

## MINUTES OF THE CITY COUNCIL

**SAN JOSÉ, CALIFORNIA**

**TUESDAY, OCTOBER 19, 2004**

The Council of the City of San José convened in regular session at 9:00 a.m. in the Mayor's Conference Room 600, at City Hall.

Present: Council Members - Campos, Chavez, Chirco, Cortese, Dando, Gregory, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - None.

Upon motion unanimously adopted, Council recessed at 9:04 a.m. to a Closed Session in Room 600, (A) confer with Legal Counsel with respect to existing litigation pursuant to Government Code Section 54956.9 subsection (a) to consider the cases of (1) Preservation Action Council of San José v. City of San José, et al., (2) City of San José v. Arcadia Development, et al.; (3) State v. City of San José; et al.; (4) Nguyen v. City of San José; et al.; (5) Sutter's Place, Inc. dba Bay 101, et al. v. City of San José; (B) to confer with Legal Counsel to discuss significant exposure to litigation pursuant to: (1) subsection (b) in one matter; (2) to discuss initiation of litigation pursuant to subsection (c) of Section 54956.9 of the Government Code in one (1) matter. (C) Public employee performance evaluation pursuant to Government Code Section 54957, Title: City Clerk. (D) to confer with Labor Negotiator pursuant to Government Code Section 54957.6, City Negotiator: City Manager designee Alex Gurza, and the following Employee Organizations: (1) San José Police Officers' Association; (2) International Association of Firefighters; (3) Municipal Employees Federation; (4) Confidential Employees Organization; (5) City Association of Management Personnel; (6) Association of Maintenance Supervisory Personnel; (7) Operating Engineers, Local 3; (8) International Brotherhood of Electrical Workers; (9) Association of Building and Mechanical and Electrical Inspectors; (10) Association of Engineers and Architects; (11) International Federation of Professional and Technical Employees, Local 21.

By unanimous consent, Council reconvened from the Closed Session and recessed at 11:10 a.m. and reconvened at 1:34 p.m. in the Council Chambers.

Present: Council Members - Campos, Chavez, Chirco, Cortese, Dando, Gregory, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - None.

## INVOCATION

Reverend Bill Johnson, Cambrian Park United Methodist Church presented an excerpt from the book entitled "Jesus Now". (District 9)

## PLEDGE OF ALLEGIANCE

Mayor Gonzales led the Pledge of Allegiance.

## ORDERS OF THE DAY

Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and carried unanimously, the Orders of the Day, and the Amended Agenda were approved. (11-0).

## CEREMONIAL ITEMS

- 1.2 Presentation of proclamations in recognition for being “Green Businesses” to Curtis Horticulture, Santa Clara County Agriculture and Resource Management - Administrative Office, Santa Clara County Integrated Waste Management Division, Silicon Valley Manufacturing Group, Fat Spaniel Technologies, Reel Grobman & Associates, Lunch Stop (Cafeteria, San Jose City Hall), Lunch Stop (Berger Drive), American Lung Association of Santa Clara/San Benito Counties, Raines, Melton, and Carella, Inc., and the City of San José Environmental Services Department. (Environmental Services)**

Action: Mayor Gonzales invited Council Member LeZotte and Director of Environmental Services Carl Mosher to the podium in order to recognize the “Green Businesses”. Mayor Gonzales presented commendations to Santa Clara County Agriculture and Resource Management, Santa Clara County Integrated Waste Management Division, Fat Spaniel Technologies, Reel Grobman and Associates, Lunch Stop at San José City Hall, Lunch Stop at Berger Drive, American Lung Association of Santa Clara/San Benito Counties, and City of San José Environmental Services Department. Curtis Horticulture, Silicon Valley Manufacturing Group, and Raines, Melton, and Carella, Inc. were also recognized.

- 1.3 Presentation of a commendation to sponsors and student artists that participated in the San José Downtown Foundation’s Downtown Door project. (Chavez)**

Action: Mayor Gonzales and Council Member Chavez commended sponsors and student artists that participated in the San José’ Downtown Foundation’s “Downtown Door” project, including: Comerica, Forest City Commercial Management, Hoge, Fenton, Jones & Appel Inc., San José North Rotary Club, Sharks Foundation, Willoughby, Stuart, Bening Inc., San José Downtown Foundation, Nancy Thai, Mount Pleasant High School, Tejas Bafna, Downtown College Preparatory, Bao Tram Nguyen, Saleha Pirzada, San Jose High Academy; and Carolina Alvarado, Carolyn Cuykendall, Erek Daves, Justine Marshall, and Sara Montes, Lincoln High School.

## CONSENT CALENDAR

Upon motion by Vice Mayor Dando, seconded by Council Member Chavez and carried unanimously, the Consent Calendar, with the exception of Items 2.4 and 2.5, was approved. Council Member Williams removed Item 2.4 for questions, and Item 2.5 was removed for public comment. (11-0).

