

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, MAY 07, 2013

The Council of the City of San José convened in Regular Session at 9:01 a.m. in the Council Chambers at City Hall.

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

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

STRATEGIC SUPPORT SERVICES

3.2 Accept Labor Negotiations Update.

There was no Staff presentation.

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:04 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (c) with respect to anticipated litigation in two (2) matters. (B) Conference with Real Property Designated Representatives pursuant to Government Code Section 54956.8 with respect to (1) San José Arena (HP Pavilion), 525 West Santa Clara Street, San José, California; Negotiating Parties: Ed Shikada for the City of San José and John Tortora for the Arena; 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. (C) to confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (b) with respect to significant exposure to litigation: Claimants: In re Claim of Ghenis; City Department: Parks, Recreation and Neighborhood Services. (D) to confer with Legal Counsel pursuant to Government Code Section 54956.9(d)1) with respect to existing litigation: (1) Citizens Against Airport Pollution v. City, et al; Names of Parties Involved: Citizens Against Airport Pollution, an unincorporated association, Does 1-5, City of San José, City Council of the City of San José and Does 6-10, Does 10-30, Real Parties in Interest; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV- 177290; Amount of Money or Other Relief Sought: City to set aside and void approvals relating to 8th addendum to

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Airport Master Plan. (2) Carillo, Alexandra v. City; Names of Parties Involved: Alexandra Carrillo, City of San José and Does 1-10; Court: Superior Court of California, County of Santa Clara; Case No: 1-13-CV-242864; Amount of Money or Other Relief Sought: Damages according to proof. (3) City v. International Association of Firefighters, et al; Names of Parties Involved: International Association of Firefighters, Local 230; Court: Superior Court of California, County of Santa Clara; Case No: 1-06-CV-075858; Amount of Money or Other Relief Sought: Motion to compel arbitration. (4) City v. International Association of Firefighters, et al; Names of Parties Involved: International Association of Firefighters, Local 230; Court: Superior Court of California, County of Santa Clara; Case No: 1-09-CV-133786; Amount of Money or Other Relief Sought: Arbitration of Firefighters Bill of Rights Issue. (5) Parker, et al. v. City of San José, et al; Names of Parties Involved: David Parker, James Williams, Jason Bivens, Debra Ward and Shannon Blean, City of San José and Does 1-20; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV-176055; Amount of Money or Other Relief Sought: Damages according to proof. (6) American Federation of State, County and Municipal Employees, City of San José; Court: State of CA Public Employment Relations Board; Case No: SF-CE-837-M; Amount of Money or Other Relief Sought: Damages according to proof. (7) IAFF Local 230 v. City; Names of Parties Involved: International Association of Firefighters Local 230, City of San José; Court: State California Public Employees Relations Board; Case No: SF-CE-941-M; Amount of Money or Other Relief Sought: Damages according to proof. (8) American Federation of State, County and Municipal Employees, et al. v. City; Names of Parties Involved: American Federation of State, County and Municipal Employees, City of San José; Court: State California Public Employees Relations Board; Case No: SF-CE-924-M; Amount of Money or Other Relief Sought: Damages according to proof. (9) IAFF Local 230 v. City; Names of Parties Involved: International Association of Firefighters Local 230, City of San José; Court: State California Public Employees Relations Board; Case No: SF-CE-969-M; Amount of Money or Other Relief Sought: Damages according to proof. (10) OE#3 v. City of San José; Names of Parties Involved: Operating Engineers Local Union No. 3, City of San José; Case No: SF-CE-900-M. Amount of Money or Other Relief Sought: Damages according to proof. (11) IFPTE Local 21, AFL-CIO v. City of San José; Names of Parties Involved: International Federation of Professional and Technical Engineers, City of San José; Court: State California Public Employees Relations Board; Case No: SF-CE-966-M. Amount of Money or Other Relief Sought: Damages according to proof. (12) American Federation of State, County and Municipal Employees, et al. v. City; Names of Parties Involved: American Federation of State, County and Municipal Employees, City of San José, Court: State California Public Employees Relations Board; Case No: SF-CE-945-M; Amount of Money or Other Relief Sought: Damages according to proof. (13) IAFF Local 230 v. City; Names of Parties Involved: International Association of Firefighters Local 230, City of San José; Court: State California Public Employees Relations Board; Case No: SF-CE-970-M; Amount of Money or Other Relief Sought: Damages according to proof. (14) IAFF Local 230 v. City; Names of Parties Involved: International Association of Firefighters Local 230, City of San José; Court: State California Public Employees Relations Board; Case No: SF-CE-972-M; Amount of Money or Other Relief Sought: Damages according to proof.

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(15) City of San José v. SJPOA; Names of Parties Involved: City of San José, San José Police Officers' Association; Case No: CSMCS ARB 11-0477. (16) City of San José v. SJPOA; Names of Parties Involved: City of San José, San José Police Officers' Association; Case No: CSMCS ARB 12-0171. (17) City of San José v. SJPOA; Names of Parties Involved: City of San José, San José Police Officers' Association; Case No: CSMCS ARB 11-0136. (18) City of San José v. SJPOA; Names of Parties Involved: City of San José, San José Police Officers' Association; Case No: CSMCS ARB 11-0142. (19) Great Oaks Water, Inc. v. City, et al. Names of Parties Involved: Great Oaks Water, Inc., John W.S. Roeder, Betty B. Roeder, Betty B. Roeder Trust A and William C. Miller, Jr. and Betty B. Roeder, Trustees of the Walter S. Roeder Trust B, The City of San José, The San José Redevelopment Agency, Southbay Water Recycling, Does 1 – 100; Court: Superior Court of California, County of Santa Clara; Case No: 1-04-CV012008; Amount of Money or Other Relief Sought: Damages according to proof. (20) County of Alameda, et al. v. AMBAC Financial, et al; Names of Parties Involved: County of Alameda, City and County of San Francisco, City of Los Angeles, Los Angeles Department of Water and Power, Los Angeles World Airports, City of Oakland, City of Richmond, Redwood City, East Bay Municipal Utility District, City of Sacramento, Sacramento Suburban Water District, Sacramento Suburban Water District, Sacramento Municipal Utility District, City of San José, City of Stockton, The Redevelopment Agency of the City of Stockton, County of Tulare, The Regents of the University of California, The Redevelopment Agency of the City of San José, AMBAC Financial Group, Inc., AMBAC Assurance Corporation, MBIA, Inc., MBIA Insurance Corporation, MBIA Insurance Corp. of Illinois, aka National Public Finance Guarantee Corporation, Syncora Guarantee, Inc., fka XL Capital Assurance Inc., Financial Guaranty Insurance Company, Financial Security Assurance, Inc., CIFG Assurance North America, Inc., Assured Guaranty Corp., Jason Kissane, Does 1-50; Court: Superior Court of California, In and for the City and County of San Francisco; Amount of Money or Other Relief Sought: Damages according to proof. (21) RDA/City vs. Bank of America, N.A., et al; Names of Parties Involved: City of San José, The San José Redevelopment Agency, Bank of America, N.A., Merrill Lynch and Co., Inc., UBS AG, UBS Financial Services, Inc., UBS Securities, LLC, MBIA, Inc., Citibank, N.A., Citigroup Financial Products Inc., Citigroup Global Markets Holdings Inc., Morgan Stanley, Rabobank Group, Bayerische, Landesbank Gironzentrale, Piper Jaffray & Co., Societe Generale SA, Financial Security Assurance, Inc., Assured Guaranty US Holdings Inc., Dexia S.A., National Westminster Bank, PLC, Natixis Funding Corp., Natixis S.A., The Goldman Sachs Group, Inc., Goldman Sachs Mitsui Marine Derivative Products, L.P., Goldman Sachs Bank USA, CDR Financial Products, Winters & Co., Advisors, LLC, George K. Baum & Co., Sound Capital Management, Inc., Investment Management Advisory Group, Inc., First Southwest Company, PFM Investment, LLC, PFM Asset Management LLC. Court: United States District Court, Northern District of California, San José Division; Case No: CV10 2199; Amount of Money or Other Relief Sought: Damages according to proof. (22) Sipple, et al. v. City of Alameda, et al; Names of Parties Involved: Donald Sipple, John Simon, Karl Simonsen, Christopher Jacobs, Settlement Class Representatives, New Cingular Wireless PCS LLC, City of Alameda, County of Alameda, City of Albany, City of Alhambra, City of Arcadia, City of Baldwin Park, City of Beaumont, City of Bell,

