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## MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, OCTOBER 24, 2017

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

Present: Councilmembers - Arenas, Carrasco, Davis, Diep, Jimenez, Jones, Khamis, Nguyen, Peralez, Rocha.

Absent: Councilmembers - Liccardo. (Excused)

### STRATEGIC SUPPORT SERVICES

#### 3.2 Accept Labor Negotiations Update.

There was no report.

### CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:40 a.m. to a Closed Session in Room W133; (A) To confer with Legal Counsel – Existing Litigation Pursuant to Government Code Section 54956.9(d)(1): (1) City of San José v. City of Santa Clara; Names Of Partie(s) Involved: City of San José, City of Santa Clara; Court: Superior Court of California, County of San Mateo; Case No.: 16-CIV-02303; Amount of Money or Other Relief Sought: Petition for Writ of Mandate and Complaint for Declaratory Relief; (2) City of Santa Clara v. City of San José, et al.; Names Of Partie(s) Involved: City of Santa Clara, City of San José, City of San José City Council, Does I through X; Federal Realty and Investment Trust, and Does 1-20; Court: Superior Court of California, County of San Mateo; Case No.: 17-CIV-00547; Amount of Money or Other Relief Sought: Petition for Writ of Mandate and Complaint for Declaratory Relief; (3) Federated City Employees' Retirement System v. City of San José, Norberto Duenas, in his Official Capacity as the City Manager of the City of San José; Names Of Partie(s) Involved: Federated City

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

## CLOSED SESSION (Cont'd.)

Employees' Retirement System v. City of San José, Norberto Duenas, in his Official Capacity as the City Manager of the City of San José, and Does 1-50; Court: Superior Court of California, County of Santa Clara; Case No: 16-CV-302829; Amount of Money or Other Relief Sought: Writ of Mandate; (6) San José Retired Employees' Association, et al. v. City, et al.; Names Of Partie(s) Involved: San José Retired Employees Association, Howard E. Fleming, Donald S. Macrae, Frances J. Olson, Gary J. Richert and Rosalinda Clara, Sixth District Court of Appeal; Case No.: 1-12-CV-23360; H040979; H042074; Amount of Money or Other Relief Sought: Verified Petition for Writ of Mandate and Declaratory Relief; (4) San José Retired Employees Association, et al. v. City of San José, et al.; Names Of Partie(s) Involved: San José Retired Employees Association, Kirk Pennington, David Armstrong, Donna Jewett, Dorothy McGinley, City of San José, the Board of Administration for the Federated City Employees Retirement Plan; Court: Superior Court of California, County of Santa Clara; Case No: 1-14-CV-268085; Amount of Money or Other Relief Sought: Change to City medical plan; (C) to Confer with Labor Negotiator Pursuant to Government Code Section 54957.6: City Negotiator: Jennifer Schembri, Director of Employee Relations; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (2) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (3) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP. (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP. (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO; (6) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW; (8) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (9) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3. (10) San José Police Officers' Association (SJPOA); Nature of Negotiations: Salaries, Hours, Working Conditions, etc.; Name of Existing Wages Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (11) Association of Legal Professionals of San

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

José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc;  
Web: <http://www.sanjoseca.gov/?nid=186>; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 11:50 a.m. and reconvened to Regular Session at 1:30 p.m. in the Council Chambers.

Present: Councilmembers - Arenas, Carrasco, Davis, Diep, Jimenez, Jones, Khamis, Nguyen, Peralez, Rocha; Liccardo.

Absent: Councilmembers - All Present.

## **INVOCATION**

City of San José Animal Care & Services Division representatives brought adoptable dogs and kittens and highlighted the good work of the shelter in honor of Adopt a Shelter Pet Month.

## **PLEDGE OF ALLEGIANCE**

Mayor Sam Liccardo, accompanied by students from Rosemary Elementary School, led the Pledge of Allegiance.

## **ORDERS OF THE DAY**

Upon motion by Councilmember Donald Rocha, seconded by Councilmember Johnny Khamis, and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Item 4.1 deferred one week at the request of the Applicant. (11-0.)

## **CEREMONIAL ITEMS**

### **1.1 Presentation of a commendation to the Fire Department Communications Center.**

Mayor Sam Liccardo and Councilmember Raul Peralez presented a commendation to the Fire Department Communications Center for renewal of their status as an Emergency Medical Dispatch Accredited Center of Excellence. (Peralez)

### **1.2 Presentation of a commendation to the Tai Ji Men Qigong Academy. (Rocha)**

Mayor Sam Liccardo and Councilmember Donald Rocha presented a commendation to the Tai Ji Men Qigong Academy for their promotion of love and peace through the ancient traditional qigong martial arts and for their performances that kicked off the 2017 29th Summer Universiade.

**1.3 Presentation of a proclamation declaring City of San José's participation in the 2017 Combined Giving Campaign. (Planning, Building and Code Enforcement)**

Mayor Sam Liccardo and City Manager David Sykes, joined by Rosalynn Hughey, Assistant Director, Planning, Building and Code Enforcement, promoted the City of San José's participation in the 2017 Combined Giving Campaign.

**1.4 Presentation of a commendation to Silicon Valley Shakespeare. (Davis)**

Silicon Valley Shakespeare was presented with a commendation by Mayor Sam Liccardo and Councilmember Dev Davis for their innovative approach in performing the works of Shakespeare.

*Heard in the evening.*

**1.5 Presentation of a proclamation declaring October as Filipino American History Month in the City of San José. (Jimenez/Carrasco)**

Mayor Sam Liccardo, Vice Mayor Magdalena Carrasco and Councilmember Sergio Jimenez provided a proclamation declaring October as Filipino American History Month in the City of San José.

*Heard in the evening.*

**1.6 Presentation of a commendation to Ranger Mike Peasland in honor of his work and dedication to the residents of the City of San José. (Carrasco)**

Mayor Sam Liccardo and Vice Mayor Magdalena Carrasco presented a commendation to Ranger Mike Peasland in honor of his heroic actions and dedication to the residents of the City of San José.

*Heard in the evening.*

**CONSENT CALENDAR**

Upon motion by Councilmember Johnny Khamis, seconded by Councilmember Chappie Jones, and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (11-0.)

**2.1 Approval of City Council Minutes:**

None provided.

**2.2 17-234 Final Adoption of Ordinances.**

ORDINANCE NO. 30013 - An ordinance of the City of San José adding Part 21 to Chapter 2.08 of Title 2 of the San José Municipal Code to establish the Clean Energy Community Advisory Commission. CEQA: Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment. (City Clerk)

Documents Filed: Proof of Publication of the Title of Ordinance No. 30013 executed on October 20, 2017 by the City Clerk.

Action: Ordinance No. 30013 was adopted. (11-0.)

