

## MINUTES OF THE CITY COUNCIL

**SAN JOSÉ, CALIFORNIA**

**TUESDAY, NOVEMBER 9, 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 9:03 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) Rey v. City of San José, et al., (2) Montoya v. City of San José, et al.; (3) City of San José v. Movassate, et al.; (4) City of San José; et al. v. County of Santa Clara, et al. (B) Public employee performance evaluation pursuant to Government Code Section 54957, Title: City Attorney.

By unanimous consent, Council reconvened from the Closed Session and recessed at 10:30 a.m. and reconvened at 1:37 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

Dave Bridgen, San José Police Department Chaplin presented the invocation. (District 10)

### PLEDGE OF ALLEGIANCE

Mayor Gonzales led the Pledge of Allegiance.

### ORDERS OF THE DAY

Upon motion by Council Member Chavez, seconded by Vice Mayor Dando, and carried unanimously, the Orders of the Day, and the Amended Agenda were approved. (10-0-1. Absent: Campos.)

## CEREMONIAL ITEMS

### **1.1 Presentation of a proclamation designating November 14-20, 2004 as “National Hunger and Homelessness Awareness Week.” (Housing)**

Action: Mayor Gonzales invited Director of Housing Leslye Corsiglia to the podium. Mayor Gonzales presented a proclamation designating the week of November 14-20, 2004, “National Hunger and Homelessness Awareness Week”. Policy Planning and Homeless Manager Vivian Frelix-Hart, and Sister Margaret, County of Santa Clara were recognized.

### **1.3 Presentation of a commendation to De Mattei Construction recognizing its important contribution to the economy. (Mayor/Yeager) (Rules Committee referral 11/03/04)**

Action: Mayor Gonzales invited Council Member Yeager, Assistant Director of Economic Development Kim Walesh, Director of Planning, Building and Code Enforcement Stephen Haase, and President of De Mattei Construction, Mark Mattei, to the podium. Mayor Gonzales presented a commendation to Mr. Mattei in recognition of his company’s contribution to the economy of San José.

### **1.4 Presentation of an award from American Legion Post 419 and presentation of a commendation recognizing Fire Engineer Stacey Hansen for her efforts on behalf of Vietnam Veterans. (Mayor/Williams) (Rules Committee referral 11/03/04)**

Action: Mayor Gonzales invited Council Member Williams, Stacey Hansen, San José Fire Department, and Ralph Jacobs, American Legion, to the podium. Stacey Hansen was presented commendations from the American Legion and the City of San José in recognition of her outstanding efforts on behalf of Vietnam Veterans.

### **1.6 Presentation of a commendation to Valley Christian High School for its contribution to the City of San José as a model school, supporting our community’s youth, education and overall growth. (Williams) (Rules Committee referral 11/03/04)**

Action: Mayor Gonzales and Council Member Williams recognized Chancellor Claude Fletcher, Dr. Cliff Daugherty, and students of Valley Christian High, Christina Masurat, Bryan Dudley, Tucker Bryan, and Ben Walker, with a commendation to Valley Christian High School for high quality student focused education. Vice Mayor Dando expressed appreciation to the school for community service.

## CONSENT CALENDAR

Upon motion by Vice Mayor Dando, seconded by Council Member Yeager 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 for:  
(a) Regular meeting of September 14, 2004.**

Documents Filed: The regular minutes of September 14, 2004.

Action: The minutes were approved. (11-0.)

**2.2 Final adoption of ordinances:**

**(a) ORD. NO. 27271 – Amends Chapter 12.10 of Title 12 of the San José Municipal Code to revise the City of San José Revolving Door Ordinance.**

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on November 2, 2004, submitted by the City Clerk.

Action: Ordinance No. 27271 was adopted. (11-0.)

**(b) ORD. NO. 27273 – Amends Title 7 of the San José Municipal Code to add a new Chapter 7.11 to ban the feeding of wild animals.**

Documents Filed: (1) Memorandum from City Attorney Richard Doyle, dated November 3, 2004, transmitting addition information. (2) Proof of Publication of Notice of Public Hearing, executed on November 2, 2004, submitted by the City Clerk.

Discussion: A short discussion ensued with direction as indicated in “Action”.

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

Action: Upon motion by Council Member Chavez, seconded by Council Member Reed, and carried unanimously, Ordinance No. 27273 was adopted, with Staff directed to seek guidance from the Animal Advisory Committee regarding additional terms and conditions for the banning of feeding feral cats, and pigeons (rock doves); and including examining how other cities are dealing with feral cats and coyotes. Recommendations for any additional ordinance changes shall return to Council. (11-0.)

**2.3 Approval of a first amendment to the cooperation agreement with the County of Santa Clara for the Central Expressway/De La Cruz Boulevard Intersection Improvement Project, extending the term of the agreement from December 31, 2004 to December 31, 2005, with no increase in cost to the City. CEQA: Resolution Nos. 67380 and 71451, PP04-280. (Airport)**

Documents Filed: Memorandum from Director of Aviation Ralph Tonseth, dated October 20, 2004, recommending approval of the first amendment.

Action: The first amendment to the cooperation agreement was approved. (11-0.)