### 2.2 Final adoption of ordinances.

- (a) **ORD. NO. 27258 – Amending Chapter 12.08 of Title 12 of the San José Municipal Code to revise the City of San José Gift Ordinance.**

Documents Filed: (1) Memorandum from City Attorney Richard Doyle, dated October 14, 2004, recommending adoption of the resolution. (2) Proof of Publication of Notice of Public Hearing, executed on October 13, 2004, submitted by the City Clerk.

Action: Ordinance No. 27258 was adopted. (11-0).

- (b) **ORD. NO. 27265 – Amends Chapter 4.46, 4.47, and 4.54 of Title 4 of the San José Municipal Code to add sections to suspend the collection of fifty percent of the Building and Structure Construction Tax, the Commercial-Residential-Mobilehome Park Building Tax, and the Construction Tax for construction of small business improvements, either as new construction or tenant improvements, of 3,000 square feet or less by new or existing small businesses.**

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on October 15, 2004, submitted by the City Clerk.

Action: Ordinance No. 27265 was adopted. (11-0). First Reading: 10-1-0. Noes: Williams.

- 2.3 (a) **Approval of a lease assignment and first amendment from the State of California Department of Transportation Airspace Ground Lease to the City of San José for a property to be used as a parking lot facility located beneath I-280 at South First Street, between Caltrans and Center for Employment Training, Inc., at a cost of \$3,847 per month, subject to an annual adjustment equal to the Consumer Price Index, commencing on November 1, 2004 and expiring on March 31, 2033.**

*(Item continued on the next page)*

- 2.3 (b) **Adoption of a resolution authorizing the City Manager to negotiate and execute Parking Agreements with Presentacion Dominguez for the rental of thirty-two (32) parking spaces at an annual rate of \$9,116 for a term of five (5) years with four (4), five (5) year options, and the Bill Wilson Marriage and Family Counseling Center for the rental of thirty-four (34) parking spaces at an annual rate of \$9,685 for a term of five (5) years with four (4), five (5) year options. CEQA: Exempt, PP04-07-218. Council District 3. (Transportation)**  
**(Deferred from 9/28/04 - Item 2.6)**

Documents Filed: Replacement memorandum from Director of Transportation James Helmer, dated October 12, 2004, recommending approval of the lease, and adoption of the resolution.

Action: The lease and first amendment were approved, and Resolution No. 72361, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute Parking Agreements with Presentacion Dominguez for the Rental of Thirty Two Parking Spaces at an Annual Rate of \$9,116 and with the Bill Wilson Marriage and Family Counseling Center for the Rental of Thirty Four Parking Spaces at an Annual Rate of \$9,685", was adopted. (11-0).

- 2.4 **Adoption of a resolution authorizing the Director of General Services to execute an amendment to the existing agreement with Browning-Ferris Industries, Inc. for removal, transportation, and beneficial reuse of biosolids, to increase the first year compensation by \$175,000, for a total maximum first year compensation not to exceed \$1,360,730. CEQA: Exempt, PP 03-09-300. (General Services)**

Documents Filed: (1) Memorandum from Interim Director of General Services Jim McBride, dated September 29, 2004, recommending adoption of the resolution. (2) Letter from the Treatment Plant Advisory Committee, dated October 14, 2004, stating concurrence with the Staff recommendation.

Discussion: Director of Environmental Services Carl Mosher responded to Council Member Williams' questions and agreed to follow up with more detail.

Action: Upon motion by Council Member Williams, seconded by Council Member Chavez, and carried unanimously, Resolution No. 72362, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of General Services to Execute an Amendment to the Existing Agreement with Browning-Ferris Industries, Inc.", was adopted, with Staff directed to return with detailed information for the removal, transportation, and certification of biosolids. (11-0).

- 2.5 Approval of award for a sole source purchase of 161 Motorola Astro-Spectra W4 mobile radios and remote control cables from Motorola, Inc. for a total cost not to exceed \$425,532.76, including tax and delivery, and authorize the Director of General Services to execute the purchase order. CEQA: Not a Project. (General Services/ Information Technology/Police)**

Documents Filed: Memorandum from Interim Director of General Services Jim McBride, Police Chief Robert Davis, and Interim Director of Information Technology Department James Helmer, dated October 13, 2004, recommending approval of the award of sole purchase.

Public Comment: William Garbett objected to the sole source award.

Action: Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and carried unanimously, the award for sole source purchase was approved. (11-0).

- 2.6 Approval of use of the HP Pavilion at San José for a Community Event date, at a 75% program funding level that is not to exceed \$30,000, for the Joint Venture: Silicon Valley Network Annual Index Briefing and Celebration, on January 27, 2005. CEQA: Not a Project. (San José Arena Authority)**

Documents Filed: Memorandum from Executive Director Chris Morrissey, San José Arena Authority, dated September 24, 2004, recommending approval of use at HP Pavilion.

Action: The Community Event date was approved. (11-0).

- 2.7 Approval of a City Council position of “Support” for Measure H, the “College Repair/Job Training Measure” for the West Valley-Mission Community College District on the November 2, 2004 ballot. (City Manager’s Office) (Rules-In-Lieu referral 10/13/04)**

Documents Filed: Memorandum from Director Intergovernmental Relations Betsy Shotwell, dated October 8, 2004, recommending approval of support position.