**2.3 Approval of Council Committee Minutes.**

**17-209 Approval of Council Committee Minutes.**

- (a) Rules and Open Government Committee Minutes. (Mayor)
  - (1) August 23, 2017.
  - (2) August 30, 2017.
  - (3) September 6, 2017.
  - (4) September 13, 2017.
  - (5) September 20, 2017.
- (b) Ad-Hoc Committee for Development Services Minutes of September 28, 2017. (Khamis)  
CEQA: Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

Documents Filed: Rules and Open Government Committee Minutes dated August 23, 2017, August 30, 2017, September 6, 2017, September 13, 2017, and September 20, 2017. Ad-Hoc Committee for Development Services Minutes of September 28, 2017.

Action: The Council Committee Minutes were accepted. (11-0.)

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

None provided.

**2.5 City Council Travel Reports.**

Mayor Sam Liccardo reported on his trip to Paris, France, where he spoke at a conference co-hosted by Bloomberg Philanthropies Atlantic regarding Smart City efforts. It included a gathering of mayors for C40, which focuses on climate change and is engaged in releasing a sustainability plan to comply with the Paris Agreement.

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

None provided.

- 2.7 17-201** Approve an Amendment to the Master Consultant Agreement between The City of San José and Price Waterhouse Coopers, Public Sector LLP (PwC) dated December 19, 2016 to increase maximum total compensation from \$250,000 to \$325,000. CEQA: Not a Project, File No. PP17-002, Consultant Services for design, study, inspection, or other professional services with no commitment to future action. (Environmental Services)

Documents Filed: City Council Action Request from Assistant City Manager Environmental Services, Ashwini Kantak for Director, Environmental Services, Kerrie Romanow, dated October 24, 2017, recommending approval of an Amendment to a Master Consultant Agreement.

Public Comments: Paul Ledesma, Committee for Green Foothills, offered support to the agreement.

Action: An Amendment to the Master Consultant Agreement between the City of San José and Price Waterhouse Coopers, Public Sector LLP (PwC) dated December 19, 2016 to increase maximum total compensation from \$250,000 to \$325,000, was approved. (10-0-0-1. Abstain: Rocha.)

- 2.8 17-168** Accept the Semi-Annual Status Report on the Citywide Capital Improvement Program. CEQA: Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action. (Public Works)

Documents Filed: Replacement memorandum from Director of Public Works, Barry Ng, dated October 23, 2017, recommending acceptance of the Semi-Annual Status Report and providing corrections regarding the active number of projects.

Action: The Semi-Annual Status Report on the Citywide Capital Improvement Program, was accepted. (11-0.)

- 2.9 17-194** Approve the First Amendments to the Master Agreements with Callander Associates Landscape Architecture Inc. and PlaceWorks extending the duration from December 31, 2017, to December 31, 2019, for a continuation of ongoing consultant design services supporting various City facility projects, at no additional cost to the City. CEQA: Not a Project, File No. PP17-003, Agreements/Contracts resulting in no physical changes to the environment. (Public Works)

**2.9 (Cont'd.)**

Documents Filed: City Council Action Request from Director of Public Works Barry Ng, recommending approval of the First Amendment to Master Consultant Agreements.

Action: First Amendments to the Master Agreements with Callander Associates Landscape Architecture Inc. and PlaceWorks extending the duration from December 31, 2017, to December 31, 2019, for a continuation of ongoing consultant design services supporting various City facility projects, at no additional cost to the City were approved. (11-0.)

- 2.10 17-212** Adopt a resolution authorizing the City Manager or his designee to:  
(a) Negotiate and execute a Lateral Tie-Back Agreement with SJSC Properties, LLC, and providing consent to the Developer to allow a crane to operate non-live loads over the City's Parking Garage located at 43 N 5th Street in the City of San Jose, County of Santa Clara, State of California; and (b) Negotiate and execute all other documents and take such further actions as are necessary to complete these transactions.  
CEQA: Addendum to the Downtown Strategy 2000 EIR, the Envision San Jose 2040 General Plan and the Envision San Jose 2040 General Plan Supplemental EIR, Planning File No. SP17-009. Council District 3. (Economic Development)

City Attorney Richard Doyle indicated a Brown Act issue with this the agreement will require the consent of the Financing Authority. Economic Development Assistant Director, Nanci Klein provided further clarification.

Action: Deferred to October 31, 2017 per the City Attorney.

- 2.11 17-272** (a) Approve travel by Vice Mayor Carrasco to Annapolis, Maryland on October 31, 2017 to November 3, 2017 for the Sister Cities International Fall Leadership Meeting. Source of Funds: Mayor/Council Travel Budget.  
(b) Request for an excused absence for Vice Mayor Carrasco from the Regular Meeting of the City Council on October 31, 2017 and the Rules and Open Government Committee and Committee of the Whole on November 1, 2017.  
CEQA: Not a Project, File No. PP17-010, City Organization & Administrative Activities resulting in no change to the physical environment. (Carrasco)

Documents Filed: Memorandum from Vice Mayor Magdalena Carrasco, dated October 11, 2017, requesting authorization to travel.

Action: The travel request was approved. (11-0.)

**2.12 17-274**

(a) Authorize international travel by Councilmember Khamis to Tainan, Taiwan from October 27, 2017 to November 4, 2017 to lead a delegation, as an official representative of the City of San José, to celebrate the 40th Anniversary of the Sister City relationship between Tainan, Taiwan and the City of San José, with additional meetings with officials from the City of Taipei, Taiwan. Source of Funds: San José - Tainan Sister City Association.

(b) Authorize an excused absence for Councilmember Khamis from the following meetings due to Authorized City Business:

(1) The October 31, 2017 Closed Session and Regular Session meetings of the City Council.

(2) The November 1, 2017 meeting of the Rules and Open Government Committee and Committee of the Whole.

(3) The November 2, 2017 meetings of the Police & Fire Department Retirement Plan Board of Directors and the Smart Cities & Service Improvements Committee.

(4) The November 3, 2017 Special Meeting of the City of San José and the Santa Clara Valley Water District.

(c) Approve the receipt of gifts of air travel, hotel, and meals received in an official capacity as a representative of the City in accordance with San Jose Municipal Code section 12.08.040(c). While the City could reimburse for the meals, they will be provided as a gesture to foster a positive working relationship between the City of San José and its Sister City of Tainan, Taiwan as well as with the City of Taipei, Taiwan. CEQA: Not a Project, File No. PP17-010, City Organization & Administrative Activities resulting in no change to the physical environment. (Khamis)

Documents Filed: Memorandum from Councilmember Johnny Khamis, dated October 16, 2017, requesting authorization to travel.

Action: The travel request was approved. (11-0.)

**2.13 17-275**

Authorize international travel to Tainan and Taipei, Taiwan, for Joseph Hedges, International Affairs Manager, as the City Manager's designated representative on the Sister City trip to Tainan, from October 30, 2017 to November 4, 2017 and accept the gift of travel from the San Jose Tainan Sister City Association. CEQA: Not a Project, File No. PP17-010, City Organization & Administrative Activities resulting in no change to the physical environment. (City Manager)

Documents Filed: Memorandum from Deputy City Manager, David Sykes, dated October 19, 2017, requesting authorization to travel for Joseph Hedges, International Affairs Manager.