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City of Bellflower, City of Benecia, City of Berkeley, City of Burbank, City of Calabasas, City of Cathedral, City of Ceres, City of Chico, City of Chico, City of Chula Vista, City of Citrus Heights, City of Claremont, City of Colton, City of Compton, City of Covina, City of Cudahy, City of Culver City, City of Cupertino, City of Daly City, City of Desert Hot Springs, City of Dinuba, City of Downey, City of East Palo Alto, City of El Cerrito, City of El Monte, City of El Segundo, City of Emeryville, City of Eureka, City of Exeter, City of Fairfax, City of Fairfield, City of Gardena, City of Gilroy, City of Glendale, City of Gonzales, City of Greenfield, City of Grover Beach, City of Guadalupe, City of Gustine, City of Hawthorne, City of Hayward, City of Hercules, City of Hermosa Beach, City of Holtville, City of Huntington Beach, City of Huron, City of Indio, City of Inglewood, City of Irwindale, City of La Habra, City of Lakewood, City of La Palma, City of La Verne, City of Lawndale, City of Lindsey, City of Long Beach, City of Los Alamitos, City of Los Altos, City of Los Angeles, Los Angeles County, City of Lynwood, City of Malibu, City of Mammoth Lakes, City of Maywood, City of Menlo Park, City of Modesto, City of Montclair, City of Monterey, City of Monterey Park, City of Moreno Valley, City of Mountain View, City of Norwalk, City of Oakland, City of Orange Cove, City of Oroville, City of Pacific Grove, City of Palm Springs, City of Palo Alto, City of Paramount, City of Pasadena, City of Pico Rivera, City of Piedmont, City of Pinole, City of Placentia, City of Pleasant Hill, City of Pomona, City of Port Hueneme, City of Porterville, City of Rancho Palos Verde, City of Redondo Beach, City of Redwood City, City of Rialto, City of Richmond, City of Riverside, City of Sacramento, City of Salinas, City of San Bernardino, City of Buenaventura (Ventura), City of San Francisco, City of San Gabriel, City of San Jose, City of San Leandro, City of San Luis Obispo, City of San Marino, City of San Pablo, City of Sanger, City of Santa Ana, City of Santa Barbara, City of Santa Cruz, City of Santa Monica, City of Seal Beach, City of Seaside, City of Sierra Madre, City of Soledad, City of South Pasadena, City Stanton, City of Stockton, City of Sunnyvale, City of Torrance, City of Tulare, City of Waterford, City of Watsonville, City of Westminster, City of Whittier, City of Winters, City of Woodlake, Does 1-50; Court: Superior Court of California, County of Santa Clara; Case No: BC462270; Amount of Money or Other Relief Sought: Damages according to proof. (23) Konnick v. Kaiser, et al; Names of Parties Involved: Michi Konnick, by her Gaurdian Ad Litem, Mircea G. Dragomir, CLPF and George Konnick, Kaiser Foundation Healthplan, Inc., Kaiser Foundation Hospitals, The Permanente Medical Group, Inc., Chandu A. Karadi, Johnson D. Chan, American Medical Response, Inc., Bonnie McPherson, Carlos Garcia, Thomas Cooper, The City of San José dba San José Fire, Rocco Francisco and Does 1-200; Court: Superior Court of California, County of Santa Clara; Case No: 1-11-CV-200068; Amount of Money or Other Relief Sought: Damages according to proof. (24) Seibert v. City of San José; Names of Parties Involved: Grant Seibert, City of San José, San José Civil Service Commission, Debra Figone as San José City Manager, Alex Gurza as San José Director of Employee Relations, William McDonald as Fire Chief for San José Fire Department, Does 1-10; Court: Superior Court of California, County of Santa Clara; Case No: 1-11CV2040986; Amount of Money or Other Relief Sought: Damages according to proof. (25) 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

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Municipal Corporation, City Council and Mayor of the City of San José, Does 1-200; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV-167289; Amount of Money or Other Relief Sought: Declaratory and Injunctive Relief. (26) Bernal, et al. v. City, et al. Names of Parties Involved: Mike C. Bernal, Susan R. Bernal, Nanetta Bernal, Lilian Bernal Auvinen, Katherine Lira, Diana Bernal-Tuyor, Mike A. Bernal, Gary James Bernal, Domenico Loverde, Tomas J. Martinez, Authur Paul Lira, Jr., Jerimiah Lira, Sommer Kai Espinosa, Lucia A. Bernal, Guillermo Espinosa, City of San José and Does 1-25; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-116141; Amount of Money or Other Relief Sought: Damages according to proof. (27) Andy's BP, Inc. et al, v. City of San José, et al. Names of Parties Involved: Andy's BP, Inc., a California Corporation, Sabek, Inc., a California Corporation and Andy Saberi, an Individual, the City of San José, Joseph Horwedel, individually and Amir Shirazi, individually and dba Moe's Stop and Amir Shirazi, as Trustee for the Mohammad M. Shirazi Living Trust and Does 1-25; Court: United States District Court, Northern District of California, San José Division; Case No: 12-CV-01631 LHK; Amount of Money or Other Relief Sought: Damages according to proof. (28) Berg & Berg Enterprises, LLC v. City, et al; Names of Parties Involved: Berg & Berg Enterprises, LLC, City of San José, San José City Council and Does 1-50; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV-091955; Amount of Money or Other Relief Sought: Damages according to proof. (29) California Clean Energy Committee v. City, et al; Names of Parties Involved: California Clean Energy Committee, City of San José, Does 1-50, FWSH Partners II, LLC, Edward D. Storm and Does 51-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-11-CV-212623; Amount of Money or Other Relief Sought: Injunctive Relief; (30) City of Milpitas v. City, et al; Names of Parties Involved: City of Milpitas, a public entity, City of San José, public entity and Does 1-10; Court: Superior Court of California, County of Santa Clara; case No: 1-12-CV-233069; Amount of Money or Other Relief Sought: Petition for writ of mandate. (31) People/City v. Bevan, Warren; Names of Parties Involved: People of the State of California, ex rel., City Attorney of the City of San José, Wanda M. Bevan, an individual, Warren Bevan, aka Warren A. Bevan, an individual, Warren A. Bevan and Lynn E. Winnett-Bevan, Trustees of the Bevan Trust, created on 8/16/06 and Does 1-10; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV118193; Amount of Money or Other Relief Sought: Injunctive relief. (32) City v. Marquez, Rita and Avalos, Luzmarie; Names of Parties Involved: City of San José, Rita Marquez, Luzmarie Avalos, Court: Superior Court of California, County of Santa Clara; Case No: C-1354130; Amount of Money or Other Relief Sought: Damages according to proof. (33) People/City v. Rosales; Collins & Constant, Robert Collins, John Seaman, et al; Names of Parties Involved: People of the State of California, ex rel, City Attorney of San José and City of San José, Julian Rosales, an individual, dba Beautiful Temple International, Collins & Constant Investments, LLC, A California limited liability company, Robert Collins, an individual, John Seaman, an individual; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV235487; Amount of Money or Other Relief Sought: Injunctive Relief. (34) Ahluwalia, et al. v. City of San José, et al; Names of Parties Involved: Harsh R. Ahluwalia, individually and as