Action: City Council “Support” position for Measure H was approved. (11-0).

- 2.8 Authorization for the Administration to file comments on the proposed rules issued by the Federal Deposit Insurance Corporation (FDIC) objecting to proposed regulation changes that would decrease the number of lenders and limit lender accountability to lend to low- and moderate-income communities pursuant to the Federal Community Reinvestment Act (CRA). CEQA: Not a Project. (Housing) (Rules-In-Lieu referral 10/13/04)**

## 2.8 (Cont'd.)

Documents Filed: Memorandum from Director of Housing Leslye Corsiglia, dated October 12, 2004, recommending authorization for Administration to file comments on the proposed rules by FDIC.

Action: Authorization for Administration to proceed was approved. (11-0).

### END OF CONSENT CALENDAR

## STRATEGIC SUPPORT SERVICES

### 3.2 Report of the Rules Committee – October 6, 2004 Vice Mayor Dando, Chair

Documents Filed: The Rules Committee Report dated October 6, 2004.

(a) Redevelopment Agency items reported out at Redevelopment Agency meeting

(b) City Council

(1) Review October 19, 2004 Draft Agenda

The Committee recommended approval for the October 19, 2004 City Council agenda with one addition.

(2) Add New Items to October 12, 2004 Amended Agenda. Attachment: Memorandum from Mayor Gonzales, and Council Member Yeager, dated September 28, 2004, recommending adding the review and discussion of Council Policy 0-28.

The Committee recommended approval of the October 12, 2004 City Council Amended Agenda with seven additions.

(3) List of Reports Outstanding

The Committee noted and filed the City Manager's report.

(c) Legislative Update

(1) State. Attachment: State Legislative Summary dated October 6, 2004.

The Committee noted and filed the State Legislative Summary.

(2) Federal - There was no report.

**3.2 Report of the Rules Committee – October 6, 2004 (Cont'd.)  
Vice Mayor Dando, Chair**

(d) Meeting Schedules

- (1) Proposed 2005-2006 City Budget Calendar. Attachment: Memorandum from Budget Director Larry Lisenbee, dated September 30, 2004, recommending Council adopt the proposed budget.

The Committee accepted the recommendation to adopt the proposed 2005-2006 City Budget Calendar.

(e) The Public Record - There was no report.

(f) Appointment to Boards, Commissions and Committees

- (1) Advisory Commission on Rents Recruitment Outreach. Attachment: Memorandum from City Clerk Lee Price, dated October 1, 2004, transmitting update.

The Committee noted and filed the informational update on the recruitment for Advisory Commission on Rents.

(g) Rules Committee Reviews, Recommendations and Approvals

- (1) Approval of a Proposed Amendment to Council Rules of Order Resolution No. 71820, Rule 1, Section G: Designation of the Chair in the Absence of the Mayor and Vice Mayor. Attachment: Memorandum from Mayor Gonzales, dated October 1, 2004, recommending approval of Rule 1.

The Committee accepted the recommendation to amend Rule 1, Section G of the Rule of Conduct, Resolution 71820, which requires formal action by the City Council. See Item 3.6 for Council Action taken.

- (2) Council Member Authorization to Travel Out of State. Attachment: Memorandum from Council Member Chavez, dated September 28, 2004, recommending approval of travel.

Dropped.

- (3) Crossing Guard Criteria. Attachment: Memorandum from Director of Transportation James Helmer, dated October 1, 2004, transmitting the report.

The Committee noted and filed the report.

**3.2 Report of the Rules Committee – October 6, 2004 (Cont'd.)  
Vice Mayor Dando, Chair**

(h) Oral communications

Dave Logan, Yellow Cab Company, requested elimination of the temporary hold on the issuance of taxicab permits. The Committee directed the City Attorney to clarify the City Council's May 2004 action on this matter, and report back to the Rules Committee.

(i) Adjournment - The meeting was adjourned at 3:10 p.m.

Action: Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and carried unanimously, the Report of the Rules Committee and the actions of October 6, 2004, were accepted. (11-0).

**3.4 Adoption of a resolution authorizing the City Manager to execute a consultant services contract to assist City staff with a business process gap analysis, contract negotiations, and provide technical architecture and quality assurance support related to the development of the BearingPoint/PeopleSoft contract scope of services. CEQA: Not a Project. (Finance)  
(Deferred from 10/5/04 – Item 3.4)**

Documents Filed: None.

Action: Deferred to October 26, 2004.

**3.5 Review and discussion of Council Policy 0-28, which sets forth Council procedures regarding censure. (Yeager/Mayor)**

Documents Filed: (1) Memorandum from Mayor Gonzales, dated October 15, 2004, recommending approval of Attachment A (Resolution urging the District Attorney to complete the inquiry) and B (questions for guiding Council discussion of censure) contained in his memorandum. (2) Memorandum from Council Member Cortese, dated October 18, 2004, recommending a formal vote of admonition to Council Member Gregory. (3) Memorandum from Council Member Reed, dated October, 2004, recommending regarding Council Member Gregory, agendizing a public hearing regarding censure or a Resolution on Condemnation, and Council make clear which actions violate standards for ethical conduct. (4) Memorandum from City Attorney Richard Doyle, dated October 14, 2004, proving a summary on the policy/procedures/requirements for imposed censure on a member of the City Council.