Action: The travel request was approved. (11-0.)



- 2.14 17-276** Approve an Agreement with United Neighborhoods of Santa Clara County to administer the funding of BeautifySJ Grants as a fiscal agent from the time of execution until December 31, 2018 in an amount not to exceed \$300,000. CEQA: Exempt, File No. PP17-039, CEQA Guidelines Section 15301, Existing Facilities. (Parks, Recreation and Neighborhood Services)

Documents Filed: City Council Action Request from Director of Parks, Recreation and Neighborhood Services Angel Rios, Jr., recommending approval of an agreement.

Action: An Agreement with United Neighborhoods of Santa Clara County to administer the funding of BeautifySJ Grants as a fiscal agent from the time of execution until December 31, 2018 in an amount not to exceed \$300,000, was approved. (11-0.)

- 2.15 17-277** As recommended by the Rules and Open Government Committee on October 18, 2017:
- (a) Approve the PATH San José Fundraiser scheduled on October 25, 2017 as a City Council sponsored Special Event and approve the expenditure of funds.
  - (b) Approve and accept donations from various individuals, businesses, or community groups to support the event.
- CEQA: Not a Project, File No. PP17-011, Temporary Special Events resulting in no changes to the physical environment. (Perales)

Documents Filed: Memorandum from City Clerk Toni J. Taber, dated October 19, 2017, transmitting the recommendations of the Rules and Open Government Committee.

Action: The PATH San José Fundraiser scheduled on October 25, 2017 as a City Council Sponsored Special Event was approved, and expenditure of funds and authorization to accept donations from various individuals, businesses or community groups to support the event, was approved. (11-0.)

- 2.16 17-278** As recommended by the Rules and Open Government Committee on October 18, 2017, approve a \$5,000 grant to support the Herbert Hoover Middle School Parent Teacher Staff Association for their school beautification project, “The Quad Makeover,” which will be used by all 1,100 students. CEQA: Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action. (Davis)

Documents Filed: Memorandum from City Clerk Toni J. Taber, dated October 19, 2017, transmitting the recommendations of the Rules and Open Government Committee.

Action: A \$5,000 grant to support the Herbert Hoover Middle School Parent Teacher Staff Association for their school beautification project, “The Quad Makeover,” which will be used by all 1,100 students, was approved. (11-0.)

**END OF CONSENT CALENDAR**

## STRATEGIC SUPPORT SERVICES

- 3.3 (a) Accept the Community Workforce Agreement/Project Labor Agreement (CWA/PLA) Task Force Report;  
(b) Provide further direction to City staff.  
CEQA: Not a Project, File No. PP17-010, City Organizational & Administrative Activities resulting in no changes to the physical environment. (Public Works)

Documents Filed: (1) Memorandum from Mayor Sam Liccardo, dated October 23, 2017, offering support to recommendations with changes. (2) Memorandum from Councilmember Johnny Khamis, dated October 23, 2017, recommending continuance of item. (3) Memorandum from Councilmember Raul Peralez, dated October 23, 2017, accepting staffs' recommendations with additional direction. (4) Memorandum from Deputy City Manager, David Sykes, dated September 22, 2017, recommending acceptance of the report with further direction to staff. (5) Supplemental memorandum from Deputy City Manager, David Sykes, dated October 12, 2017, providing a revised deliberations matrix. (6) Supplemental memorandum from Director of Public Works Barry Ng, dated October 19, 2017, providing additional information for consideration.

Director of Public Works Barry Ng provided a presentation.

Public Comments: Twenty-six (26) members of the public offered criticism of the Project Labor Agreement (PLA) and support to the staff recommendations and provisions in the Mayor and in Councilmember Johnny Khamis' memoranda. Twenty-three (23) members of the public offered support to the PLA, to union partnerships and expressed concerns regarding wage theft.

*The meeting of the City Council recessed at 5:50 p.m. and resumed at 6:22 p.m.*

Nina Grayson, Office of Equality Assurance, responded to questions.

Motion: Councilmember Johnny Khamis moved deferral of this item, per his memorandum dated October 23, 2017. Councilmember Dev Davis seconded the motion.

Substitute Motion: Councilmember Sylvia Arenas offered a substitute motion, to apply a \$2m threshold for projects subject to a community workforce agreement, with limit of a core workforce of 10 workers and disallow double payments. Councilmember Tam Nguyen seconded the motion.

Vice Mayor Magdalena Carrasco requested a friendly amendment to include minority-owned businesses, and including items (d) and (b) from the Mayor's memorandum dated October 23, 2017. Councilmember Sylvia Arenas and Councilmember Tam Nguyen accepted the amendment to the motion.

### 3.3 (Cont'd.)

Councilmember Sylvia Arenas respectfully declined the amendments from Councilmember Tam Nguyen to compromise on a \$ 4 million threshold, and declined a friendly amendment from Councilmember Lan Diep to increase the limit to a 35-member workforce or more.

The substitute motion failed. (5-6. Noes: Khamis, Nguyen, Davis, Diep, Jones, Liccardo.)

The underlying motion failed. (2-9. Noes: Arenas, Carrasco, Diep, Jimenez, Jones, Nguyen, Peralez, Rocha; Liccardo.)

Councilmember Tam Nguyen moved approval at 25 core employees and a \$ 4 million threshold. The motion failed for lack for a second.

Motion: Councilmember Chappie Jones moved negotiations with the labor unions around terms as outlined in Mayor Sam Liccardo's memorandum dated October 23, 2017, with modifications as noted below in "Action". Councilmember Lan Diep seconded the motion.

Councilmember Johnny Khamis requested a friendly amendment to include part 2 from his memorandum dated October 23, 2017. Councilmembers Jones and Diep accepted the amendment to their motion.

Action: On a call for the question, the motion was carried, with Staff directed to negotiate with the labor unions around terms as outlined in Mayor Sam Liccardo's memorandum dated October 23, 2017, with modifications as noted. Recommendations were approved as outlined in the Community Workforce Agreement (CWA)/Project Labor Agreement (PLA) Task Force memorandum, dated September 22, 2017, and the supplemental memorandums dated October 12, 2017 and October 20, 2017 with the following changes:

A. Allow the first ~~sixty (60)~~ *thirty-five (35)* workers employed by non-signatory Contractor/Employer to come from its own core workforce, prior to the imposition of any requirement to hiring workers from the union hall. (a) To minimize risk of malfeasance, staff may consider measures to ensure accurate designation of "core" employees, such as by requiring non-signatory subcontractors to identify their core workforce at the time of bidding. (b) "Core" employees of non-signatory employers shall not be required to pay union dues and fees.

B. Permit signatory and non-signatory Contractors/Employers to select and directly hire all supervisors above general foreman.

C. A non-signatory Contractor/Employer shall compensate any workers for benefits in excess of the basic hourly wage in accordance with the applicable prevailing wage determination established by the Department of Industrial Relations pursuant to California Labor Code and the City's Prevailing Wage Policy. Contractor/Employer shall either: (a) Directly compensate the core worker, or (b) Contribute to Contractor/Employer's sponsored benefit plans on behalf of the worker, or (c) Contribute to the Union's established employee benefit plan on behalf of the worker.