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successor-in-interest to Decedent Varun Kumar, Ravinder K. Ahluwalia, individually and as co-successor-in-interest to Decedent Varun Kumar, the Estate of Varun Kumar, City of San José, Chris Moore, in his official capacity as Chief of Police for the San José Police Department, Sergio Carabarin, in his individual and official capacities as an officer of the San José Police Department, Ryan Kimber, in his individual and official capacities as an officer of the San José Police Department, Phil Juan, in his individual and official capacities as an officer of the San José Police Department, and Does 1-50; Court: United States District Court, Northern District of California, San José Division; Case No: C13-0114 PSFG; Amount of Money or Other Relief Sought: Injunctive Relief. (35) Carter v. City of San José, et al; Names of Parties Involved: Jamil Carter, The City of San José, The San José Police Department (SJPd), Michael Sullivan, individually and in his official capacity as Lieutenant, SJPd and Keith Cottrell, individually and in his official capacity as Sergeant, SJPd; Court: United States District Court, Northern District of California; Case No: CV12-01968 HRL; Amount of Money or Other Relief Sought: Damages according to proof. (36) Cicala, et al. v. City, et al; Names of Parties Involved: Paul Cicala, Enrico Sagullo, Erick Sanchez, City of San José, Robert Davis, Officers Ordaz, Higgins, Marfia, Kyono, Siegel and Does; Court: United States District Court, Northern District of California; Case No: C08-04032 PVT; Amount of Money or Other Relief Sought: Damages according to proof. (37) Chahal v. City of San José, Bach Thai Tran; Names of Parties Involved: Lakhbir Singh Chahal, Baljit Chahal, City of San José, Bach Thai Tran, Does 1-20; Court: Superior Court of California, County of Santa Clara; Case No: 1-11-CV-199202; Amount of Money or Other Relief Sought: Damages according to proof. (38) Correa v. City of San José, et al; Names of Parties Involved: Thomas Correa, The City of San José; The San José Police Department (SJPd), Michael Sullivan, individually and in his official capacity as Lieutenant, SJPd, Kimberly Hudson, individually and in his official capacity as Sergeant, SJPd; Court: United States District Court, Northern District of California, San José Division; Case No: CV12-05436 HRL; Amount of Money or Other Relief Sought: Damages according to proof. (39) Fujikawa, Michael v. City, Chief Chris Moore, et al; Names of Parties Involved: Michael Fujikawa, The City of San José, Police Chief Chris Moore, Officers Payne (Badge No. 3971), Officer Pfiefer (Badge No. 3951), Officer Jeffrey (Badge No. 3926), Officer Akery (Badge No. 3495) and Does 1-50; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-219612; Amount of Money or Other Relief Sought: Damages according to proof. (40) Galindo, Celina et al. v. Tassio, Kilmer, et al; Names of Parties Involved: Celina Galindo, Sabrina Galinda, Valente Galindo, IV, a minor, by and through his Guardian ad Litem, Gina Padilla, Officer Lee Tassio, Officer Anthony Kilmer and City of San José; Court: Superior Court of California, County of Santa Clara; Case No: CV13-0105 HRL; Amount of Money or Other Relief Sought: Damages according to proof. (41) Garden City, Inc. dba Casino M8trix, et al. v. City of San José, et al. Names of Parties Involved: Garden City, Inc., dba Casino M8trix, a California Corporation, Airport Parkway Two, LLC, a California limited liability company and Airport Opportunity Fund, LLC, a Delaware limited liability company, City of San José, a California municipal corporation, San José Police Department, for the City of San José, Richard Teng, individually and as Administrator of the San José Police Department

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Division of Gaming Control; Court: Superior Court of California, County of Santa Clara; Case No: 1-13-CV-240941; Amount of Money or Other Relief Sought: Damages according to proof. (42) Garden City, Inc. dba Casino M8trix, et al. v. City of San José, et al; Names of Parties Involved: Garden City, Inc., dba Casino M8trix, a California Corporation, Airport Parkway Two, LLC, a California limited liability company and Airport Opportunity Fund, LLC, a Delaware limited liability company, City of San José, a California municipal corporation, San José Police Department, for the City of San José, Richard Teng, individually and as Administrator of the San José Police Department Division of Gaming Control; Court: United States District Court, Northern District of California, San José Division; Case No: CV-13-0577 PSG; Amount of Money or Other Relief Sought: Damages according to proof. (43) Swallow, et al. v. City of San José; Names of Parties Involved: Eric Swallow, Jeanine Lunardi, City of San José; Court: Superior Court of California, County of Santa Clara; case No: 1-13-CV-243151; Amount of Money or Other Relief Sought: Damages according to proof. (44) Gonzales, Mary Lou v. City, et al. Names of Parties Involved: Mary Lou Gonzales, City of San José, as a municipal corporation, San José Police Chief Moore, individually and in his official capacity, SJPd Detective Yvonne Delacruz, in her official and individual capacity, SJPd Sgt. Archer, in his official capacity and individual capacity, SJPd Homicide Detective Jamie (Last Name Unknown), in his official capacity and individual capacity, SJPd Officers Doe 1 to Doe 7 in their individual and official capacities, SJPd Officers and Detectives and employees Doe 8-50; Court: United States District Court, Northern District of California, San José Division; Case No: CV13-0695 PJH; Amount of Money or Other Relief Sought: Damages according to proof. (45) Gonzales-Guerrero, Javier v. City, Brian Johst, Mark Stephens, et al; Names of Parties Involved: Javier Gonzales-Guerrero, City of San José, Brian Johst, Mark Stephens, Gary Petrakovitz and Tim Stephens; Court: United States District Court, Northern District of California, San José Division; Case No: CV12-03541 PSG; Amount of Money or Other Relief Sought: Damages according to proof. (46) Hellams, John, Charles Bernard and Marline Anderson v. City, et al; Names of Parties Involved: John Hellams, Charles Bernard, Marelene Anderson, City of San José, Does 1-50; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-227586; Amount of Money or Other Relief Sought: Damages according to proof. (47) Hernandez, Luis and Cindy Calderon v. City of San José, et al; Names of Parties Involved: Luis Hernandez, Cindy Calderon, City of San José, Ernie Alcantar, individually and his official capacity as Captain, SJPd and James Werkema, individually and his official capacity as Lieutenant, SJPd; Court: United States District Court, Northern District of California, San José Division; Case No: CV12-02952 HRL; Amount of Money or Other Relief Sought: Damages according to proof. (48) Kerkeles v. City of San José, et al; Names of Parties Involved: Michael Kerkeles, aka Michael Kerk, City of San José, Matthew Christian and Does 1-15; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV103523; Amount of Money or Other Relief Sought: Damages according to proof. (49) Montiel v. City, et al; Names of Parties Involved: Jermaine Montiel, Officer M. Williams, Officer C. Sheppard, Officer Hernandez, Officer Rodriguez, John Doe and Richard Doe, Robert Davis, City of San José and Does; Court: United States District Court, Northern District of California,