- 2.4 (a) **Adoption of appropriation ordinance and funding sources resolution amendments in the Services for Redevelopment Capital Projects Fund (City-side Redevelopment Fund) for the Market Almaden Pedestrian Lighting Project (PSM 385), with a net impact to the fund of \$62,404.**
- (b) **Adoption of a resolution making certain determinations regarding the related expenditures of Redevelopment Agency funds on certain public improvements in connection with the Market Almaden Pedestrian Lighting Project, as more specifically described in the memorandum from the Redevelopment Agency, Dated September 27, 2004.**

**CEQA: Not a Project. Council District 3. SNI: Market Almaden. (City Manager's Office)**

Documents Filed: Memorandum from Budget Director Larry Lisenbee, dated October 20, 2004, recommending adoption of the appropriation ordinance, and funding sources resolution amendments, and resolution.

Action: Ordinance No. 27276, entitled: "An Ordinance of the City of San José Amending Ordinance No. 27196 to Appropriate Monies in the Services for Redevelopment Capital Projects Fund for the Market Almaden Pedestrian Lighting Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; Resolution No. 72378, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 72189 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2004-2005 to Adjust Revenues in the Services for Redevelopment Capital Projects Fund"; and Resolution No. 72379, entitled: "A Resolution of the Council of the City of San José Making Certain Determinations Regarding the Expenditure of Redevelopment Agency Funds for Certain Public Improvements in the Market Almaden Neighborhood in the Strong Neighborhoods Initiative Redevelopment Project Area", were adopted. (11-0.)

- 2.5 **Adoption of a resolution authorizing the Director of Environmental Services Department to submit an application to the California Integrated Waste Management Board, Reuse Assistance Grant Program, in the amount of \$43,900 for the purpose of supporting recycling programs in San José public Schools, to accept the grant on behalf of the City of San José, and to execute all documents necessary to implement the grant. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services Carl Mosher, dated November 4, 2004, recommending adoption of the resolution.

Public Comment: William Garbett spoke in opposition to the Staff recommendation.

Action: Upon motion by Council Member Cortese, seconded by Council Member Williams, and carried unanimously, Resolution No. 72380, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Environmental Services to Submit an Application to the California Integrated Waste Management Board for a Reuse Assistant Grant in the Amount of \$43,900, to Accept the Grant on Behalf of the City, and to Execute All Documents Necessary to Implement the Grant", was adopted. (11-0.)

**2.6 Adoption of a resolution authorizing the City Manager to submit grant applications to the State Department of Parks and Recreation for the following projects:**

- (a) Police Activities League Sports Complex Repairs, in an amount not to exceed \$1,000,000, from the California Youth Soccer and Recreation Development Program; and**
- (b) Martin Park Soccer and Softball Field Project, in amount not to exceed \$1,000,000, from the State Urban Parks and Healthy Communities Program and include a required match to the grant funding of up to \$334,000 by the City.**

**CEQA: Not a Project. SNI: Five Wounds/Brookwood Terrace, Gateway East. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated October 20, 2004, recommending adoption of the resolution.

Action: Resolution No. 72381, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Execute and Submit Applications to the State Department of Parks and Recreation for a Grant for the Police Activities League Sports Complex Repairs in an Amount Not To Exceed \$1,000,000 from the California Youth Soccer and Recreation Development Program, and for a Grant for the Martin Park Soccer and Softball Field Project in an Amount Not To Exceed \$1,000,000 from the State Urban Parks and Healthy Communities Program”, was adopted. (11-0.)

**2.7 Adoption of a resolution initiating proceedings and setting November 30 at 1:30 p.m. as the date for Council consideration of the reorganization of territory designated as McKee No. 124, which involves the annexation to the City of San José of 0.76 acre of land more or less, located on the north side of Madeline Drive, approximately 220 feet easterly of White Road and adjacent to the City of San José annexations McKee Nos. 39 and 75-A, and the detachment of the same from County Lighting County Service, Central Fire Protection, Area No. 01 (Library services) County Services and County Sanitation District 2-3. CEQA: Resolution No. 65459, C04-049. Council District 5. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated October 20, 2004, recommending adoption of the resolution.

Action: Resolution No. 72382, entitled: “A Resolution of the Council of the City of San José Initiating Reorganization Proceedings for the Annexation and Detachment of Certain Uninhabited Territory Designated as McKee No. 124 and Described Herein, and Setting the Date and Place for Consideration of Such Reorganization”, was adopted. (11-0.)

**2.8 Acceptance of the Office of the Independent Police Auditors Mid-Year Report. (Independent Police Auditor)**

Documents Filed: 2004 Mid-Year Report dated January 1, through June 30, 2004 from the Office of the Independent Police Auditor.

Discussion: Deputy Director-Assistant Auditor IPA Steven Wing responded to questions from Council Member Cortese regarding the officer involved shooting.

Action: This item was renumbered from 9.1. Upon motion by Council Member Cortese, seconded by Council Member Chavez, and carried unanimously, the report was accepted. (11-0.)

**2.9 Approval of three appointments to the San José Housing Trust Fund Oversight Committee. (Mayor)**

Documents Filed: None.

Action: Deferred to November 16, 2004.

**END OF CONSENT CALENDAR**

**STRATEGIC SUPPORT SERVICES**

**3.2 Report of the Rules Committee - October 27, 2004  
Vice Mayor Dando, Chair**

Documents Filed: The Rules Committee dated October 27, 2004, and the Partial Rules Committee Report dated November 3, 2004.

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

(b) City Council

(1) Review November 9, 2004 Draft Agenda

The Committee recommended approval of the November 9, 2004 City Council agenda.

(2) Add New Items to November 2, 2004 Amended Agenda

- Mayor and Council Member Requests
- City Manager Requests
- City Attorney Requests
- City Clerk Requests

The Committee recommended two additions to the November 2, 2004 City Council agenda.