- D. Exempt small business employers having a subcontract of \$250,000 or less in value.
- E. Direct the City Manager to develop metrics for annual reporting that measure the effectiveness of this Program.
- F. Apply a ~~\$ 10 million~~ *\$ 6 million threshold* for applicability of CWA/PLA mandates.

Also including second part of Councilmember Johnny Khamis' memorandum dated October 23, 2017:

Direct staff to gather additional information to be presented by City Staff

so that we may better understand the effects of a CWA/PLA policy on projects within San Jose:

1. Estimate the impact on qualified ethnic/minority/woman-owned (disadvantaged) small businesses which participate in our BidSync system from the implementation of a CWA/PLA policy.
  2. For the 396 construction contracts awarded over the past five years identified in the Staff Memorandum, provide a chart of statistics on bids for all projects where bidding was required, to include: (a) Number of qualified bids received for each project; (b) Number of bids that exceeded Engineer's Estimates; (c) Dollar variance and percentage variance of awarded bid, positive or negative, from Engineer's Estimates; (d) Dollar variance and percentage variance of final actual project cost, positive or negative, from Engineer's Estimates included in bid award; (e) Type of contractor to which bid was awarded - union or merit contractor, and whether the contractor was a disadvantaged business; (f) For any merit contractor awarded bids, the total reduction in take-home pay for their employees that would have resulted were they to have had union dues deducted from their paychecks and the total cost of union benefit fund contributions that would have been required for the contractor.
  3. For the pool of all projects identified in the six-month projection of City CIP projects: (a) Provide the dollar impact of a 15% cost increase on the cost of the project (b) Provide an assessment of project impact from a 15% cost increase on project costs (i.e. is the project scope reduced, e.g. miles of road paved reduced by 15%, or, if scope cannot be reduced, where additional monies would be sourced for project completion)
  4. Commission a non-biased study of the economic impacts of implementing a CWA/PLA policy in the City of San Jose, based on an analysis of economic impacts of implementation of CWA/PLA where they have been in place for at least two years.
- (6-5. Noes: Arenas, Carrasco, Jimenez, Peralez, Rocha.)

- 3.4 17-211** Approve an ordinance amending Chapter 12.08 of the San José Municipal Code related to the Gift Ordinance to strike the City’s exceptions for allowable gifts and incorporate the exceptions for allowable gifts under the Political Reform Act while maintaining a \$50.00 gift limit. CEQA: Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment. (City Attorney)  
Please note: Approval of this item requires 8 or more affirmative votes (2/3).

Documents Filed: (1) Memorandum from Councilmember Lan Diep, dated October 24, 2017, offering support to recommendations. (2) Memorandum from City Attorney Richard Doyle, dated October 11, 2017, providing recommendations regarding the City’s Gift Ordinance.

City Attorney Richard Doyle offered an overview of the proposal.

Action: Upon motion by Councilmember Lan Diep, seconded by Councilmember Johnny Khamis and carried unanimously, Ordinance No. 30016, entitled “An Ordinance of the City of San José Adding Section 12.02.095 And 12.02.110 To Chapter 12.02 And Amending Chapter 12.08 Of Title 12 Of the San Jose Municipal Code In Its Entirety, To Align With the Political Reform Act’s Gift Provisions, Except For the Political Reform Act’s Higher Gift Limit And Making Other Clerical Or Technical Changes”, passed for publication. (11-0.)

- 3.5 17-195** (a) Adopt a resolution approving the terms of an Agreement between the City and nine (9) Federated bargaining units regarding additional amendments to the Alternative Pension Reform Framework Settlement Agreement, including, but not limited to pension cost-sharing, the independent medical review panel, the Voluntary Employees’ Beneficiary Association (VEBA) and retiree healthcare, and authorizing the City Manager to execute an Agreement with those terms.  
(b) Approve the modifications for unrepresented employees in Unit 99 and Units 81/82 similar to those in the Agreement except for certain provisions specified in the memorandum to Council.  
CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. (City Manager)

Documents Filed: Memorandum from Director of Employee Relations, Jennifer Schembri, dated October 13, 2017, recommending adoption of a resolution.

Councilmember Sylvia Arenas abstained from this item due to a conflict of interest.

**3.5 (Cont'd.)**

Action: Upon motion by Councilmember Raul Peralez, seconded by Councilmember Johnny Khamis and carried unanimously, Resolution No. 78388, entitled: "A Resolution of the Council of the City of San José Approving the Terms of An Amendment To the Federated Alternative Pension Reform Framework Settlement Agreement With Bargaining Units Representing Employees In the Federated City Employees' Retirement System, And Authorizing the City Manager To Execute An Agreement With Those Terms, And Approving Modifications For Unrepresented Employees In Unit 99 And Units 81/82 Similar To Those In the Amendment To the Federated Alternative Pension Reform Framework Settlement Agreement", was adopted. (10-0-0-1. Abstain: Arenas.)

- 3.6 17-196** Approve an ordinance amending various sections of Chapters 3.28 and 3.58 of Title 3 of the San José Municipal Code to implement additional revisions including but not limited to pension cost-sharing, the independent medical review panel, the Voluntary Employees' Beneficiary Association (VEBA) and retiree healthcare based on the implementation of the Alternative Pension Reform Framework and Measure F for members of the Federated City Employees' Retirement System. CEQA: Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment. (City Manager)

Documents Filed: Memorandum from Director of Employee Relations, Jennifer Schembri, dated October 13, 2017, recommending approval of an ordinance.

Councilmember Sylvia Arenas abstained from this item due to a conflict of interest.

Action: Upon motion by Councilmember Raul Peralez, seconded by Councilmember Dev Davis, and carried unanimously, Ordinance No. 30017, entitled "An Ordinance of the City of San José Amending Various Sections of Chapters 3.28 and 3.58 of Title 3 of the San José Municipal Code to Implement the Amendments to the Terms of the Alternative Pension Reform Framework Settlement Agreement with City Nonsworn Employee Bargaining Unit Groups", was passed for publication. (10-0-0-1. Abstain: Arenas.)

- 3.7 17-197** (a) Adopt a resolution authorizing the City Manager to:  
(1) Negotiate and execute an agreement with US Digital Designs, Inc., (Tempe, AZ) to purchase and replace the existing Fire Station Alerting System, including hardware, software, related professional services, support and maintenance, and applicable taxes, under the pricing and terms obtained through the National Purchasing Partners and its Government Division (doing business as NPPGov) cooperative agreement, for an initial five-year term commencing on or about October 24, 2017, and ending on or about April 30, 2024, with a maximum compensation not-to-exceed amount of \$1,282,165, subject to the appropriation of funds; (2) Negotiate and execute amendments and change orders to the Agreement to cover unanticipated changes in requirements, additions, deletions or

relocations of fire stations as may be required, or for future enhancements for a not-to-exceed amount of \$120,000, subject to the appropriation of funds; and (3) Execute one-year options to extend the term of the Agreement for ongoing technical support, maintenance, and related professional services as may be required, subject to the appropriation of funds.