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San José Division; Case No: C07 05490 PSG; Amount of Money or Other Relief Sought: Damages according to proof. (50) City of San José, et al. v. BKD Investments, LLC, et al. Names of Parties Involved: People of the State of California, ex rel, City Attorney of the City of San José and the City of San José, BKD Investments, LLC, a California Limited Liability Company dba Hotel Elan, Pankaj K. Patel, an individual, Sanjay K. Patel, an individual, April Guzman, an individual and Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-227614; Amount of Money or Other Relief Sought: Permanent Injunction and Final Judgment. (51) People/City v. Stanley A. Fimowicz, et al. Names of Parties Involved: People of the State of California, ex rel, City Attorney of the City of San José, the City of San José, Stanley A. Fimowicz, an individual, Stella L. Fimowicz, an individual and Does 1-10; Court: Superior Court of California, County of Santa Clara; Case No: 1-13-CV-243896; Amount of Money or Other Relief Sought: Damages according to proof. (52) People/City v. Chinh Hoang Nguyen dba La Visage Salon, et al. Names of Parties Involved: People of the State of California, ex rel, City Attorney of the City of San José and the City of San José, Chinh Hoang Nguyen aka Nguyen Chinh Hoang, an individual, dba La Visage Salon, Tung Van Vo, aka Andy Hoang Buu Vo aka Vo Tung, an individual, dba La Visage Salon, Sang Van Pham aka Pham Sang Van, an individual; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-226470; Amount of Money or Other Relief Sought: Damages according to proof. (53) Naymark, et al. v. City, et al. Names of Parties Involved: Janice Naymark, Ronald Naymark, City of San José, San José Police Department, Robert Davis, City of Campbell, Campbell Police Department, David Gullo, Town of Los Gatos, City of Monte Sereno, Los Gatos, Monte Sereno Police Department, Scott Seaman, City of Palo Alto, Lynn Johnson, City of Santa Clara, Santa Clara Police Department, Stephen D. Lodge, State of California, California Highway Patrol, Michael L. Brown, County of Santa Clara, Office of the Santa Clara County Sheriff, Laurie Smith and Does 1-25; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV080008; Amount of Money or Other Relief Sought: Injunctive relief. (54) Rice, JoAnn, America Savin, et al. v. City, et al. Names of Parties Involved: JoAnn Rice, America Savin, Perry Nelson and W.N., a minor, by and through his Guardian and Litem, America Savin, City of San José, San José Police Department, Does 1-10; Court: United States District Court, Northern District of California, San José Division; Case No: 2:13-CV-00334-KJM-CKD; Amount of Money or Other Relief Sought: Damages according to proof. (55) Valdez, et al. v. City, et al. Names of Parties Involved: Franciscan Valdez, Ricardo Vasquez, Daniel Martinez, Jamil Stubbs, City of San José, San José Police Chief Robert Davis, Officer R. Agaman (4041), Officer Martin (#3894), Officer Rickert (#3734), Officer Wallace (#3922), Officer Orlando, Does 1-2500; Court: United States District Court, Northern District of California, San José Division; Case No: C09 00176 RMW; Amount of Money or Other Relief Sought: Damages according to proof. (56) Pham/Do v. City, et al. Names of Parties Involved: Vinh Huu Pham and Lan Thi Do, City of San José, a municipality of the State of California, Officer Brian Jeffrey, #3926, individually and his official capacity as a police officer, Officer Matthew Blackerby, #3999, individually and in his official capacity as a police officer and Does 1-100; Court: United States District Court, Northern District of California, San José Division; Case No:

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CV11-01526 EJD; Amount of Money or Other Relief Sought: Damages according to proof. (57) Pugh v. City, et al. Names of Parties Involved: Dwayne Pugh, City of San José and Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV189429; Amount of Money or Other Relief Sought: Damages according to proof. (58) Salinas, Roberta, George and Frances Salinas, et al. v. City et al. Names of Parties Involved: Roberta Salinas, George Salinas, Frances Salinas, Carlos Salinas, Olivia Salinas, Loretta Salinas, City of San José and Does 1-50; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-116174; Amount of Money or Other Relief Sought: Damages according to proof. (59) Noreen Salinas v. City, et al. Names of Parties Involved: Noreen Salinas, City of San José, Chief Robert Davis, Taser International, Inc., Does 1-10; Court: United States District Court, Northern District of California, San José Division; Case No: C08-02625 RS (consolidated with C09-04410RS); Amount of Money or Other Relief Sought: Damages according to proof. (60) Vasquez v. City, et al. Names of Parties Involved: Ramon Jose Vasquez, Brian Ferrante, individually and as an Officer of the San José Police Department and Tom Morales, individually and as an Officer of the San José Police Department, Does 1-50; Court: United States District Court, Northern District of California, San José Division; Case No: CV10-00948 LKH; Amount of Money or Other Relief Sought: Damages according to proof. (61) Watson-Stalker, et al. v. City et al. Names of Parties Involved: Tracy Watson, Renee Stalker, Olivia Stalker, Shafer Watson, Riley Watson, County of Santa Clara, County of Santa Clara Department of Family and Children Services, County of Santa Clara Department of County Counsel, County of Santa Clara District Attorney's Office, Santa Clara Medical Center, Evergreen School District, City of San José, San José Police Department, Norma Sparks, Yazima Letona, Sharon Burgan, Jewels Rameriz, Vu Tran, Ann Miller Ravel, Rima Singh, Aaron West, George Kennedy, Clifton Black, Rose Real, Robert Pruitt, Cheryl Harms, Claudia Blodgett, Gary Kishimoto, John Hamilton, Anita Noble, Janet Kahle, Mary Ritter, David Kearns, Rajul Kazi, Rob Davis, William Hoyt, Craig Blank; Court: United States District Court, Northern District of California, San José Division; Case No: C06-04029 RMW; Amount of Money or Other Relief Sought: Damages according to proof. (62) City v. Western Roofing. Names of Parties Involved: City of San José, Western Roofing; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV123029; Amount of Money or Other Relief Sought: Damages according to proof. (63) City v. Rossdruliscesenbery Architecture, Inc., et al. Names of Parties Involved: City of San José, Rossdruliscesenbery Architecture, Inc., aka Michael Ross Charles Drulis Architects and Planners, a purported California corporation, Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-237767; Amount of Money or Other Relief Sought: Damages according to proof. (64) Shahrivar, Farid v. City, et al. Names of Parties Involved: Farid Shahrivar, City of San José, a municipality, Rodney Rapson, an individual, David Sykes, an individual, Harry Freitas, an individual, Katherine Jensen, an individual, David Printy, an individual, Danny Tso, an individual, Katrina Allen, an individual, Dough Baker, an individual, Alex Gurza, an individual, Sarah Nunes, an individual, Les White, an individual, Allen Demers, an individual, Rajiv Das, an individual, Adam Stempel, an individual, Steve Pagan, an individual, Angela Chen, an individual, Mark Danaj, an individual,