**3.2 Report of the Rules Committee - October 27, 2004 (Cont'd.)  
Vice Mayor Dando, Chair**

- (3) List of Reports Outstanding. Attachment: Report from the City Manager dated October 26, 2004, transmitting reports outstanding for November 2, 2004.

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

- (c) Legislative Update
- (1) State - There was no report.
- (2) Federal
- (a) Federal Legislative Report. Attachment: Memorandum from Director Intergovernmental Relations Betsy Shotwell, dated October 22, 2004, recommending acceptance of the report.

The Committee noted and filed the Federal Legislative Summary Report.

- (d) Meeting Schedules - There were none.
- (e) The Public Record. Attachment: Memorandum from City Clerk Lee Price, dated October 28, 2004, transmitting items for administration for the period of October 20-26, 2004.

The Committee noted and filed the Public Record, with the City Attorney directed to review the City Municipal Parking Ordinance 11.36.100(1) and to report back to the committee in two weeks on Item A, request from Gary Lieber, resident of District 2.

- (f) Appointment to Boards, Commissions and Committees - There were none.
- (g) Rules Committee Reviews, Recommendations and Approvals
- (1) Affordable Housing Risk Analysis Workload Assessment. Attachment: Memorandum from Director of Housing Leslye Corsiglia, dated October 14, 2004, transmitting the report and recommendation.

The Committee accepted the report and recommendation to issue an information memorandum.

- (h) Oral communications - There were none.
- (i) Adjournment - The meeting was adjourned at 3:30 p.m.

**3.2 Report of the Rules Committee – November 3, 2004 (Partial)  
Vice Mayor Dando, Chair**

(g) Rule Committee Reviews, Recommendations and Approvals

- (1) Approve the proposed designation of Vice Mayor Pat Dando as the voting delegate and Council Member Ken Yeager as the alternate voting delegate at the December 4, 2004 Annual Business Meeting for the National League of Cities (NLC). Attachment: Memorandum from Director Intergovernmental Relations Betsy Shotwell, dated October 26, 2004, recommending the above delegates.

The Committee recommended approval of the proposed designation of the voting delegate and alternate delegate.

Action: Upon motion by Vice Mayor Dando, seconded by Council Member Cortese, and carried unanimously, the Rules Committee Report, the Partial Rules Committee Report and the actions of October 27, 2004 and November 3, 2004, were approved. (11-0.)

**3.4 Acceptance of the report on Procurement Process Integrity Guidelines for the New City Hall Converged Network Request for Proposals (RFP), and direction to the City Manager to disseminate applicable provisions to prospective proposers, consultants, and staff involved in the RFP. CEQA: Not a Project. (City Manager's Office/Finance/General Services)**

Documents Filed: (1) Memorandum from Deputy City Manager Ed Shikada, Director of Finance Scott Johnson, Interim Director of General Services Jim McBride, dated November 4, 2004, recommending acceptance of the report. (2) Memorandum from City Auditor Gerald Silva, dated November 5, 2004, outlining issues not addressed. (3) Supplemental memorandum from Deputy City Manager Ed Shikada, dated November 9, 2004, confirming agreement with comments by the City Auditor.

Deputy City Manager Ed Shikada presented an outline of the Procurement Process Integrity Guidelines for the New City Hall Converged Network RFP. Council questions followed.

A short discussion followed, with direction as noted in "Action".

Action: Upon motion by Vice Mayor Dando, seconded by Council Member Cortese, and carried unanimously, the report was accepted, with Staff directed to amend the Protocol by: (1) Changing "Project Manager" to "Deputy City Manager" (Item 1 of Prior to RFP Release). (2) Clarifying language regarding Mayor and Council Office contacts (Item 3 of Upon Release of a Recommended Selection, Prior to City Council Approval). (3) Eliminating the word "fraudulently" (Item 3 in Part II: Code of Conduct Provisions). (11-0).

**3.5 Adoption of a revised Council Policy for Retaining Architectural and Engineering Services. CEQA: Not a Project. (Public Works)**

Documents Filed: None.

Action: Deferred to November 16, 2004.

**3.6 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, et al; and 11/2/04 – Item 3.4)**

Documents Filed: Memorandum from Budget Director Larry Lisenbee, dated November 2, 2004, recommending adoption of the ordinance.

Action: Upon motion by Council Member Williams, seconded by Council Member Reed, and carried unanimously, Ordinance No. 27277, entitled: “An Ordinance of the City of San José Authorizing and Ratifying Certain Encumbrances and/or Expenditures in Various Funds Made During City’s 2003-2004 Fiscal Year in Excess of Sums Appropriately Therefore”, was adopted. (11-0).

- 3.8 (a) Adoption of a resolution authorizing the City Manager to negotiate and execute a contract from November 10, 2004 to June 30, 2005 in an amount not to exceed \$440,220 with BearingPoint, Inc. to participate in Stage 1 of the CUSP Project, which includes a comprehensive business process gap fit readiness analysis related to the ultimate installation and implementation of CUSP.**
- (b) Adoption of a resolution authorizing the City Manager to negotiate and execute a Customer Information System (CIS) consultant services contract from November 10, 2004 to June 30, 2005 in an amount not to exceed \$325,700 with Blue Heron Consulting to assist City staff with Stage 1 of the CUSP Project, which includes providing the City with an independent, third party overview and analysis of a comprehensive business process gap fit readiness analysis and contract negotiations related to the City's development of the BearingPoint contract scope of services for Stage 2 of the CUSP Project.**
- (c) Adoption of the following appropriation ordinance and funding sources resolution amendments:**
- (1) Increase the estimate for Earned Revenue in the Integrated Waste Management Fund by \$4,389,242.**
  - (2) Establish a CUSP Project appropriation to the Finance Department in the Integrated Waste Management Fund in the amount of \$4,389,242.**

**CEQA: Not a Project. (Finance/City Manager's Office)  
(Deferred from 10/5/04 et al and 11/2/04 - Item 3.6)**

Action: Renumbered to Item 3, Joint City Council/Financing Authority Agenda. See Item 3 for Council Action taken.