(b) Adopt the following Fiscal Year 2017-2018 Appropriation Ordinance in the Construction Tax and Property Conveyance Tax Fund: Fire Protection Purposes:

(1) Increase the Fire Station Alert System Appropriation to the Fire Department by \$185,160; and

(2) Decrease the Unrestricted Ending Funding Balance by \$185,160.

CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. (Finance/Fire/City Manager)

Documents Filed: Joint memorandum from Director of Finance Julia H. Cooper, Fire Chief Curtis Jacobson and Senior Deputy City Manager/Budget Director Jennifer Maguire, recommending adoption of a resolution.

Fire Station representatives responded to questions.

Action: Upon motion by Councilmember Johnny Khamis, seconded by Councilmember Sergio Jimenez and carried unanimously, Resolution No. 78389, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to: (1) Negotiate and Execute an Agreement with Us Digital Designs, Inc. For the Purchase And Replacement Of the Existing Fire Station Alerting System For An Initial Five-Year Term From October 24, 2017 Through April 30, 2024 With A Maximum Compensation Not-to-Exceed Amount Of \$1,282,165; (2) Negotiate And Execute Amendments and/or Change Orders to the Agreement For Future Enhancements, As May Be Required, For A Not-to-Exceed Amount Of \$120,000; And (3) Execute One-Year Options to Extend the Term Of the Agreement For Ongoing Technical Support, Maintenance, And Related Professional Services, As May Be Required, Subject to Appropriation Of Funds", and Ordinance No. 30018, entitled "An Ordinance of the City of San José Amending Ordinance No. 29962 to Appropriate Moneys in the Construction Tax and Property Conveyance Tax Fund: Fire Protection Purposes for the Fire Station Alert System; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", were adopted. (11-0.)

- 3.8 17-271 (a) Approve an ordinance amending Section 12.06.910 of Chapter 12.06 of Title 12 of the San José Municipal Code to require Independent Committees to complete the “Per Election to Date” column of the Form 460 when reporting contributions and expenditures, and repealing Section 12.06.920, which requires the City Clerk to publish a report before an election with the total amount of contributions and expenditures made by each candidate and candidate controlled committee, and the total independent expenditures made by each independent committee.
- (b) Adopt a resolution amending the regulations and procedures of the San José Ethics Commission to set forth the current investigation and hearing procedures for the San José Board of Fair Campaign and Political Practices, and repealing Council Resolution No. 77879. CEQA: Not a Project, File No. PP17-010, City Organization & Administrative Activities resulting in no change to the physical environment. (City Clerk)

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated October 24, 2017, recommending actions related to the Board of Fair Campaign and Political Practices.

Action: Upon motion by Councilmember Chappie Jones, seconded by Councilmember Johnny Khamis and carried unanimously, Resolution No. 78390, entitled: “A Resolution of the Council of the City of San José Amending Regulations and Procedures for the San José Board of Fair Campaign and Political Practices Investigations and Hearings and Repealing Resolution No. 77879”, was adopted; and Ordinance No. 30019, entitled “An Ordinance of the City of San José, Amending Section 12.06.910 of Chapter 12.06 Of Title 12 of the San José Municipal Code Regarding Campaign Disclosure Statements and Repealing Section 12.06.920 of Title 12 Related to the Duties of the City Clerk”, was passed for publication. (11-0.)

## COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 17-205 Adopt a resolution authorizing the City Manager to execute a non-binding Memorandum of Understanding with Adobe Systems Incorporated addressing Adobe’s contemplated headquarters expansion project and pedestrian bridge. CEQA: Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action. Council District 3. (Economic Development)  
**Deferred to 10/31/17 per Orders of the Day.**

### 4.2 Actions Related to the SJSC Tower Project Located at 43 N. 5th Street.

*Item re-numbered to Item 2.10. See Item 2.10 for action.*



- 4.3**            **17-198**            Approve an ordinance amending Part 8 of Chapter 17.23 of Title 17 of the San José Municipal Code (Interim Ordinance) to extend the termination date of the Interim Ordinance until after the effective date of an Ordinance amending Chapter 17.23 consistent with Council direction (revised Apartment Rent Ordinance). CEQA: Exempt, File No. PP16-051, CEQA Guidelines Section 15061(b)(3) No potential for causing a significant effect on the environment. (Housing)

Documents Filed: Memorandum from Director of Housing Jacky Morales-Ferrand, dated October 3, 2017, recommending approval of an ordinance.

Director of Housing Jacky Morales-Ferrand provided a presentation.

Action: Upon motion by Councilmember Tam Nguyen, seconded by Councilmember Dev Davis and carried unanimously, Ordinance No. 30020, entitled “An Ordinance of the City of San José Amending Part 8 to Chapter 17.23 of Title 17 of the San José Municipal Code Extending the Termination Date”, was passed for publication. (8-0-3. Absent: Khamis, Jiménez, Rocha.)

- 4.4**            **17-199**            (a) Accept the staff report regarding potential changes to the Affordable Housing Impact Fee and Inclusionary Housing Programs and the impact of AB 1505 on those programs.  
(b) Adopt a resolution that amends Resolution No. 77218 as previously amended by Resolution No. 78010 (collectively, “Housing Impact Fee Resolution”) to revise the definition of “dwelling unit” to clarify the distinguishing characteristics of a unit subject to the Affordable Housing Impact Fee.  
(c) Direct the City Attorney and Housing Department to return with a new ordinance that imposes an inclusionary housing obligation on for-sale and rental projects with three (3) to nineteen (19) homes. CEQA: Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment. (Housing)

Documents Filed: Memorandum from Director of Housing Jacky Morales-Ferrand, dated October 10, 2017, recommending adoption of a resolution.

Public Comments: Offering concerns, comments and recommendations, were: Steve Hanleigh, Atluri Kumar, Mark Lazzario, Matthew Warren (Law Foundation of Silicon Valley) and Nicole Montojo (Silicon Valley at Home).

Director of Housing Jacky Morales-Ferrand and Inclusionary Housing Program Director Patrick Heisinger provided a presentation.

Motion: Councilmember Johnny Khamis accepted items #1 and #2 from the report with the deferral of work on item #3 to concentrate on building units. Councilmember Donald Rocha seconded the motion.

#### 4.4 (Cont'd.)

Council discussion followed, and Senior Deputy City Attorney Shasta Greene responded to questions.

Substitute Motion: Councilmember Raul Peralez recommended approval of staff recommendations as indicated below in "Action". Councilmember Sergio Jimenez seconded the motion.

Action: On a call for the question, the substitute motion carried, and Resolution No. 78392, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 77218 to Revise the Definition of Dwelling Unit", was adopted. Staff recommendation, dated October 10, 2017, only items #1 and #2 were accepted, to:

1. Accept the staff report regarding potential changes to the Affordable Housing Impact Fee and Inclusionary Housing Programs and the impact of AB 1505 on those programs.