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Robert Fabela, an individual, Susan Lacy and Does 1-45; Court: United States District Court, Northern District of California, San José Division; Case No: CV1-0-01029 PSG; Amount of Money or Other Relief Sought: Damages according to proof. (65) Vagts, Hale and Patty Vagts v. State of California, et al. Names of Parties Involved: Hale Vagts and patty Vagts, State of California, City of San José and Does 1-40; Court: Superior Court of California, County of Santa Clara; Case No: 1-13-CV-239693; Amount of Money or Other Relief Sought: Damages according to proof. (66) Flores, Valerie v. City of San José, et al. Names of Parties Involved: Valerie Flores, City of San José, Does 1-25; Court: Superior Court of California, County of Santa Clara; Case No: 1-11-CV-212090; Amount of Money or Other Relief Sought: Damages according to proof. (67) Leath, Vicky Kim v. City, County of Santa Clara, et al. Names of Parties Involved: Vicky Kim Leath, City of San José, County of Santa Clara, Huyen Nguyen; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-227600; Amount of Money or Other Relief Sought: Damages according to proof. (68) McLaughlin, Shirli v. City of San José; Names of Parties Involved: Shirli McLaughlin, City of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-236396; Court: Superior Court of California, County of Santa Clara; Case No: 1-12-CV-236396; Amount of Money or Other Relief Sought: Damages according to proof. (69) Ortiz v. City, et al. Names of Parties Involved: Esmeralda Galan and Jose Ortiz, Husband and Wife, Individually and as Parents and Successors in Interest of their Deceased Minor Son Mateo Ortiz, City of San José, a Charter City, David Alvernaz, Alycia Saaveda-Alvernaz and Does 1-20; Court: Superior Court of California, County of Santa Clara; Case No: 1-11-CV199150; Amount of Money or Other Relief Sought: Damages according to proof. (70) Perez, Cynthia v. City of San José; Names of Parties Involved: Cynthia Perez, City of San José and Does 1-25; Court: Superior Court of California, County of Santa Clara; Case No: 1-11-CV-209825; Amount of Money or Other Relief Sought: Damages according to proof. (71) Stand for San José, et al. v. City, et al. Names of Parties Involved: Stand for San José and Eileen Hannan, City of San José, City Council of the City of San José, Redevelopment Agency of the City of San José, Diridon Development Authority; Court: Superior Court of California, County of Santa Clara; Case No: 1-11-CV-214196; Amount of Money or Other Relief Sought: Injunctive Relief. (72) 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 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. (73) Ted Smith v. City, et al. Names of Parties Involved: Ted Smith, City of San José, a municipal entity, San José Redevelopment Agency, a municipal entity, Harry Mavrogenes, in his official capacity as Executive Director of the San José Redevelopment Agency, Mayor Chuck Reed, in his official capacity as Mayor of the City of San José, Pete Constant, in his official capacity as Council Member of the City of San José, Ash Kalra, in his official capacity as Council Member of the City of San José, Sam Liccardo, in his official capacity as Council Member of the City of San José, Pierluigi Oliverio, in his official capacity as Council Member of the City of

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San José, Madison Nguyen, in her official capacity as Council Member of the City of San José, Rose Herrera, in her official capacity as Council Member of the City of San José, Judy Chirco, in her official capacity as Council Member of the City of San José, Kansen Chu, in his official capacity as Council Member of the City of San José, Nora Campos, in her official capacity as Council Member of the City of San José, Nancy Pyle, in her official capacity as Council Member of the City of San José and Does 1-20; Court: Superior Court of California, County of Santa Clara; Case No: 1-09-CV-150427; Amount of Money or Other Relief Sought: Damages according to proof. (74) Vietnamese-American Community of Northern California v. City, et al. Names of Parties Involved: Vietnamese-American Community of Northern California, City of San José, City Council of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-107082; Amount of Money or Other Relief Sought: For declaratory and injunctive relief according to proof. (E) to confer 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 Wages

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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/employeerelations/moa.asp>; Telephone for Employee Relations: 408-535-8150.

(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, Subsection (c) with respect to anticipated litigation in two (2) matters.

By unanimous consent, Council recessed from the Closed Session at 11:35 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, Rocha; Reed.

Absent: Council Members - All Present.

INVOCATION (DISTRICT 5)

Hung Q Do, Maha Valrocana Buddhist Temple presented the Invocation.

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Herrera, seconded by Vice Mayor Nguyen and carried unanimously, the Orders of the Day and the Amended Agenda were approved, and Item 5.1 was deferred to May 14, 2013. (11-0.)

CEREMONIAL ITEMS

1.1 Presentation of a proclamation declaring the month of May 2013 as “Asian Pacific American Heritage Month” in the City of San José. (Chu)

Mayor Reed and Council Members Chu and Kalra recognized the month of May 2013 as “Asian Pacific American Heritage Month” in San José.

1.2 Presentation of a proclamation declaring the month of May 2013 as “Jewish American Heritage Month” in the City of San José. (Herrera)

Mayor Reed and Council Member Herrera recognized the month of May 2013 as “Jewish American Heritage Month” in San José.

1.3 Presentation of a proclamation declaring the week of May 5 – 11, 2013 as “Municipal Clerk’s Week” in the City of San José. (City Clerk)

Mayor Reed and Acting City Clerk Toni J. Taber, CMC recognized the week of May 5 through May 11, 2013 as “Municipal Clerk’s Week” in the City of San José.

CONSENT CALENDAR

Upon motion by Council Member Oliverio, 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.

There were none.

2.2 Final Adoption of Ordinances.

There were none.

2.3 Approval of Council Committee Reports.

- (a) Public Safety, Finance and Strategic Support Committee Report of April 18, 2013. (Constant)**
- (b) Community and Economic Development Committee Report of April 22, 2013. (Herrera)**

Documents Filed: (1) The Public Safety, Finance and Strategic Support Committee Report dated April 18, 2013. (2) The Community and Economic Development Committee Report dated April 22, 2013.

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

- 2.4**
- (a) Request for an excused absence for Council Member Constant from the Regular Meeting of the Public Safety, Finance, and Strategic Support Committee on May 16, 2013 due to a scheduling conflict. (Constant)**
 - (b) Request for an excused absence for Council Member Constant from the Regular Meeting of the Rules and Open Government Committee on May 22, 2013 due to Authorized City Business: Pension Reform Summit in Sacramento, CA. (Constant)**

2.4 (Cont'd.)

Documents Filed: Memoranda from Council Member Constant, dated April 24, 2013 and April 25, 2013 requesting excused absences for City business.

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 Adopt the following amendments to the Appropriation Ordinance and Funding Source Resolution in the General Fund:

- (a) Increase the estimate for Other Revenue by \$68,089;
- (b) Increase the appropriation to Council District 2 by \$18,714;
- (c) Increase the appropriation to Council District 4 by \$3,125;
- (d) Increase the appropriation to Council District 7 by \$13,550;
- (e) Increase the appropriation to Council District 8 by \$12,700;
- (f) Increase the appropriation to Council District 9 by \$19,350; and
- (g) Increase the appropriation to Council District 10 by \$650.

CEQA: Not a Project, File No. PP10-067(b), Appropriation Ordinance. (City Clerk/ City Manager's Office)

Documents Filed: Memorandum from Acting City Clerk Toni Taber, CMC and Budget Director Jennifer A. Maguire, dated April 12, 2013, recommending adoption of appropriation ordinance and funding sources resolution amendments in the General Fund.

Action: Ordinance No. 29249, entitled: "An Ordinance of the City of San José Amending Ordinance No. 29102 to Appropriate Monies in the General Fund for Council District No. 2, For Council District No. 4, For Council District No. 7, For Council District No. 8, For Council District No. 9 and For Council District No. 10; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption" and Resolution No. 76621, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 76302 Setting Forth the Estimated Sources of Fund for the Fiscal Year 2012-2013 to Adjust Revenues in the General Fund", were adopted. (11-0.)

2.8 As recommended by the Rules and Open Government Committee on May 1, 2013:

- (a) Approve the District 1 Health & Safety Fair 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. (Constant)

2.8 (Cont'd.)

Documents Filed: Memorandum from Acting City Clerk Toni Taber, CMC, dated May 2, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: The District 1 Health & Safety Fair 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.)

2.9 As referred by the Rules and Open Government Committee on May 1, 2013, consider positions in support of:

- (a) SCA 7 (Wolk) Public Libraries.
 - (b) SCA 9 (Corbett) Local Government: Economic Development: Special Taxes.
 - (c) SCA 11 (Hancock) Local Government: Special Taxes: Voter Approval.
 - (d) ACA 3 (Campos) Local Government Finance: Public Safety Services.
 - (e) ACA 8 (Blumenthal) Local Government Financing: Voter Approval.
- (City Manager's Office)

Documents Filed: Memorandum from Acting City Clerk Toni Taber, CMC, dated May 2, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Motion: Council Member Constant moved approval to oppose the Staff recommendations and vote against positions of support for the five proposed Constitutional Amendments. Council Member Oliverio seconded the motion.

Extensive Council discussion ensued.

