in the City of San José to receive any monies connected with marijuana collectives. (5) Explore scenarios prohibiting medical marijuana collectives up to a mile from residential areas with regard to land uses and enforcement. (6) Referring to the prohibition in shopping centers located on parcels over 40 acres in size stated in the memorandum from Council Member Rocha, explore options to make it congruent with other definitions. (7) Explore scenarios for a prohibition around assembly uses, 1000 feet for all sensitive, i.e. residential and school uses. (8-3. Noes: Campos, Chu, Herrera.)

ADJOURNMENT

The Council of the City of San José was adjourned at 12:00 a.m. in memory of Odette Morrow, who passed away on September 17, 2013. She was very active in the Coyote Creek neighborhood and served as a Lay Chaplain with her church, where she ministered to people in convalescent homes and trained volunteers to do the same. (Kalra)

Minutes Recorded, Prepared and Respectfully Submitted by,

Toni J. Taber, CMC
City Clerk

/smd 12-10-13 MIN

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