- 3.9 (a) **Consideration of authorizing an appropriation of funds for the Mayor to hire an Independent Investigator regarding allegations of wrongful termination and improper or illegal conduct by Council Member Gregory. (Mayor)**
- (b) **Upon approval of above item, adoption of the following appropriation ordinance amendments in the General Fund:**
- (1) **Establish a City-Wide Expenses appropriation to the City Clerk's Office for an Independent Investigator for Council Member Gregory, in the amount of \$50,000.**
  - (2) **Decrease the Contingency Reserve by \$50,000. (City Manager's Office)**
- (Rules Committee referral 11/03/04)**

Documents Filed: (1) Memorandum from Mayor Gonzales, dated November 5, 2004, recommending authorization to hire the investigator, and appropriate funds. (2) Supplemental memorandum from Mayor Gonzales, dated November 8, 2004, transmitting additional information. (3) Supplemental memorandum from Mayor Gonzales, Vice Mayor Dando, and Council Members Chavez and Yeager, dated November 9, 2004, transmitting additional recommendations. (4) Memorandum from Budget Director Larry Lisenbee, dated November 4, 2004, recommending adoption of the appropriation ordinance amendments.

Motion: Council Member Yeager moved approval of Mayor Gonzales' two memorandums, and the memorandum he cosigned with Mayor Gonzales, Vice Mayor Dando, and Council Member Chavez, and the Staff recommendation. Council Member Chavez seconded the motion.

Discussion: A short discussion followed with direction as noted in "Action".

Action: On a call for the question, the motion carried unanimously, Ordinance No. 27278, entitled: "An Ordinance of the City of San José Amending Ordinance No. 27196 to Appropriate Monies in the General Fund for the Independent Investigator for Council Member Gregory; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", was adopted; the appropriation of funds was approved for hiring the Independent Investigator, with the additional recommendations: (1) That the reports and findings of the Independent Investigator looking into the claim of wrongful termination and allegations of improper conduct of Council Member Gregory, be presented by the Independent Investigator to the Council's Blue Ribbon Task Force on Ethics. (2) Once hired, the Investigator will meet with the Blue Ribbon Task Force to discuss the timeline and appropriate check in points with the Task Force throughout the investigation. When the investigation has concluded, the investigator will bring to the Task Force the findings of his or her investigation. The Task Force will make its recommendations to the Rules Committee for possible placement on the Council's agenda. This step provides an appropriate role for the Task Force, uses its experience and expertise that has developed over the past year, and clarifies the process once the investigation is done. (3) Formally vest the Blue Ribbon Task Force with subpoena power, and the ability to take testimony. (4) Staff directed to preserve all records, including e-mail, and (11-0).

## ECONOMIC & NEIGHBORHOOD DEVELOPMENT

### 4.2 Report of the Driving a Strong Economy Committee – October 25, 2004 Council Member Williams, Chair

Documents Filed: The Driving a Strong Economy Committee Report, dated October 25, 2004.

- (a) Development Services Program Status Report. Attachment: Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, Director of Public Works Katy Allen, and Fire Chief Jeffrey Clet, dated October 12, 2004, transmitting the report.

The Committee accepted the Staff Report and recommended Staff to cross-reference this item at the November 9, 2004 City Council meeting. See Item 4.4 for Council Action taken.

- (b) Secondary Units

The Committee accepted Staff's request for deferral of Secondary Units to the November 29, 2004 Committee meeting.

- (c) International Economic Development Activity. Attachment: Memorandum from Director of Economic Development Paul Krutko, dated October 12, 2004, transmitting the report.

The Committee accepted the Staff Report.

- (d) Oral Petitions

Olga Enciso-Smith, Restaurant and Gallery owner of Machu Picchu, requested relocation assistance for her business.

- (e) Adjournment - The meeting was adjourned at 2:47 p.m.

Action: Upon motion by Council Member Williams, seconded by Council Member Chavez, and carried unanimously, the Driving a Strong Economy Committee Report, and the actions of October 25, 2004, were accepted. (11-0).

### 4.3 Approve initiation of a conforming rezoning of the parcels along San Juan Avenue from R-2 to R-1-8, consistent with the City's General Plan. (Chavez) (Rules Committee referral 11/03/04)

Documents Filed: None.

Action: Upon motion by Council Member Chavez, seconded by Vice Mayor Dando, and carried unanimously, the initiation of a conforming rezoning of the parcels were approved. (11-0).

**4.4 Acceptance of the report on the status of the Development Services Program. (Planning, Building, and Code Enforcement)  
[Driving a Strong Economy Committee referral 10/25/04 – Item 4.2(a)]**

Documents Filed: (1) Memorandum from Senior Executive Analyst City Manager's Office Nadine Nader, dated November 4, 2004, transmitting the Staff Report. (2) Slide presentation "Development Services Program Status Report, dated November 9, 2004.

Director of Planning, Building and Code Enforcement Stephen Haase presented an outline of the Development Services Program Status Report.