Council Member Khamis expressed support to the motion on the floor.

Vice Mayor Nguyen and Council Members Kalra, Chu, Liccardo and Campos expressed support to the Staff recommendations.

Substitute Motion: Council Member Rocha moved approval of the Staff recommendations. Council Member Kalra seconded the motion.

Public Comments: Speaking in opposition to the Staff recommendations were Elizabeth Brierly, Silicon Valley Taxpayers Association; Alberta Brierly, Martha O'Connell, Kathy Skidmore, Ross Signorino and Gloria Strong.

Action: On a call for the question, the substitute motion carried, the Positions of Support were approved for (a) SCA 7 (Wolk) Public Libraries; (b) SCA 9 (Corbett) Local Government: Economic Development: Special Taxes; (c) SCA 11 (Hancock) Local Government: Special Taxes: Voter Approval; (d) ACA 3 (Campos) Local Government Finance: Public Safety Services and (e) ACA 8 (Blumenthal) Local Government Financing: Voter Approval. (7-4. Noes: Constant, Herrera, Khamis, Oliverio.)

- 2.10 As recommended by the Rules and Open Government Committee on May 1, 2013:**
(a) Approve the Rainbow Flag Raising Sponsored by Council District Six 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. (City Clerk/Oliverio)

Documents Filed: Memorandum from Acting City Clerk Toni Taber, CMC, dated May 2, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: The Rainbow Flag Raising Sponsored by Council District Six 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.)

- 2.11 As recommended by the Rules and Open Government Committee on May 1, 2013:**
(a) Approve “Plant Eat Share” as a City sponsored Special Event.
(b) Approve and accept donations from various individuals, businesses, or community groups to support the event.
CEQA: Not a Project. (Liccardo)

Documents Filed: Memorandum from Acting City Clerk Toni Taber, CMC, dated May 2, 2013, transmitting the recommendations of the Rules and Open Government Committee.

Action: The “Plant Eat Share” 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.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

- 3.4 Approve settlement in the case of *Michael Kerkeles v. City of San José, et al.*, and authorize the City Attorney to execute a Settlement Agreement and Release with Michael Kerkeles, and his attorney, in the amount of \$150,000, plus attorney’s fees to be determined by the court. CEQA: Not a Project; File No. PP10-066(h), Settlement Agreements. (City Attorney’s Office)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated April 25, 2013, recommending approval of the settlement.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Chu and carried unanimously, settlement in the case of *Michael Kerkeles v. City of San José, et al.*, and authorize the City Attorney to execute a Settlement Agreement and Release with Michael Kerkeles, and his attorney, in the amount of \$150,000, plus attorney’s fees to be determined by the court, was approved. (9-0-2. Absent: Constant, Kalra.)

**3.5 Approve an ordinance amending various sections of Chapter 2.08 of Title 2 and repealing Section 25.04.610 of Chapter 25.04 of Title 25 of the San José Municipal Code relating to the consolidation of Boards, Bureaus, and Commissions. CEQA: Not a Project, File No. PP10-068(c), Code or policy change that involves no changes in the physical environment. (City Clerk)
(Deferred from 4/23/13 – Item 2.7)**

Documents Filed: (1) Memorandum from Acting City Clerk Toni Taber, CMC, dated April 26, 2013, recommending approval of an ordinance. (2) Supplemental memorandum from Acting City Clerk Toni Taber, CMC, dated May 6, 2013, recommending approval of minor changes to the proposed ordinance amending various sections of Chapter 2.08 of Title 2 of the San José Municipal Code related to Boards, Bureaus and Commissions.

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

Public Comments: Martha O’Connell provided comments related to the consolidation of Boards, Bureaus and Commissions.

Acting City Clerk Toni Taber, CMC responded to Council questions and concerns.

Council Member Liccardo moved approval of a substitute motion to allow Staff to return to Council when there is difficulty finding applicants to fill seats and to direct Staff to issue an annual report and/or information memorandum regarding vacancies, quorum issues and etc. The substitute motion failed due to a lack of a second.

Council Members Oliverio and Herrera accepted Council Member Liccardo’s substitute motion as an amendment to the original motion.

Council Member Liccardo expressed opposition to the motion on the floor.

Council Member Constant requested to amend the original motion to include for the second reading, to specify that the Appeals Commission is a Council interview and appointment process. Council Member Oliverio accepted the amendment to the motion.

Action: On a call for the question, the original motion carried, Ordinance No. 29250, entitled: “An Ordinance of the City of San José Amending Various Sections of Chapter 2.08 of Title 2 of the San José Municipal Code and Repealing Section 25.04.610 of Chapter 25.04 of Title 25 Related to the Consolidation of Boards, Bureaus and Commissions”, was passed for publication, as amended: include for the second reading, specify that the Appeals Commission is a Council interview and appointment process. Staff was directed to issue an annual report and/or information memorandum regarding vacancies, quorum issues and etc. (10-1. Noes: Liccardo.)

- 3.6 (a) Approve participation in the Microsoft Enterprise License Agreement for State and Local Governments (“Enterprise Agreement”), a cooperative agreement administered by the County of Riverside, California on behalf of State and Local public agencies for five years for advantage pricing of Microsoft software products as may be required by the City.
- (b) Approve enrollment with Compucom Systems, Inc. (Dallas, TX), the lowest bid received from authorized Large Account Resellers, pursuant to the terms and conditions of the Enterprise Agreement.
- (c) Adopt a resolution authorizing the City Manager to:
- (1) Execute purchase orders and other necessary documents that may be required under the Enterprise Agreement to purchase quantity 5,500 annual subscriptions of Microsoft Office 365, including G Archiving and quantity 400 subscriptions for enhanced Microsoft Office 365 from Compucom Systems, Inc. for a total amount not to exceed \$413,772 for a twelve month period.;
 - (2) Execute four additional annual purchase orders for the same amount of \$413,772 each year, for a maximum compensation of \$1,655,088 for all four years, subject to appropriation of funds.
 - (3) Purchase additional annual subscriptions as may be required at the same unit price, subject to the appropriation of funds.

CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Finance/Information Technology)

Documents Filed: Memorandum from Director of Finance Julia H. Cooper and Acting Chief Information Officer Vijay Sammeta, dated April 22, 2013, recommending as indicated above in Item 3.6.

Public Comments: Rick Joyer, Microsoft, spoke in support to the Staff recommendations.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Constant and carried unanimously, participation in the Microsoft Enterprise License Agreement for State and Local Governments (“Enterprise Agreement”), a cooperative agreement administered by the County of Riverside, California on behalf of State and Local public agencies for five years for advantage pricing of Microsoft software products as may be required by the City and enrollment with Compucom Systems, Inc. (Dallas, TX), the lowest bid received from authorized Large Account Resellers, pursuant to the terms and conditions of the Enterprise Agreement were approved and Resolution No. 76625, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Execute Purchase Orders and Other Necessary Documents Required as Part of a Microsoft Enterprise License Agreement for State and Local Governments with Compucom Systems, Inc., for a Twelve Month Period, To Execute Four Additional Purchase Orders and To Purchase Additional Annual Subscriptions as May Be Required”, was adopted. (11-0.)

- 3.7 **Adopt a resolution authorizing the City Attorney to:**
- (a) Execute a Second Amendment to the agreement between Hanson Bridgett LLP and Federated City Employees' Retirement System to increase the compensation for the remaining term of the agreement to end June 30, 2014 by \$250,000, from \$250,000, for a total contract amount not to exceed \$500,000.**
 - (b) Execute a Second Amendment to the agreement between Hanson Bridgett LLP and Police & Fire Department Retirement Plan to increase the compensation for the remaining term of the agreement to end June 30, 2014 by \$250,000, from \$250,000, for a total contract amount not to exceed \$500,000.**

CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Retirement Services)

Documents Filed: Memorandum from Director of Retirement Services Roberto Pena, dated April 15, 2013, recommending adoption of a resolution.