2. Adopt a resolution that amends Resolution No. 77218 as previously amended by Resolution No. 78010 (collectively, "Housing Impact Fee Resolution") to revise the definition of "dwelling unit" to clarify the distinguishing characteristics of a unit subject to the Affordable Housing Impact Fee.

(7-3-1. Noes: Jones, Khamis, Rocha. Absent: Carrasco.)

## TRANSPORTATION & AVIATION SERVICES

- 6.1 17-193** Report on bids and award of contract for the 8463 - Mineta San José International Airport Terminal B South Ramp Reconstruction - Phase 1 Project to the low bidder, Graniterock Company in an amount of \$6,247,416, and approve a ten percent contingency in the amount of \$624,742. CEQA: Determination of Consistency with the Final Environmental Impact Report for the San José International Airport Master Plan Update, as supplemented (Resolution Nos. 67380 and 71451), File No. PP15-129. (Public Works/Airport)

Documents Filed: Joint memorandum from Director of Public Works Barry Ng and Director of Aviation, John Aitken, A.A.E., dated October 2, 2017, recommending acceptance of a report and award of a contract.

Action: Upon motion by Councilmember Raul Peralez, seconded by Councilmember Donald Rocha and carried unanimously, the Report on bids and award of contract for the 8463 - Mineta San José International Airport Terminal B South Ramp Reconstruction - Phase 1 Project to the low bidder, Graniterock Company in an amount of \$6,247,416, with related contingencies, was accepted. (10-0-1. Absent: Carrasco.)

## ENVIRONMENTAL & UTILITY SERVICES

- 7.1 17-056** (a) Accept staff report responding to questions laid out in Item (a) in the Clerk's transmittal memo titled "Actions Related to San Jose Water Company" on August 31, 2017.
- (b) Provide direction to staff on options for how the City can take a greater role in advocating to the California Public Utilities Commission on behalf of the City and customers of San Jose Water Company.
- CEQA: Not a Project, PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action. (Environmental Services)

Documents Filed: (1) Joint memorandum from Mayor Sam Liccardo, Councilmember Donald Rocha and Councilmember Johnny Khamis, dated October 20, 2017, recommending actions related to San José Water Company. (2) Memorandum from Councilmember Donald Rocha, dated September 11, 2017, providing recommendations. (3) Memorandum from City Clerk Toni J. Taber, CMC, dated August 31, 2017, providing Rules and Open Government Committee recommendations. (4) Memorandum from Director, Environmental Services, Kerrie Romanow, dated October 3, 2017, recommending acceptance of the staff report with direction. (5) Supplemental memorandum from Director, Environmental Services, Kerrie Romanow, dated September 8, 2017, providing a recommended schedule for Administration to report to Council on action items (6) "San José Water Company 2017 Capital Improvement Budget". (7) Letter from Marylynn Wheeler Reynolds, dated September 8, 2017.

Director, Environmental Services, Kerrie Romanow, provided an introduction to the topic.

Public Comments: Speaking on the water cost crisis and the need for an external perspective and audit, were: Joseph Trapasso, Bill Kennedy, Uday Nagendran, Mary Jo Townzen and Marylynn Wheeler-Reynolds, Patrica Blevins, Tom Surette, Rita Benton, , Mary Robertson, Adam Wilson, Cassandra Owen and Eddie Truong.

Council discussion followed. Director, Intergovernmental Relations, Betsy Shotwell and Director, Environmental Services, Kerrie Romanow responded to questions.

Motion: Councilmember Donald Rocha moved the memorandum cosigned by Mayor Sam Liccardo and Councilmembers Rocha and Khamis, dated October 20, 2017. Councilmember Johnny Khamis seconded the motion.

Action: On a call for the question, the motion carried unanimously, and the staff report responding to questions laid out in Item (a) in the Clerk's transmittal memo titled "Actions Related to San Jose Water Company" on August 31, 2017, was accepted, including the joint memorandum from Mayor Sam Liccardo, Councilmember Johnny Khamis and Councilmember Donald Rocha, dated October 20, 2017, directing the City Manager as follows:

## 7.1 (Cont'd.)

(1) Upon hearing and considering the information provided by Staff, the San José Water Company, and members of the public at this October 24th hearing, Council should determine whether to send a letter on behalf of the City of San Jose to the California Public Utilities Commission (CPUC) in support of the Office of Ratepayer Advocates proposed rates for San Jose Water Company (SJWC) on CPUC Proceeding A1704001 - San Jose Water Company Cost of Capital; (2) Direct the City Manager to pursue the level of involvement staff proposed under Option 1, using existing resources: Monitor all applications to the CPUC that will result in an increase to the cost of water service. Perform a brief analysis and provide a recommendation for response or further action; (3) Through our existing Office of Intergovernmental Relations, direct the City Manager to support state and federal efforts to promote water affordability with a goal of access to safe, clean, and reliable water for all residents.

Staff to provide an update through the Transportation and Environment Committee within six months to one year.

## **10. LAND USE**

### **10.1 Land Use on Consent Calendar**

- (a) **17-090** Consideration of an ordinance of the City of San José rezoning a 0.72-gross acre site located at 524 East Brokaw Road from HI Heavy Industrial Zoning District to CIC Combined Industrial/Commercial Zoning District (Bedrok, LLC, Owner). CEQA: Determination of Consistency with the Final Program Environmental Impact Report (EIR) for the Envision San José 2040 General Plan (Resolution No. 76041) and the Envision San José 2040 General Plan Supplemental Environmental Impact Report (Resolution No. 77617) and Addenda thereto. Planning, Building and Code Enforcement Director recommends approval. (Planning, Building and Code Enforcement) C17-028 - Council District 3
- (b) **17-203** Consideration of an ordinance of the City of San José rezoning a 2.18-gross acre site located at 5952 Silver Creek Valley Road from IP Industrial Park Zoning District to CIC Combined Industrial/Commercial Zoning District (Buddy Silvercreek, LLC, Owner). CEQA: Determination of Consistency with the Final Program Environmental Impact Report (EIR) for the Envision San José 2040 General Plan (Resolution No. 76041) and the Envision San José 2040 General Plan Supplemental Environmental Impact Report (Resolution No. 77617), and Addenda thereto. Planning, Building and Code Enforcement Director recommends approval. (Planning, Building and Code Enforcement) C17-036 - Council District 2

Documents Filed: (1) The Report of the Staff of the Department of Planning, Building and Code Enforcement Project on Project File No. C17-028, dated September 5, 2017, and

## 10.1 Land Use on Consent Calendar (Cont'd.)

Project File No. C17-036, dated October 2, 2017. (2) Proofs of Publication of Notices of Public Hearings, executed on September 29, 2017, submitted by the City Clerk.

Public Comments: Mayor Sam Liccardo opened the public hearing. There was no public testimony from the floor. Mayor Sam Liccardo closed the public hearing.