Discussion: Mayor Gonzales expressed dismay about the conduct of Council Member Gregory and outlined his memorandum. Council Member Gregory explained that under the advice of his Attorney, HE would not speak to the allegations outlined in the *Mercury News*.

### 3.5 (Cont'd.)

Council Member Reed remarked the Council Censure Policy should not keep the Council from taking prompt action to clear up suspicion when a Council Member has been accused of improper behavior. He added a censure action regarding Council Member Gregory would not be inconsistent with Council Policy 0-28 because there are no criminal charges pending against him and Council does not have to determine if he violated the law.

Council Member Cortese recommended that the City Council issue a formal vote of admonition to Council Member Gregory with reference to recent allegations of inappropriate conduct and that it do so in two weeks.

Council Member Chavez asked the City Attorney for a status report on the pending investigations by the District Attorney and the Elections Commission on allegations against Council Member Gregory. City Attorney Richard Doyle reported that the District Attorney has not provided any indication as to when they will complete their investigation. He added that the Elections Commission evaluator's investigation was held in abeyance pending the District Attorney's investigation.

Motion: Council Member Chavez moved that the City Council: (1) focus its discussion of censure on the issues associated with Council Policy 0-28 and as appropriate, provide direction to the City Attorney for preparing specific amendments to bring back for Council approval; (2) approve the Mayor's proposed resolution regarding ethical standards, due process, and public confidence; and (3) direct the City Attorney to return in two weeks with a status update on the pending investigations. Council Member Williams seconded the motion.

Council Member Williams strongly expressed opposition to a censure hearing at this time. Council Member Yeager expressed support for the motion and added that the Blue Ribbon Task Force would be looking at a censure policy as part of its work plan.

Substitute Motion: Council Member Cortese moved Council Member Chavez's motion, as amended, by directing that all questions be answered within 2 weeks, and further, that an action of admonition be placed on the agenda in 3 weeks. Council Member Reed seconded the motion.

Public Comment: William Garbett spoke in opposition to the Council taking any action. Charles Alexander read a letter from Pastor Alfred Smith asking the Council to take no action until the District Attorney completes its inquiry. Bob Brownstein spoke in favor of the motion as recommended by Mayor Gonzales and urged the Council to follow due process. Ross Signorino urged the Council to restore confidence and integrity in City government.

Mayor Gonzales called for a vote on the substitute motion by Council Member Cortese. The substitute motion failed. (3-8. Noes: Campos, Chavez, Chirco, Dando, Gregory, Williams, Yeager; Gonzales.)

### 3.5 (Cont'd.)

Action: On a call for the original motion by Council Member Chavez, the motion carried unanimously, Council Policy 0-28 was referred to the Blue Ribbon Task Force, Resolution No. 72369 was adopted, urging the District Attorney to complete its investigation, and the City Attorney was directed to return in two weeks with a follow-up report to include: (1) Response to questions outlined in the Mayor's memorandum dated October 15, 2004; (2) An update on the status of pending investigations by the District Attorney and Elections Commission. (11-0).

### 3.6 **Adoption of a resolution superseding Resolution No. 71820, the Council's Rules of Order, to amend Rule 1, Section G as it relates to the designation of the Chair in the absence of the Mayor and Vice Mayor.** **[Rules Committee referral 10/6/04 – Item 3.2(g)(1)]**

Documents Filed: Memorandum from Mayor Gonzales, dated October 8, 2004, recommending approval of Rule 1, Section G.

Motion: Vice Mayor Dando moved approval of Mayor Gonzales' recommendation. Council Member Gregory seconded the motion. Council Member LeZotte opposed the adoption of the resolution, stating this action should be scrutinized.

Public Comment: William Garbett spoke in opposition to the issue.

Action: On a call for the question, the motion carried, and Resolution No. 72363, entitled: "A Resolution of the Council of the City of San José Amending the Rules for the Conduct of Its Meetings, and Superseding Resolution No. 71820", was adopted. (10-1. Noes: LeZotte.)

### 3.7 **Adoption of an ordinance ratifying final expenditures in various appropriations for FY 2003-04. (City Manager's Office)** **(Deferred from 10/12/04 – Item 3.5)**

Documents Filed: None.

Action: Deferred to November 2, 2004.

**3.8 Approval of the following policy guidelines for use of the Mayor and Council Travel Fund, established October 12, 2004:**

- (a) **The Mayor and Council Travel Fund may be used for:**
- (1) **The annual San Jose Silicon Valley Chamber of Commerce and City of San Jose City to City trip.**
  - (2) **Mayor and Council Member travel where those traveling are appointed by the Council to represent the City to either advocate for priority legislation or to represent the City on Boards and Committees of the League of California Cities, the U.S. Conference of Mayors or the National League of Cities.**
- (b) **Elected officials wishing to use these funds should submit a written request to the Rules Committee.**

**CEQA: Not a Project. (City Manager's Office)  
(Rules-In-Lieu Committee referral 10/13/04)**

Documents Filed: Memorandum from Assistant City Manager Mark Linder, dated October 7, 2004, recommending approval of the policy guidelines as described above.