Public Comment: Beverly Bryant, Home Builders Association of Northern California, expressed support for the Staff recommendation.

Action: Upon motion by Council Member Williams, seconded by Council Member Reed, and carried unanimously, the report was accepted, with Staff directed to research whether or not other jurisdictions are recovering costs and/or subsidizing certain types of developments. (10-0-1. Absent: Dando.)

**RECREATION & CULTURAL SERVICES**

**5.2 Adoption of a resolution:**

- (a) **Determining that public use and necessity require the acquisition of a surface trail easement on a portion of an automobile tow and storage property owned by Vincent S. Alongi and Ida A. Alongi, Co-Trustees of the Vincent S. Alongi and Ida A. Alongi Revocable Living Trust dated August 20, 1992, and Carmel M. Alongi and Stanley Paul Alongi, Co-Trustees of the Nicholas N. Alongi Exemption Trust under the Nicholas N. Alongi and Carmel M. Alongi Revocable Living Trust dated January 7, 1992, located at 940 Lonus Street;**
- (b) **Finding that:**
  - (1) **The property interest to be acquired is necessary for the completion of the Los Gatos Creek Trail - Reach 4 Project;**
  - (2) **The proposed project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury;**
  - (3) **City staff established an amount of just compensation not less than the full amount of the approved appraisal;**
  - (4) **City staff made an offer to the owners for the full appraised amount; and**
  - (5) **The proposed taking and use are authorized by law.**
- (c) **Directing the City Attorney to file an eminent domain action to acquire the above property interest.**

**CEQA: Mitigated Negative Declaration, PP04-01-014. Council District 6. (Public Works)**

Documents Filed: None.

Action: Deferred to November 30, 2004.

- 5.3 Approval of a five-year property use agreement, and one five-year option, with MetroPCS allowing for construction, installation, maintenance, and operation of a telecommunications facility at San José Municipal Golf Course, and the approval of a Right of Entry/Revenue Sharing agreement with MetroPCS and Mike Rawitser Golf Shop to allow for MetroPCS's entry onto the Golf Course and for the equal sharing of the revenue generated by this installation between the City and Rawitser Golf. CEQA: Exempt, PP04-272. Council District 4. (Public Works/Parks, Recreation and Neighborhood Services/Information Technology)**

Documents Filed: None.

Action: Deferred to November 16, 2004.

## **TRANSPORTATION SERVICES**

- 6.2 Report on bids and award of contract for the Story Road Widening (Senter Road to McLaughlin Avenue) Project to the low bidder, Top Grade Construction, Inc., in the amount of \$1,578,798.70, and approval of a contingency in the amount of \$79,000. CEQA: Exempt, PP04-03-084. Council District 7. SNI: Tully/Senter. (Public Works/Transportation)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, and Director of Transportation James Helmer, dated October 20, 2004, recommending award of the contract.

Action: Upon motion by Council Member Gregory, seconded by Council Member Yeager, and carried unanimously, the contract was approved. (9-0-2. Absent: Dando, Reed.)

- 6.3 Adoption of the following resolutions related to the Bailey Avenue Overhead Grade Separation Project:**

- (a) **Adoption of a resolution authorizing the Director of Public Works to execute and file with the California Department of Finance a request to extend the availability of the unspent portion of the encumbered \$5,000,000 appropriated from the State Grade Separation Funds, and to execute any documents necessary to implement the extension.**
- (b) **Adoption of a resolution authorizing the Director of Public Works to execute an amendment to the agreement with the California Department of Transportation extending the agreement expiration date from December 31, 2004 to December 31, 2006 for reimbursement to the City from the State Grade Separation fund for the Bailey Avenue Overhead at Monterey Road.**

**CEQA: Resolution No. 68705. Council District 2. (Public Works)  
(Rules Committee referral 11/3/04)**

### 6.3 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen, dated November 3, 2004, transmitting an addendum, and recommending adoption of the resolutions. (2) Supplemental memorandum from Director of Public Works Katy Allen, dated November 5, 2004, transmitting additional information.

Action: Upon motion by Council Member Chavez, seconded by Council Member Williams, and carried unanimously, Resolution No. 72383, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Public Works to Execute and File with the California Department of Finance a Request to Extend the Availability of the Unspent Portion of the Encumbered \$5,000,000 Appropriated from the State Grade Separation Funds for the Bailey Avenue Overhead Grade Separation Project, and To Execute Any Documents Necessary to Implement the Extension"; and Resolution No. 72384, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Public Works to Execute an Amendment to the Agreement with the California Department of Transportation Extending the Term of the Agreement for Reimbursement from the State Separation Fund for the Bailey Avenue Overhead Grade Separation Project", were adopted. (9-0-2. Absent: Dando, Reed.)

## **PUBLIC SAFETY SERVICES**

### **9.1 Acceptance of the Office of the Independent Police Auditors Mid-Year Report. (Independent Police Auditor)**

Action: Renumbered to 2.8. See Item 2.8 for Council Action.

## **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:

None.

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

None.

## **OPEN FORUM**

- (1) William Garbett commented on the Police Department's new CAD System.
- (2) Gary Wood, Coalition Justice and Accountability, expressed concern regarding the selection process for the new Independent Police Auditor.
- (3) Ross Signorino provided an update on election results relating to Measure S, "Library Parcel Tax".

## **ADJOURNMENT**

The afternoon session adjourned at 4:16 p.m.

## **RECESS/RECONVENE**

The City Council recessed at 4:59 p.m. from the Joint City Council/San José Financing Authority Meeting, and reconvened at 7:03 p.m. in the Council Chambers, City Hall.