Action: Upon motion by Councilmember Johnny Khamis, seconded by Councilmember Donald Rocha and carried unanimously, Ordinance No. 30021, entitled: "A Ordinance of the Council of the City of San José Rezoning Certain Real Property of Approximately 0.72-Gross Acre Situated at the South Side of East Brokaw Road, Approximately 110 Feet West of Junction Avenue (524 East Brokaw Road) from the HI Heavy Industrial Zoning District to the CIC Combined Industrial/Commercial Zoning District"; and Ordinance No. 30022, entitled: "A Ordinance of the Council of the City of San José Rezoning Certain Real Property of Approximately 2.18-Gross Acres Situated at the South Side of Silver Creek Valley Road, Approximately 400 Feet East of Hellyer Avenue (5952 Silver Creek Valley Road) from the IP Industrial Park Zoning District to the CIC Combined Industrial/Commercial Zoning District", were passed for publication. (11-0.)

### END OF CONSENT CALENDAR

- 10.2**      **17-094**
- (a) Adopt a resolution (i) approving the Water Supply Assessment and, then, (ii) certifying the 237 Industrial Center Environmental Impact Report and making certain findings concerning significant impacts, mitigation measures, alternatives, and adopting a Statement of Overriding Considerations and Mitigation, Monitoring and Reporting Program, all in accordance to the California Environmental Quality, Act, as amended.
- (b) Consideration of an ordinance of the City of San José Rezoning an approximately 64.59 gross acre site, located northwest of Highway 237 and McCarthy Boulevard (1657 Alviso-Milpitas Road), from the A(PD) Planned Development Zoning District to the LI Light Industrial Zoning District (Cilker Carl A And Kathleen C Trustee, Owners).
- (c) Adopt a resolution approving (i) Special Use Permit No. SP16-053, subject to conditions, to allow the removal of eight ordinance sized and 14 non-ordinance sized trees, and construction of six buildings for a data center use totaling approximately 376,519 square feet with associated site improvements and 14 generators, and (ii) a Development Exception to allow a reduction in off-street parking. CEQA: 237 Industrial Center Environmental Impact Report. Planning Commission recommends approval (7-0-0). (Planning, Building and Code Enforcement)  
C15-054, SP16-053 & V17-004 - Council District 4

## 10.2 (Cont'd.)

Documents Filed: (1) Joint memorandum from Mayor Sam Liccardo and Councilmember Lan Diep, dated October 20, 2017, approving recommendations with modifications. (2) Memorandum from Councilmember Sergio Jimenez, dated October 23, 2017 providing additional recommendations to the Mayor and Councilmember's memorandum. (3) Transmittal memorandum from Director, Planning, Building and Code Enforcement, Rosalynn Hughey, dated October 10, 2017, recommending consideration of Projects C15-054, SP16-053 and V17-004. (4) The Report of the Staff of the Department of Planning, Building and Code Enforcement Project on Project File No. C15-054, SP16-053 and V17-004O, dated October 4, 2017. (5) Proof of Publication of Notice of Public Hearing, executed on September 15, 2017, submitted by the City Clerk. (6) Letter from Assemblymember Kansen Chu, and correspondence from nine other constituents, dated October 23, 2017, offering opposition to any change to Iris Chang Park. (5) Letter from Mark Espinoza, OCA President, offering support to the project.

Director, Planning, Building and Code Enforcement, Rosalynn Hughey offered a presentation.

Mayor Sam Liccardo opened the public hearing.

Public Comment: Applicant, Jonathon Noble, on behalf of Microsoft, offered support to the proposal. Eric Schoennauer continued the presentation.

Asking that Iris Chang Park be taken from consideration and citing inadequacies with the CEQA, were Michael Bertram, Ying-Ying Chang and Mark Espinoza. Ella Foley Gannon, Los Esteros Critical Energy Facility, supported the project, but objected to the EIR analysis. Kathryn Hedges, representing PACT, and Vladimir Raykin provided comments.

Mayor Sam Liccardo closed the public hearing.

Motion: Councilmember Lan Diep moved approval of the memorandum he cosigned with Mayor Sam Liccardo, dated October 20, 2017 and the October 23, 2017 memorandum from Councilmember Sergio Jimenez. Councilmember Johnny Khamis seconded the motion.

Action: On a call for the question, Staff's recommendations were accepted, including direction as outlined in the joint memorandum from Mayor Sam Liccardo and Councilmember Lan Diep, dated October 20, 2017, to: Approve the recommendations outlined in the October 10, 2017 staff report related to Microsoft Corporation's (Microsoft) proposed 237 Industrial Center development at Highway 237 and Zanker Road, with the following modifications and direction to the City Manager, to: (1) Allocate up to \$ 100,000 for appropriate traffic calming improvements in Alviso from the \$350,000 contribution by Microsoft towards land acquisition and design of a water well; and (2) Provide a status report to Council, by way of an Info Memo prior to the end of the year, outlining the location and construction schedule for the water well to serve the Microsoft development.

And including the memorandum from Councilmember Sergio Jimenez, dated October 23, 2017, to: Outline a schedule for the completion and development of Iris Chang Park, and

## 10.2 (Cont'd.)

work with the local community and City of San Jose Municipal Water System on a new location in the general North San Jose area for the proposed groundwater well that would not impact the park.

Resolution No. 78393, entitled: "A Resolution of the Council of the City of San José (i) Approving the Water Supply Assessment and, then (ii) Certifying the 237 Industrial Center Environmental Impact Report (SCH#2016052053) and Making Certain Findings Concerning Significant Impacts, Mitigation Measures and Alternatives, and Adopting a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program, All in Accordance with the California Environmental Quality Act, As Amended", and Resolution No. 78394, entitled: "A Resolution of the Council of the City of San José Approving, Subject to Conditions, a Special Use Permit to Remove Eight Ordinance Sized Trees and 14 Non-Ordinance Sized Trees and to Allow the Construction of Six Buildings for a Data Center Use Totaling Approximately 376,510 Square Feet with Generators, and a Development Exception to Allow a Reduction to the Off-Street Parking Requirements, Located Northwest of State Route 237 and McCarthy Boulevard (1657 Alviso-Milpitas Road, APN: 015-31-054)", were adopted; and Ordinance No. 30023, entitled: "A Ordinance of the Council of the City of San José Rezoning Certain Real Property of Approximately 64.59 Acres Situated Northwest of State Route 237 and McCarthy Boulevard (1657 Alviso- Milpitas Road) from the A(PD) Planned Development Zoning District to the LI Light Industrial Zoning District", was passed for publication. (11-0.)