Motion: Vice Mayor Dando moved approval of the Staff recommendation including the following change, "appointed by the Council or otherwise officially appointed to serve on committees of the League of California Cities, the National League of Cities, and the United States Conference of Mayors", with Staff directed to report back in one year on the use of the fund. Council Member Chavez seconded the motion.

Amendment to the Motion: Council Member Yeager moved to amend the motion by adding "to attend" the League of California Cities and the National League of Cities. Council Member Chavez accepted the amendment.

Mayor Gonzales, Council Members Campos and Chirco expressed opposition to the amendment. Mayor Gonzales called for a vote, and the amendment to the motion failed. (3-8. Noes: Campos, Chirco, Cortese, Dando, Gregory, Reed, Williams; Gonzales.)

Action: On a call for the question, the original motion carried, and the Staff recommendation was approved, as amended: [(a)(2) appointed by the Council or otherwise officially appointed to serve on committees of the League of California Cities, the National League of Cities, and the United States Conference of Mayors]; with Staff to report back in one year on the use of Fund. (10-1. Noes: Cortese.)

## ECONOMIC & NEIGHBORHOOD DEVELOPMENT

- 4.3 Adoption of a resolution authorizing the City Manager to allocate \$25,000 from the Office of Economic Development budget for payment to the State of California for the newly adopted Enterprise Zone tax credit voucher fee. CEQA: Not a Project. (Economic Development)**

Documents Filed: Memorandum from Director of Economic Development Paul Krutko, dated September 30, 2004, recommending adoption of the resolution.

Action: Upon motion by Council Member Chavez, seconded by Council Member Reed, and carried unanimously, Resolution No. 72364, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Allocate \$25,000 for the Enterprise Zone Tax Credit Voucher Fee", was adopted. (11-0).

- 4.4 Reports on bids and award of contract for the Towers Lane Improvement Project (north of Aborn Road) to the low bidder, DeSilva Gates Construction, LP, in the amount of \$626,191, and approval of a 15 percent contingency in the amount of \$94,000. CEQA: Exempt, PP 02-03-046. Council District 7. SNI: West Evergreen. (Public Works/Transportation) (Deferred from 8/31/04 – Item 4.3, et al, and 10/12/04 – Item 4.5)**

Documents Filed: None.

Action: Dropped.

## RECREATION & CULTURAL SERVICES

- 5.2 Approval of the Guadalupe River Trail Reach 6 (Willow Street to Highway 280) Master Plan. CEQA: Mitigated Negative Declaration, PP04-03-102. Council Districts 3 & 6. SNI: Washington. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated September 29, 2004, recommending approval of the trail master plan.

Action: The Guadalupe River Trail Reach 6 Master Plan was approved. (11-0).

- 5.3 (a) **Approval of the list of San José B.E.S.T. Eligible Service Providers for 2004-2007.**
- (b) **Adoption of a resolution authorizing the City Manger to negotiate and execute grant agreements and amendments with the San José B.E.S.T. Eligible Service Providers, consistent with the directives of the Mayor’s Gang Prevention Task Force for a term of September 1, 2004 through August 31, 2005, and for a total amount not to exceed \$2,465,000.**

**CEQA: Not a Project. (Parks, Recreation and Neighborhood Services)  
(Deferred from 10/5/04 – Item 5.3 and 10/12/04 – Item 5.3)  
(Orders of the Day)**

Documents Filed: (1) Memorandum from Mayor Gonzales, Council Members Yeager and Chavez, dated October 19, 2004, recommending approval of approval of the San José B.E.S.T Eligible Service Providers for 2004-2007 and adoption of the resolution. (2) Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated September 15, 2004, recommending as stated above.

Motion: Council Member Chavez moved approval of the memorandum she cosigned with Mayor Gonzales and Council Member Yeager, including direction to Staff that final contracts return to Council for approval. Council Member Yeager seconded the motion.

Discussion: Council Member LeZotte expressed opposition to the motion because west of Highway 17 there are no programs for the emerging gang problems. Vice Mayor Dando expressed support for the motion, however in light of Council Member LeZotte’s comment, suggested that where there are “hot spots”, Staff should be proactive and inform the Council. Mayor Gonzales requested that Staff work with Council Member LeZotte on these issues.

Action: On a call for the question, the motion carried unanimously, the San José B.E.S.T. Eligible Service Providers for 2004-2007 were approved, and Resolution No. 72365, entitled: “A Resolution of the Council of the City of San José Approving the List of San José B.E.S.T. Eligible Service Providers for 2004-2007 and Authorizing the City Manager to Negotiate and Execute Grant Agreements with Eligible Service Providers for 2004-2005”, was adopted, with Staff directed to bring back the final agreements for Council approval. (11-0).