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

Absent: Council Members - None.

## **CEREMONIAL ITEMS**

- 1.2 Presentation of plaques to William Pope, for 3 years 7 months service on the Deferred Compensation Advisory Committee; to Jason Loia, for 1 year 5 months service on the Small Business Development Commission; to Arturo Rivera, for 1 year 10 months service on the Small Business Development Commission; to Sean Delev, for 1 year 9 months service on the Youth Commission; and to Erica Garcia, for 5 years two months service on the Youth Commission. (Mayor)  
(Rules Committee referral 11/03/04)**

Action: Mayor Gonzales presented commendations to Sean Delev for 1 year, 9 months service, and Erica Garcia for 5 years, 2 months service on the Youth Commission. Plaques will be sent to: William Pope, 3 years 7 months service on the Deferred Compensation Advisory Committee, Jason Loia, 1 year 5 months service on the Small Business Development Commission, and Arturo Rivera 1 year 10 months service on the Small Business Development Commission, who were not present at the ceremony.

- 1.5 Presentation of a United States flag from our reservists that was flown in Guantanamo Bay, Cuba. A certificate accompanies the flag from the Base Commander stating it was flown in honor of the City of San José. (Mayor/LeZotte)  
(Rules Committee referral 11/03/04)**

Action: Mayor Gonzales invited Council Member LeZotte, and Reservist Brian Christian to the podium. Mr. Christian presented to Mayor Gonzales and the City Council, the flag that was proudly flown over Guantanamo Bay, Cuba, on August 10, 2004, in the spirit of patriotism and as a tribute to those who lost their lives during terrorist attacks on the United States of America and those who continue to fight in the global war on terrorism.

- 1.7 Presentation of a commendation to Jo Anne McCracken for her excellent work in battling truancy at schools within the East Side Union High School District. (Cortese)  
(Orders of the Day)**

Action: Mayor Gonzales invited Council Member Cortese, and Jo Anne McCracken, Santa Clara County Deputy District Attorney, to the podium. Mayor Gonzales presented a commendation to Ms. McCracken, honoring her excellent work in battling truancy within the East Side Union High School District.

## **PUBLIC HEARINGS**

City Clerk Lee Price read the requests for continuance of the applications. Upon motion by Council Member Chavez, seconded by Council Member Yeager, and carried unanimously, the below noted continuances were granted. (10-0-1. Absent: Dando.)

- 11.1 PUBLIC HEARING ON PLANNING DIRECTOR-INITIATED CONVENTIONAL REZONING of the area generally bounded by East Santa Clara Street to the north, 30<sup>th</sup> Avenue to the east, San Antonio Street and William Street to the south, and South 22<sup>nd</sup> Street to the west, from LI Light Industrial and CP Pedestrian Commercial Zoning Districts to R-2 Two-Family Residence District to reflect residential uses on a 31.34 gross acre site. CEQA: Resolution No. 65459. SNI: Five Wounds/ Brookwood Terrace. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0).**

**C 04-039 - District 3**

**(Continued from 6/1/04 – Item 11.11 et al., and 10/5/04 – Item 11.2)**

Documents Filed: None.

Action: Continued to December 7, 2004.

- 11.2 Public Hearing on and consideration of 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. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0).**

**PP04-08-227 – Citywide**

**(Continued from 10/19/04 – Item 11.1)**

Documents Filed: (1) Memorandum from Planning Commission Secretary Stephen Haase, dated October 21, 2004, transmitting the Planning Commission recommendation. (2) Proof of Publication of Notice of Public Hearing, executed on September 10, 2004, submitted by the City Clerk.

Public Comment: Mayor Gonzales opened the public hearing on the ordinance amending Chapter 20.100 of Title 20 of the San José Municipal Code. There was no testimony from the floor. Mayor Gonzales closed the public hearing.

Action: Upon motion by Council Member Reed, seconded by Council Member LeZotte, and carried unanimously, the recommendation of the Planning Commission, and the Planning Director was approved, and Ordinance No. 27279, entitled: “An Ordinance of the City of San José Amending Sections 20.100.1030, 20.100.1040 and 20.100.1050 of Chapter 20.100 of Title 20 of the San José Municipal Code to Provide An Exemption from a Single-Family House Permit for Certain Houses Located Within Flood Zones that Meet Certain Criteria Set Forth in the Ordinance”, was passed for publication. (10-0-1. Absent: Dando.)

- 11.3 Public Hearing on and consideration of 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 and 10/19/04 – Item 11.3)**

Documents Filed: None.

Action: Continued to January 2005.

- 11.4 Public Hearing on and consideration of approval of an ordinance on Planned Development Rezoning of the property located at the southwesterly corner of Chynoweth Avenue and Cedar Grove Circle, from A-Agricultural District to A(PD) Planned Development Zoning District, to allow the demolition of a single-family detached residence and the construction of 6 single family detached residences on a 0.83 gross acre site. (Vang Van Ho and Chinh Nguyen, Owner). CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1).**

**PDC 01-040 - District 2**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC-01-040, 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 20, 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 Williams, seconded by Council Member Cortese, and carried unanimously, the recommendation of the Planning Commission, and the Planning Director was approved, and Ordinance No. 27280, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Southwesterly Corner of Chynoweth Avenue and Cedar Grove Circle to A(PD) Planned Development Zoning District”, was passed for publication. (10-0-1. Absent: Dando.)