## 10.3

Adopt a resolution denying (i) the proposed Planned Development Rezoning from the R-1-8 Single-Family Zoning District to the R-1-8(PD) Planned Development Zoning District, and (ii) Planned Development Permit to allow the demolition of an existing residence and accessory structures for the construction of three single-family detached residences on individual lots, including two flag lots on a 0.42-gross acre site in the R-1-8 Single-Family Residential Zoning District, located on the southeast side of Curtiss Avenue, approximately 650 feet southerly of Willow Street (1220 Curtiss Avenue) (Goldsilverisland Properties LLC, Owner). Planning Commission recommends denial (5-0-2, Bit-Badal and Vora absent). CEQA: Exempt per CEQA Guidelines 15270 for Projects Which Are Disapproved. PDC17-018 & PD17-011 - Council District 6

Documents Filed: (1) Joint memorandum from Mayor Sam Liccardo, Vice Mayor Magdalena Carrasco and Councilmember Dev Davis and Councilmember Raul Peralez, dated October 20, 2017, recommending denial of the permit application. (2) Memorandum from Director, Planning, Building and Code Enforcement, Rosalynn Hughey, dated October 2, 2017, transmitting recommendations. (4) The Report of the Staff of the Department of Planning, Building and Code Enforcement Project on Project File No. PDC17-018 and PD17-011, dated September 6, 2017. (5) Proof of Publication of Notice of Public Hearing, executed on August 25, 2017, submitted by the City Clerk. (6) Providing

### 10.3 (Cont'd.)

an email in support of the plan were Ying-Min Li, including 38 signed letters offering support.

Director, Planning, Building and Code Enforcement, Rosalynn Hughey provided a presentation.

Mayor Sam Liccardo opened the public hearing.

Public Comments: Kelly Snyder, representing the applicant, asserted that this project meets the flag lot subdivision requirement. Offering objections, citing overdevelopment and traffic conditions, were: Drew Coble, John and Shirley Steck, and Tom Liggett. Expressing support to the proposal, were: Sharon Li, Nick Leon, Glenn Casey, Mankang Mai, Sintiat Te, Dong Chen, Wei Hu, Michael Xiao, Gilchrist Gibson on behalf of Ying Li, Patrick Lurlay, Jinsheng Xiao, Weiguang Lu and Yong Zhang.

Mayor Liccardo closed the public hearing.

Staff responded to the applicant's comments.

Motion: Councilmember Dev Davis moved approval of the memorandum she coauthored with Mayor Sam Liccardo, Vice Mayor Magdalena Carrasco and Councilmember Raul Peralez, dated October 20, 2017, denying the rezoning and planned development permit application for 1220 Curtiss Avenue.

Councilmember Donald Rocha expressed concerns on the need for housing.

Substitute Motion: Councilmember Tam Nguyen moved action directing staff to continue processing the project and begin an environmental study. Councilmember Donald Rocha seconded the motion.

The substitute motion failed. (4-7. Noes: Carrasco, Davis, Diep, Jones, Khamis, Peralez, Liccardo.)

Motion: On a call for the question, the original motion carried, and Resolution No. 78395, entitled: "A Resolution of the Council of the City of San José denying A Planned Development Rezoning From the R-1-8 Single Family Zoning District To the R-1-8 (PD) Planned Development Zoning District And DENYING A Planned Development Permit To Allow the Demolition Of An Existing Residence And Accessory Structures For the Construction Of Three Single-Family Detached Residences On Individual Lots, Including Two Flag Lots, on a 0.42-Gross Acre Site Located On the Southeast Side Of Curtiss Avenue, Approximately 650 Feet Southerly of Willow Street (1220 Curtiss Avenue), was adopted, including the joint memorandum from Mayor Sam Liccardo, Vice Mayor Magdalena Carrasco, Councilmember Dev Davis and Councilmember Raul Peralez, dated October 20, 2017 to deny the rezoning and planned development permit application for 1220 Curtiss Avenue, was accepted. (9-2. Noes: Nguyen, Rocha.)



10.4 17-207

(a) Conduct an Administrative Hearing and consider the Permit Appeal of the Planning Commission's approval of the Conditional Use Permit and Site Development Permit to allow the demolition of an existing 1,276-square foot gas station convenience store with incidental service and vehicle repair, and the construction of a new 5,754-square foot convenience store and fully automated car wash, and early morning use for the gas station and convenience store only (one-hour extension between 5:00 a.m. and 6:00 a.m.), a temporary use trailer, and an exceedance of the Zoning Ordinance noise performance standards by two decibels.

(b) Adopt a resolution denying the permit appeal and approving the Conditional Use Permit and Site Development Permit, subject to Conditions, to allow the demolition of an existing 1,276-square foot gas station convenience store with incidental service and vehicle repair, and the construction of a new 5,754-square foot convenience store and fully automated car wash, and early morning use for the gas station and convenience store only (one-hour extension between 5:00 a.m. and 6:00 a.m.), a temporary use trailer, and an exceedance of the Zoning Ordinance noise performance standards by two decibels on an approximately on a 0.81-gross acre site located at 3702 South Bascom Avenue (southeast corner of South Bascom Avenue and Woodard Road).

CEQA: Exempt per CEQA Guidelines Section 15302 for Replacement or Reconstruction and 15332 for Infill Development Projects. Planning Commission approved the Conditional Use Permit and Site Development Permit (4-3-0; Phan, Bit-Badal opposed). (Planning, Building and Code Enforcement)  
CP16-035 - Council District 9

Director, Planning, Building and Code Enforcement, Rosalynn Hughey discussed on-site noise measurements being considered by the appellant and responded to questions.

Mayor Sam Liccardo opened the public hearing.

Public Comments: The appellant, Kathleen Flynn, offered opposition due to safety concerns. Expressing opposition and concerns regarding the project, were: Ben Levinson, Baljinder Singh, Carl Schroeder, Loi Nguyen, James Lichau, Tatsiana Nasevich, Harleen Kaur, Sue Ann Peng, Urvashi Singh, Uma Singh, Kathy, Ashleen Sandhu, Upashna Singh, Upkar Singh, Devryn Singh, Narinder Kau, Upraj Sing, Ramsen, Fred Svinth and Christian.

Mayor Sam Liccardo closed the public hearing.

Motion: Councilmember Donald Rocha moved deferral of this item to November 28, 2017. The motion was seconded by Councilmember Dev Davis.

Action: On a call for the question the motion carried unanimously, and this item was deferred to the Council meeting of November 28, 2017. (11-0.)

## OPEN FORUM

Steve Bennette spoke regarding the fire danger posed by 50 acres of dry brush in his neighborhood. He urged the need for fire prevention to be in the hands of trained personnel.

Documents Filed: photo provided by Mr. Bennette.

## ADJOURNMENT

Mayor Sam Liccardo adjourned the meeting of the San José City Council at 11:58 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,



Toni J. Taber, CMC  
City Clerk

rmk/10-24-17 MIN

**17-287**

### **Notice of City Engineer's Pending Decision on Final Maps**

In accordance with Sec. 19.16.140d of the San José Municipal Code, this is notice of the City Engineer's pending decision on the following Final Maps:

Tract-10429, Location - 3581 Bournemouth Dr., District 9, Developer - Castro Valley Edenbridge, Lots/Units-5/5, Type-SFD, Proposed Decision - Approval