## TRANSPORTATION SERVICES

### 6.1 Report of the Building Better Transportation Committee – October 4, 2004 Council Member Cortese, Chair

Documents Filed: The Building Better Transportation Report dated October 4, 2004

- (a) Expansion and Improvement of Transit and Transportation Systems
  - (1) Taxicab Service Model Implementation Follow-up Report and Recommendations. Attachment: Memorandum from Director of Transportation James Helmer, Police Chief Robert Davis, and Director of Aviation Ralph Tonseth, dated September 22, 2004, transmitting the report.

The Committee accepted the report with Staff directed to return to the Committee on November 1, 2004 with answers or documentation on all of the above, including, any written submitted questions, keeping in the time frame for the RFP; referring to Rules out of this Committee whether or not the Council had suggested that there be a moratorium based on the number of permits that have been issued; or whether that was based on the fact that this would be moving at an accelerated pace; whether or not it should be reconsidered; whether there was a moratorium.

- (2) Review of Niemen-Route 87 Portion of Downtown-East Valley Light Rail Project. Attachment: Memorandum from Director of Transportation James Helmer, dated September 20, 2004, transmitting the report.

The Committee accepted the Staff report.

- (b) Traffic Relief/Safe Streets
  - (1) Review of Annual Traffic Calming Report to Council. Attachment: Memorandum from Director of Transportation James Helmer, and Police Chief Robert Davis, dated September 22, 2004, transmitting the report.

The Committee accepted the Staff report.

- (c) Supporting Smart Growth - There were no items.

- (d) Regional Relationships/Funding/Policy
  - (1) Caltrans District 4 Regional Transportation Issues Report. Attachment: Memorandum from Director of Transportation James Helmer, dated September 22, 2004, transmitting the report.

The Committee accepted the Staff report.

**6.1 Report of the Building Better Transportation Committee – October 4, 2004  
Council Member Cortese, Chair (Cont'd.)**

- (d) Regional Relationships/Funding/Policy (Cont'd.)
  - (2) One Year Report on the Construction Impact Mitigation Plan (CIMP) activity. Attachment: Memorandum from Director of Public Works Katy Allen, dated September 20, 2004, transmitting the report.

This item was deferred until November 1, 2004.

- (e) Oral petitions - There were none.
- (f) Adjournment - The meeting was adjourned at 4:30 p.m.

Action: Upon motion by Council Member Cortese, seconded by Council Member Chavez, the Report of the Building Better Transportation Committee and the actions of October 4, 2004, were accepted. (11-0).

**PUBLIC SAFETY SERVICES**

**9.1 Updated status report on the replacement of the Computer Aided Dispatch System (CAD). (Police/Fire/Information Technology)**

Documents Filed: Memorandum from Police Chief Robert Davis, Fire Chief Jeffrey Clet, and Interim Director of Information Technology Department James Helmer, dated October 15, 2004, transmitting the report.

Police Chief Robert Davis presented an update on the progress of the replacement of the Computer Aided Dispatch System (CAD).

Public Comment: Linda Dittes, AFSCME 101, MEF, expressed disappointment with the problems, stating not all workers are satisfied with the system. Don Demers, San José POA, stated mapping is a problem and suggested a performance audit in 30 to 60 days. Alice Dilbeck, Intergraph Public Safety, stated her company has maintained continuous on-site support and will continue to work with City of San José.

Action: Upon Motion by Vice Mayor Dando, seconded by Council Member Chavez, and carried unanimously, and the Status Report was accepted, with Staff directed to return in 30 days with a written review of how the system is operating, and to institute “spot checks” in order to obtain feedback from the officers, fire fighters, and dispatchers. (11-0).

**9.2 Adoption of a resolution authorizing the City Manager to:**

- (a) Request that the Santa Clara County Board of Supervisors designate all City of San José Fire Stations as Safe Surrender Sites for newborn abandoned infants pursuant to Health & Safety Code Section 1255.7 (Safe Surrender Law), upon adoption of a Countywide Safe Surrender Implementation Plan, and the designation of fire stations countywide as Safe Surrender Sites; and**
- (b) To execute any documents necessary to effectuate designation of the City Fire Stations as Safe Surrender Sites.**

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

**(Rules-In-Lieu referral 10/13/04)**

Documents Filed: Memorandum from Fire Chief Jeffrey Clet, dated October 12, 2004, recommending adoption of the resolution.

Motion: Vice Mayor Dando moved approval of the Staff recommendation, with Staff to conduct outreach to ensure that desperate mothers learn about the plan. Council Member Chavez seconded the motion.

Public Comment: Williams Garbett spoke in favor but brought up other issues to consider.

Action: On a call for the question, the motion carried unanimously, and Resolution No. 72366, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Request Designation of All City of San José Fire Stations as Safe Surrender Sites Pursuant to Health and Safety Code Section 1255.7 and Further Authorizing the City Manager to Execute All Documents Necessary to Effectuate Such Designation”, was adopted, with Staff directed to conduct outreach to ensure that desperate mothers learn about the plan. Suggestions included VTA resources, lightrail, signage on screens in movie theatres, high schools and involving the Youth Commission. (11-0).