- 11.5 Public Hearing on and consideration of approval of an ordinance on Planned Development Rezoning of the property located at the easterly terminus of Skyway Drive, approximately 1,000 feet easterly of the intersection of Monterey Highway and Skyway Drive (100 Skyway Drive), from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District, to allow the addition of stadium lighting on an existing football field, to allow use of the lights for a maximum of 15 evening events per year (including football games), to remove the requirement for fencing around plan preservation areas on the campus site, and to eliminate the numerical requirement for trip reduction, on an approximately 53-gross acre school campus. (Valley Christian School/South Valley Christian Church, Owners). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1). PDC 02-063 - District 2**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC-02-063, dated October 7, 2004, recommending approval of an ordinance on the Planned Development Rezoning. (2) Memorandum from Secretary of Planning Commission Stephen Haase, dated October 20, 2004, transmitting the Planning Commission recommendation. (3) Initial Study/Draft Negative Declaration for the Valley Christian High School Stadium Lighting, by the City of San José, dated September 2004. (4) 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 Williams, seconded by Council Member Cortese, and carried unanimously, with Council Member Reed abstaining due to conflict of interests, the recommendation of the Planning Commission, and the Planning Director was approved, and Ordinance No. 27281, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Easterly Terminus of Skyway Drive, Approximately 1,000 Feet Easterly of the Intersection of Monterey Highway and Skyway Drive (100 Skyway Drive) to A(PD) Planned Development Zoning District”, was passed for publication. (10-0-1. Disqualified: Reed.)

- 11.6 Public Hearing on and consideration of approval of an ordinance on Planned Development Rezoning of the property located at the south side of East San Antonio Street, at South 34<sup>th</sup> Street (1650 E. San Antonio Street), from R-1-8 Residence Zoning District to A(PD) Planned Development Zoning District, to allow up to 19 single-family detached residences on a 1.75 gross acre site. (Pham Think et al, Robert Ross and Janet Rausch, Owners; DKB Homes, Charles Walton, Developer). CEQA: Mitigated Negative Declaration. SNI: Gateway East. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1). PDC 04-040 - District 5**

## 11.6 (Cont'd.)

Documents Filed: (1) Memorandum from Council Member Campos, dated November 9, 2004, recommending approval of the proposed rezoning with direction. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC-04-040, dated October 21, 2004, recommending approval of an ordinance on the Planned Development Rezoning. (3) Memorandum from Secretary of Planning Commission Stephen Haase, dated October 28, 2004, transmitting the Planning Commission recommendation. (4) Proof of Publication of Notice of Public Hearing, executed on October 1, 2004 submitted by the City Clerk. (5) Letter from DKB Homes, dated November 8, 2004, expressing support of the rezoning.

Public Comment: Mayor Gonzales opened the public hearing on the Planned Development Rezoning of the subject property. In support of the project were Art Zapier, Mike Zapier, Angela Garcia, Miguel Meza, San Antonio Unidos Neighborhood Association, and Eugenio Ramirez, Los Suenos Association. Mayor Gonzales closed the public hearing.

Action: Upon motion by Council Member Campos, seconded by Vice Mayor Dando, and carried unanimously, the recommendation of the Planning Commission, and the Planning Director was approved, and Ordinance No. 27282, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the South Side of East San Antonio Street at 34th Street (1650 E. San Antonio St.) to A(PD) Planned Development Zoning District", was passed for publication, with the following further direction that the developer continue to work with the community and City Staff as the project moves through the planning process. The developer was requested to address the following: (1) Plan and develop the use of space formerly designated as the proposed driveway in conjunction with the San Antonio Unidos Neighborhood Association and the Gateway East NAC as a tot lot open to the public. The tot lot would be provided as a turnkey facility to the City with park credit to the developer for land and improvements. The tot lot would be developed to City standards with appropriate landscaping and buffers for adjoining neighbors. (2) The developer to contribute up to \$5,000 (Five Thousand Dollars) toward possible minor traffic calming/traffic flow measures in the San Antonio Corridor that are determined appropriate and can be implemented in the short term; and, further: (3) The City Staff was directed to review current signal timing at the intersection of San Antonio and King Streets and determine if there are possible improvements to improve traffic progression. (11-0).

## 11.7 **Public Hearing on and consideration of approval of an ordinance on a Planned Development Rezoning from R-1-8 Residence Zoning District to A(PD) Planned Development Zoning District, to allow up to five single-family detached residences on a 0.48 gross acre site, located at the northwesterly terminus of South 34<sup>th</sup> Street (321 S 34<sup>th</sup> St.). (Innovative Housing Solutions LLC, Owner/Developer). CEQA: Mitigated Negative Declaration. SNI: Gateway East. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1). PDC 04-033 - District 5**

## 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-04-033, 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 20, 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 Campos, seconded by Council Member Reed, and carried unanimously, the recommendation of the Planning Commission, and the Planning Director was approved, and Ordinance No. 27283, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Northwesterly Terminus of South 34th Street (3321 S. 34th Street) to A(PD) Planned Development Zoning District", was passed for publication. (11-0).