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

City Attorney Richard Doyle responded to Council questions and concerns.

Brief Council discussion ensued.

Action: On a call for the question, the motion carried unanimously, Resolution No. 76626, entitled: "A Resolution of the Council of the City of San José Authorizing the City Attorney to Execute (1) The Second Amendment to the Agreement Between Hanson Bridgett, LLP (Investment Counsel) and the Federated City Employees' Retirement System to Increase the Compensation for the Remaining Term of the Agreement for a Total Contract Amount Not To Exceed \$500,000, and (2) The Second Amendment to the Agreement Between Hanson Bridgett, LLP (Investment Counsel) and the Police and Fire Department Retirement Plan to Increase the Compensation for the Remaining Term of the Agreement for a Total Contract Amount Not To Exceed \$500,000", was adopted. (11-0.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 (a) **Conduct a Public Hearing and consider an ordinance amending Title 20 of the San José Municipal Code (the Zoning Ordinance) to amend: Sections 20.80.1110, 20.80.1130, and 20.80.1150 of Chapter 20.80 (Specific Use Regulations, Recycling Facilities) to amend regulations for Reverse Vending Machines and Unattended Collection Containers in Small Collection Facilities; Sections 20.100.1240 and 20.100.1250 of Chapter 20.100 (Administration and Permits) to amend requirements for Display and Terms of Administrative Permits; and Sections 20.200.877 and 20.200.1303 of Chapter 20.200 (Definitions) to add definitions for “Permittee” and “Unattended Collection Container”; all to further implement the Measurable Sustainability/Environmental Stewardship Major Strategy, the Measurable Environmental Sustainability goals and policies, and the Land Use Goals and Policies set forth within the Envision San José 2040 General Plan and to make other technical, formatting or other nonsubstantive changes within those sections of Title 20.**

Documents Filed: (1) Memorandum from Mayor Reed, Vice Mayor Nguyen and Council Member Rocha, dated May 3, 2013, with direction to Staff as described in “Action”. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated April 17, 2013, transmitting the recommendations of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing, executed on March 22, 2013, submitted by the City Clerk. (4) Letter from USAgain, dated May 1, 2013, regarding the proposed ordinance. (5) Letter from John Ditty, Giving Children Hope, dated May 7, 2013, regarding the proposed ordinance. (6) Letter from Mike E. Fox, Jr., Goodwill, dated May 7, 2013, regarding the proposed ordinance. (7) Letter from Berliner Cohen, Attorneys at Law, dated May 2, 2013, regarding the proposed ordinance. (8) Email from Bill Corrao, ATRS American Textile Recycling Services, dated May 7, 2013, regarding the proposed ordinance.

Mayor Reed, Vice Mayor Nguyen and Council Member Constant provided meeting disclosures.

Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti offered introductory comments.

Vice Mayor Nguyen briefly outlined the memorandum she cosigned with Mayor Reed and Council Member Rocha. Vice Mayor Nguyen pointed out that unattended collection boxes can be blight on the community if they are not maintained and overflowing with trash, however they can also be a benefit providing a convenient opportunity to recycle clothes and increase the City’s diversion rate.

Motion: Vice Mayor Nguyen moved approval of the memorandum she cosigned with Mayor Reed and Council Member Rocha, dated May 3, 2013, with direction to Staff as described in “Action”. Council Member Rocha seconded the motion.

Mayor Reed opened the Public Hearing.

4.1 (Cont'd.)

Public Comments: Providing comments for and against the proposed ordinance were Trish Dorsey, David Ostendorf, Mark Russo, Christopher Anthony, Ryan Gleason, Robert Shuck, Donald Shuck, Troy Reichman, John Lam, Matt Mayser, Robert Williamson, Jim Cunneen, Luis Lozoya, Mike Fox and Chris Schumb, Goodwill Industries; Andrew Faber and Julie Wattfaqir, USAgain; Derrick Drake, Judith Fregoso, Julie Wedge, Campus California; John Hogan, Teen Force, Christina Egan, Charlene Nijmeh, 7th Generation Recycling; Arthur Boone, Northern California Recycling Association; Richard McCoy, Martha O'Connell, Steve Harshbarger, Ross Signorino and Ali Barekat, Sunday Friends.

Mayor Reed closed the Public Hearing.

City Attorney Richard Doyle, Director of Environmental Services Kerrie Romanow and Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti responded to Council questions and concerns. Extensive Council discussion ensued.

Council Members Rocha, Khamis and Campos provided meeting disclosures.

Council Member Campos requested to amend the motion to direct Staff to: (a) Conduct an analysis of potential sites for placement of unattended collection boxes. (b) Issue a RFI to determine interest from nonprofit operators in providing such a service and in compensating the City for use of its facilities. Ideally, the RFI should attempt to judge the level of public benefit that an operator may provide, whether in the form of payment to the City, use of materials for charitable purposes, creation of local jobs, or some other benefit. The amendment was accepted by Vice Mayor Nguyen and Council Member Rocha.

Senior Deputy City Attorney Sandra Lee suggested an amendment to the motion that Council direct Staff to add as part of the draft ordinance: disclosure of the contact name and information for the operator of the box and the property owner of the site where it is located and that Council can add a requirement to add non profit or profit. The amendment was accepted by Vice Mayor Nguyen and Council Member Rocha.

Substitute Motion: Council Member Oliverio moved approval to direct Staff to return to Council recommending a straight ban of the unattended collection boxes. Council Member Liccardo seconded the motion. On a call for the question, the substitute motion failed. (2-9. Noes: Campos, Chu, Constant, Herrera, Kalra, Khamis, Nguyen, Rocha; Reed.)

Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti recommended that a citywide cap be set at eighteen. The amendment was accepted by Vice Mayor Nguyen and Council Member Rocha.

4.1 (Cont'd.)

Action: On a call for the question, the original motion carried, the memorandum from Mayor Reed, Vice Mayor Nguyen and Council Member Rocha, dated May 3, 2013, was approved: (1) Staff was directed to return to Council with an ordinance that includes Staff recommendations as outlined in the Staff Report to the Planning Commission dated April 2, 2013 with the following modifications: (a) Establish a citywide cap set at the number of permit applications pending as of May 7, 2013 for collection boxes. (b) Do not accept applications beyond May 7, 2013. (c) Set the term of the permit and permit renewals to one year. (d) Propose a permit fee that helps cover the cost of enforcement. (2) Staff directed to conduct a preliminary assessment of the feasibility of a franchise model under which the City would allow collection boxes to be placed on City property by a nonprofit recycler in exchange for a fee, and return with the results of the assessment to the Transportation and Environment Committee. Staff analysis may include: (a) Conducting an analysis of potential sites for placement of unattended collection boxes. (b) Issuing a RFI to determine interest from nonprofit operators in providing such a service and in compensating the City for use of its facilities. Ideally, the RFI should attempt to judge the level of public benefit that an operator may provide, whether in the form of payment to the City, use of materials for charitable purposes, creation of local jobs, or some other benefit. (2) (c) Determining whether it would be possible to ban collection boxes on private property while at the same time allowing them on City property through a franchise model. (3) Direct staff to enforce against illegal, unpermitted collection boxes as resources allow. Any discussion of whether additional resources are necessary can take place as part of the budget process. Further direction included: (1) Under section (2)(a), Staff directed to conduct an analysis of potential sites for placement of unattended collection boxes and establish appropriate zoning districts complete with an analysis on minimums of setbacks from public right-of-ways, setbacks from residential properties, appropriate places to place the boxes and other land use requirements and parameters. (2) Staff directed to add as part of the draft ordinance: disclosure of the contact name and information for the operator of the box and the property owner of the site where it is located. Council can add a requirement to add non profit or profit. (10-1. Noes: Oliverio.)