## CLOSED SESSION REPORT

City Attorney Doyle disclosed the following Closed Session action(s) of October 19, 2004:

A. Potential Litigation – Settlements Authorized:

Case Name: City of San José v. Arcadia Development, et al.

Substance of Settlement: See attached.

Council Vote: Ayes: Nora Campos, Cindy Chavez, Judy Chirco,  
David Cortese, Pat Dando, Terry Gregory,  
Chuck Reed, Forrest Williams, Ken Yeager;  
Ron Gonzales.

Noes: Linda LeZotte.  
Disqualified: None.  
Absent: None.

## NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS

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

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/ Units</u>	<u>Type</u>	<u>Proposed Decision</u>
9613	Southeast corner of Jackson Avenue and Madden Avenue	5	Falk Development	162 Units (Condo)	SFA	Approve
9530	Northside of Aborn Road approximately 1000 feet East of Altamara Avenue	8	Blossom Valley Investors, Inc./Pinn Brothers Construction, Inc.	31 Units	SFDR	Approve

## ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 4:40 p.m.

## RECESS/RECONVENE

The City Council recessed at 5:00 p.m. from the Joint City Council/Redevelopment Agency Board, and reconvened at 7:04 p.m. in the Council Chambers, City Hall.

Present: Council Members - Chavez, Chirco, Cortese, Gregory, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - Campos, Dando. (Excused)

## CEREMONIAL ITEMS

### 1.1 **Appointment of swearing in of District 4 and 9 Youth Commissioners. (Mayor)** **[9-8-04 Rules Committee Referral]**

Documents Filed: Memorandum from City Clerk Lee Price, dated October 15, 2004, recommending the two appointments.

Action: Council Member Reed and Council Member Chirco introduced the Youth Commissioners for District 4 and 9. City Clerk Lee Price administered Oaths of Office to Van Le and Samantha Snook.

## PUBLIC HEARINGS

City Clerk Lee Price read the requests for continuance of the applications. Upon motion by Council Member Williams, seconded by Council Member Chirco, and carried unanimously, the below noted continuances were granted. (9-0-2. Absent: Campos, Dando.)

### 11.1 **Public Hearing on and consider approval of an ordinance amending Chapter 20.100 of Title 20 of the San José Municipal Code to allow exemptions from single-family house permit requirements for building height for construction of and additions to houses located in flood zones. CEQA: Exempt.** **PP04-08-227 – Citywide**

Documents Filed: None.

Action: Continued to November 9, 2004.

- 11.2 Public Hearing on and consider approval of an ordinance on Planned Development Rezoning of the property located at the south side of State Street, approximately 300 feet easterly of Pacific Avenue, from R-M Multiple Residence Zoning District to A(PD) Planned Development Zoning District, to allow up to 6 single-family detached residences on a 0.41 gross acre site. (Next Step Homes, LLC, Owner/ Developer). CEQA: Mitigated Negative Declaration.  
PDC 03-104 - District 4  
(Continued from 9/7/04 – Item 11.3 et al., and 10/5/04 – Item 11.3)**

Documents Filed: None.

Action: Dropped.

- 11.3 Public Hearing on and consider approval of an ordinance on Planned Development Rezoning of the property located at the south side of Hillsdale Avenue, approximately 420 feet east of Highway 87 (568 Hillsdale Avenue), from R-1-5 and R-1-8 Residence Zoning Districts to A(PD) Planned Development Zoning District, to allow 26 single-family attached residential units on a 1.6 gross acre site. (George P Thotus Trustee et al, Owner). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0).  
PDC 04-060- District 10  
(Continued from 10/5/04 – Item 11.4)**

Documents Filed: None.

Action: Continued to November 9, 2004.

- 11.4 Public Hearing on and consider approval of an ordinance on Planned Development Rezoning of the property located on the north side of Hanchett Avenue, approximately 410 feet west of Alameda Avenue (1123 Hanchett Ave), from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District, to allow an existing unpermitted social service use in a single-family residential structure, an approximately 3,073 square foot expansion of the existing structure and off-site parking on a 0.17 gross acre site. (Young Life, Owner). CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1).  
PDC 03-005 - District 6**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC-03-005, dated October 8, 2004, recommending approval of an ordinance on the Planned Development Rezoning. (2) Memorandum from Secretary of Planning Commission Stephen Haase, dated October 17, 2004, transmitting the Planning Commission recommendation. (3) Proofs of Publications of Notices of Public Hearing, executed on October 1, and October 10, 2004 submitted by the City Clerk.

#### 11.4 (Cont'd.)

Public Comment: Mayor Gonzales opened the public hearing on the Planned Development Rezoning of the subject property. There was no testimony from the floor. Mayor Gonzales closed the public hearing.

Action: Upon motion by Council Member Yeager, seconded by Council Member LeZotte, and carried unanimously, the recommendation of the Planning Commission, and the Planning Director was approved, and Ordinance No. 27268, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the North Side of Hanchett Avenue Approximately 410 Feet West of the Alameda (1123 Hanchett Avenue) to A(PD) Planned Development Zoning District", was passed for publication. (9-0-2. Absent: Campos, Dando.)