- 11.8 (a) **Public Hearing on and consideration of approval of an ordinance on Planned Development Rezoning from A(PD) Planned Development District to A(PD) Planned Development Zoning District, to allow 6 single-family detached residential units on a 0.81 gross acre site, located at/on the southwest corner of Kirk Road and Salisbury Drive. (Iranian Christian Church, Owner). CEQA: Mitigated Negative Declaration.**  
**PDC 03-105 - District 9**
- (b) **Public Hearing on and consideration of adoption of a resolution on Planned Development Permit to allow the construction of 6 single-family detached residential units, located on the southwest corner of Kirk Road and Salisbury Drive, in the A(PD) Planned Development Zoning District on a .81-acre site. (Iranian Christian Church, Owner). CEQA: Mitigated Negative Declaration.**  
**PD04-047 - District 9**
- (c) **Public Hearing on and consideration of adoption of a resolution on Planned Tentative Map Permit to reconfigure 2 parcels into 6 lots for single-family detached residential uses, located on the southwest corner of Kirk Road and Salisbury Drive, in the A(PD) Planned Development Zoning District on a .81-acre site. (Iranian Christian Church, Owner). CEQA: Mitigated Negative Declaration.**  
**PT04-059 - District 9**
- Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1).**

## 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-03-105, PD04-047, and PT04-059, dated October 21, 2004, recommending approval of an ordinance on the Planned Development Rezoning, Planned Development Permit, and Planned Tentative Map Permit. (2) Memorandum from Secretary of Planning Commission Stephen Haase, dated October 20, 2004, transmitting the Planning Commission recommendation. (3) Proofs of Publications of Notices of Public Hearings, executed on October 15, and October 25, 2004 submitted by the City Clerk.

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

Action: Upon motion by Council Member Chirco, seconded by Council Member Reed, and carried unanimously, the recommendation of the Planning Commission, and the Planning Director was approved, Ordinance No. 27284, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Southwest Corner of Kirk Road and Salisbury Drive from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District", was passed for publication; Resolution No. 72385, 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 the Development of Six (6) Single Family Detached Residences on Individual Lots"; and Resolution No. 72386, 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. (11-0).

## 11.9 **Public Hearing on and consideration of approval of an ordinance on Conforming Conventional Rezoning from R-1-2 Residential Zoning District to R-1-5 Residential Zoning District to allow residential uses on a 1.05 gross acre site, located at/on the west end of Peligrino Way, approximately 150 feet northerly of Dry Creek Road (1726 Peregrino Way). (West Valley Financial Group Inc., Owner). CEQA: Resolution No. 65459.** **C04-084 - District 6**

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on October 22, 2004, submitted by the City Clerk.

Action: Dropped.

- 11.10 Public Hearing on and consideration of approval of an ordinance on Planned Development Rezoning from R-1-8 District to A(PD) District to allow construction on six single-family detached Residences on a 0.73 gross acre site, located between Mount Pleasant Road and Mount Kenya Drive, approximately 250 feet northerly of Marten Avenue (1795 Mount Pleasant Road). (Norman C. Robbins, Calandev, LLC, Owner/Developer). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend denial (4-2-1).**

**(Continued from 10/5/04, Item 11.2)**

**PDC04-016 - District 5**

Documents Filed: (1) Memorandum from Council Member Campos, dated November 9, 2004, recommending approval of the proposed rezoning. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC-04-040, dated October 21, 2004, recommending denial of an ordinance on the Planned Development Rezoning. (3) Memorandum from Secretary of Planning Commission Stephen Haase, dated October 29, 2004, transmitting the Planning Commission recommendation. (4) Proof of Publication of Notice of Public Hearing, executed on October 15, and October 25, 2004 submitted by the City Clerk.

Public Comment: Mayor Gonzales opened the public hearing on the Planned Development Rezoning of the subject property. In support of the project was Joseph Louis, Louis Engineering Corporation.

Action: Upon motion by Council Member Campos, seconded by Council Member Reed, and carried, with Council Member Cortese voting no, expressing agreement with the Planning Director and the Planning Commission recommendation of denial, and Ordinance No. 27285, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated Between Mount Pleasant Road and Mount Kenya Drive, Approximately 250 Feet Northerly of Marten Avenue (1795 Mount Pleasant Road) to A(PD) Planned Development Zoning", was passed for publication. (10-1. Noes: Cortese.)

- 11.11 Public Hearing on and consideration of approval of an ordinance on Planned Development Rezoning from A-Agricultural Zoning District and R-1-5 Residence Zoning District to A(PD) Planned Development Zoning District, to allow up to 15 single-family detached residences on a 2.25 gross acre site, located on the southwest corner of Story Road and Clayton Road (Davis Jim W and Janet M, Trustee, Echavarria Ernest J and Cecilia, Echavarria Ernest, Owners; DKB Homes, Developer). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1).**

**PDC04-026 - District 5**

## 11.11 (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC03-026, dated October 21, 2004, recommending approval of an ordinance on the Planned Development Rezoning. (2) Memorandum from Secretary of Planning Commission Stephen Haase, dated October 28, 2004, transmitting the Planning Commission recommendation. (3) Proofs of Publications of Notices of Public Hearings, executed on October 15, and October 25, 2004 submitted by the City Clerk.

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

Action: Upon motion by Council Member Campos, seconded by Council Member Reed, and carried unanimously, the recommendation of the Planning Commission, and the Planning Director was approved, Ordinance No. 27286, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Southwest Corner of Story Road and Clayton Road to A(PD) Planned Development Zoning District", was passed for publication. (11-0).

## OPEN FORUM

- (1) Daniel McCall provided personal observations regarding Council's recent actions relating to coyotes in the Almaden Valley, the California Governor, and medical marijuana.

## ADJOURNMENT

The Council of the City of San José was adjourned in memory of Dave McKay, a compassionate community leader.

The Council of the City of San José was adjourned at 7:37 p.m.

**RON GONZALES, MAYOR**

**ATTEST:**

**LEE PRICE, CMC, CITY CLERK**

smd/11/9/04min