(b) Adopt a resolution setting forth related administrative fines for noncompliance with Sections 20.80.1110, 20.80.1120 and 20.80.1130 of Chapter 20.80 of Title 20 of the San José Municipal Code.

CEQA: Final Program Environmental Impact Report (EIR) for the Envision San José 2040 General Plan, EIR Resolution No. 76041 (File No. PP13-027). Planning Commission recommends approval (4-2-1). (Planning, Building and Code Enforcement)

Action: Item 4.1(b) was deferred to May 21, 2013 per Administration.

- 4.2 (a) Conduct a Public Hearing and consider an ordinance amending Title 20 of the San José Municipal Code (the Zoning Ordinance) to amend: Section 20.30.100 of Chapter 20.30 (Residential Zoning Districts) to allow Outdoor Vending of Fresh Fruits and Vegetables on School, Library, Community Center, and Religious Assembly sites; Sections 20.40.100 and 20.40.520 of Chapter 20.40 (Commercial Zoning Districts) to allow Outdoor Vending of Fresh Fruits and Vegetables in Commercial Zoning Districts; Section 20.50.100 of Chapter 20.50 (Industrial Zoning Districts) to allow Outdoor Vending of Fresh Fruits and Vegetables in Industrial Zoning Districts; Section 20.70.100 of Chapter 20.70 (Downtown Zoning Districts) to allow Outdoor Vending of Fresh Fruits and Vegetables, and to allow Banquet Facilities as Ground-Floor Space Uses, in Downtown Zoning Districts; Sections 20.75.200 and 20.75.320 of Chapter 20.75 (Pedestrian Oriented Zoning Districts) to allow Certified Farmers' Markets, Neighborhood Agriculture and Outdoor Vending of Fresh Fruits and Vegetables in Pedestrian Oriented Zoning Districts; and Sections 20.80.810 and 20.80.820 of Chapter 20.80 (Specific Use Regulations, Outdoor Vending Facilities) to allow Outdoor Vending of Fresh Fruits and Vegetables and other Products in conformance with specific criteria without an Administrative Permit all to further implement the Design for a Healthful Community Major Strategy, the Vibrant Neighborhoods Goals and Policies, the Economic Development Goals and Policies, and the Land Use Goals and Policies set forth within the Envision San José 2040 General Plan and to make other technical, formatting or other nonsubstantive changes within Title 20. Planning Commission recommends approval (6-0-1); and
- (b) Conduct a Public Hearing and consider an ordinance amending the San José Municipal Code to amend Sections 6.54.110, 6.54.260, and 6.54.265 of Chapter 6.54 of Title 6 of the San José Municipal Code to modify the conditions for Approved Location Peddlers and authorize the City Manager to promulgate regulations on behalf of all Approved Location Peddlers; and adding Section 6.54.320 to extend the term of Approved Location Peddler Permits.

CEQA: Final Program Environmental Impact Report (EIR) for the Envision San José 2040 General Plan, EIR Resolution No. 76041 (File No. PP13-024).

Action: Deferred to May 21, 2013 per Administration.

NEIGHBORHOOD SERVICES

- 5.1 Conduct a Public Hearing and adopt a resolution to be effective August 1, 2013 to:
- (a) Set forth the new Schedule of Parkland Fees charged pursuant to the San José Municipal Code Chapters 14.25 (“Park Impact Ordinance”) and 19.38 (“Parkland Dedication Ordinance”) to reflect the 2012 Residential Land Value Study; and
 - (b) Authorize the City Manager to determine the applicable parkland fees for any residential units in the City of San José that are not included in the Schedule of Parkland Fees based on the nearest Multiple Listing Service zones.

**CEQA: Not a Project, File No. PP10-067(a), Adjustments to fees, rates, and charges. (Parks, Recreation and Neighborhood Services)
(Deferred from 4/23/13 – Item 5.1 and 4/30/13 – Item 5.2)**

Action: Deferred to May 14, 2013 per Orders of the Day.

PUBLIC SAFETY SERVICES

- 8.1 As recommended by the Public Safety, Finance and Strategic Support Committee on April 18, 2013, accept the Audit of Fire Prevention. (City Auditor)
[Public Safety, Finance and Strategic Support Committee referral 4/18/13 – Item D(4)]

Action: Deferred to May 14, 2013 per Administration.

STRATEGIC SUPPORT SERVICES

- 3.3 As referred by the City Council on March 26, 2013, refer to the Elections Commission or other appropriate commission the question of whether or not the City of San José should adopt a resolution calling for an amendment to the United States Constitution that states that, first, only individual human beings, not corporations no other collective entities, enjoy the First Amendment protections of the United States Constitution, and second, that money is not “speech” protected by the First Amendment. In the alternative, the City Council may adopt such a resolution. (Liccardo/Campos/Rocha)
[Referred by City Council 3/26/13 – Item 3.6(h)]

Documents Filed: (1) Memorandum from Council Member Liccardo, dated May 6, 2013, recommending adoption of a resolution, as described further in “Action”. (2) Memorandum from Council Member Kalra, dated May 3, 2013, recommending adoption of a resolution. (3) Letter from Matthew R. Mahood, President/CEO, San José Silicon Valley Chamber of Commerce, dated April 8, 2013, requesting that Council oppose the proposal to seek a constitution amendment.

3.3 (Cont'd)

Motion: Council Member Liccardo moved approval of his memorandum dated May 6, 2013, to adopt the resolution calling for a constitutional amendment, declaring that the expenditure of money in campaigns is not protected speech for First Amendment purposes and that campaign contributions and expenditures may be limited and regulated by Congress, States and by implication, local governments. Vice Mayor Nguyen seconded the motion.

Public Comments: Speaking for and against the resolution in support of an amendment to the United States Constitution were Aaron Resendez, John Fioretta, Tom Shaw Gerald Hunt, Frederick Rehhausser, and Kerri Hamilton, Santa Clara County Move to Amend; Brian Carr, Loma Prieta Chapter, Sierra Club; Bruce Preville and Pablo Ghenis, Dream Menders; Herb Engstrom, California Clean Money Campaign; Spencer Graves, Rootstrikers; Craig Dunkerley, Santa Clara County Democratic Club; Conrad Marshall, Alejandro Quinonez, Norman Kline, Common Cause; Harvey Sachs, MD and Ross Signorino.

Substitute Motion: Council Member Kalra moved approval to adopt a resolution stating that the City of San José firmly believes that money is not speech and that all citizens, regardless of wealth, will not have their voices drowned out by a torrent of corporate and special interest dollars. Council Member Campos seconded the motion. On a call for the question, the substitute motion failed. (2-5-4. Noes: Chu, Herrera, Liccardo, Nguyen; Reed. Absent: Constant, Khamis, Oliverio, Rocha.)

Discussion returned to the original motion.

Action: On a call for the question, the original motion carried unanimously, the memorandum from Council Member Liccardo, dated May 6, 2013, was approved, adopting the resolution calling for a constitutional amendment, declaring that the expenditure of money in campaigns is not protected “speech” for First Amendment purposes, and that campaign contributions and expenditures may be limited and regulated by Congress, States and by implication, local governments and Resolution No. 76627, entitled: “A Resolution of the Council of the City of San José Calling for an Amendment to the United States Constitution Establishing that Money Is Not Speech and That Campaign Contributions and Expenditures Should Be Regulated and Limited”, was adopted, as amended. (7-0-4. Absent: Constant, Khamis, Oliverio, Rocha.)

ADJOURNMENT

The Council of the City of San José was adjourned at 5:29 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Toni J. Taber, CMC
Acting City Clerk

smd/05-07-13 MIN

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