- 11.5 Public Hearing on and consider approval of an ordinance on Planned Development Rezoning of the property located at the west side of South King Road approximately 780 feet northerly of Aborn Road, from R-1-2 Residential Zoning District to A(PD) Planned Development Zoning District, to allow up to 158,650 square feet of mini storage uses, outdoor RV/boat storage, a 2,700 square foot manager's office/residence, a 1,250 square foot radio transmitter building, continued operation of an existing 8,050 square foot transmitter/office building and (3) three existing radio transmission towers on a 9.91 gross acre site. (Entravision Communications Corp, Owner). CEQA: Mitigated Negative Declaration. SNI: West Evergreen. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1).**

**PDC 04-025 - District 7**

- 11.6 Public Hearing on adoption of a resolution for a Planned Development Permit for consideration of the final site, architectural, and landscape designs for the property located at the west side of South King Road approximately 780 feet northerly of Aborn Road. CEQA: Mitigated Negative Declaration. SNI: West Evergreen. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1).**

**PD 04-019 - District 7**

- 11.7 Public Hearing on adoption of a resolution approving the Tentative Map to reconfigure three existing subject parcels into 6 lots for commercial purposes for the property located at the west side of South King Road, approximately 780 feet northerly of Aborn Road. CEQA: Mitigated Negative Declaration. SNI: West Evergreen. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1).**

**PT 04-024 - District 7**

**Note: Items 11.5, 11.6, and 11.7 were heard together.**

## 11.5/11.6/11.7 (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC-04-025, PD 04-019, and PT 04-024, dated October 6, 2004, recommending approval of an ordinance, and the resolutions on the Planned Development Rezoning, Planned Development Permit and approval of the Tentative Map. (2) Memorandum from Secretary of Planning Commission Stephen Haase, dated October 13, 2004, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on October 1, 2004 submitted by the City Clerk.

Public Comment: Mayor Gonzales opened the public hearing on the Planned Development Rezoning of the subject property. There was no testimony from the floor. Mayor Gonzales closed the public hearing.

Director of Planning, Building and Code Enforcement Stephen Haase clarified that this property has an existing radio station on it, and in the General Development Notes for the Rezoning, Staff would be revising those to reflect the 24 hour operation of the radio station, as well as the allowance for maintenance for emergency purposes in order to keep that station operational. He added this issue was not addressed, either by the Applicant or the City in the initial processing of the application.

Action: Upon motion by Council Member Gregory, seconded by Council Member Cortese, and carried unanimously, the recommendation of the Planning Commission, and the Planning Director was approved, and Ordinance No. 27269, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the West Side of South King Road, Approximately 780 Feet Northerly of Aborn Road from R-1-2 Residential to A(PD) Planned Development Zoning District", was passed for publication; Resolution No. 72367, entitled: "A Resolution of the Council of the City of San José Granting, Subject to Conditions, a Planned Development Permit To Use Certain Real Property Described Herein to Allow (1) The Construction of a New 158,650 Square Foot Mini-Storage Facility that Includes Outdoor Storage for Recreational Vehicles (RV) and Boats, and (2) A Radio Transmission Facility Pursuant to Planned Development Rezoning PDC04-025"; and Resolution No. 72368, entitled: "A Resolution of the Council of the City of San José Granting, Subject to Conditions, a Tentative Map To Use Certain Real Property Described Herein to Allow the Subdivision and Reconfiguration of Three Existing Parcels into Six Parcels", were adopted. (9-0-2. Absent: Campos, Dando.)

- 11.8 Public Hearing on and consider approval of an ordinance on a Planned Development Rezoning from County to A(PD) Planned Development Zoning District, to allow up to 31 single-family detached residences on a 3.49 gross acre site, located at the north side of Umbarger Road approximately 1,200 feet westerly of Senter Road (425 Umbarger Road). (TLB Properties LLC, Owner; DAL Properties LLC – Mark Lazzarini, Developer). CEQA: Mitigated Negative Declaration. SNI: None. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1).  
PDC 04-054 - District 7**

## 11.8 (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC-04-054, dated October 6, 2004, recommending approval of an ordinance on the Planned Development Rezoning. (2) Memorandum from Secretary of Planning Commission Stephen Haase, dated October 14, 2004, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on October 1, 2004 submitted by the City Clerk.

Public Comment: Mayor Gonzales opened the public hearing on the Planned Development Rezoning of the subject property. There was no testimony from the floor. Mayor Gonzales closed the public hearing.

Action: Upon motion by Council Member Gregory, seconded by Council Member Chavez, and carried unanimously, the recommendation of the Planning Commission, and the Planning Director was approved, and Ordinance No. 27270, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the North Side of Umbarger Road Approximately 1,200 Feet Westerly of Senter Road to A(PD) Planned Development Zoning District", was passed for publication. (9-0-2. Absent: Campos, Dando.)

## ADJOURNMENT

The Council of the City of San José adjourned at 7:12 p.m.

**RON GONZALES, MAYOR**

**ATTEST:**

**LEE PRICE, CMC, CITY CLERK**

smd/10/19/04min