



CITY OF SAN JOSÉ, CALIFORNIA

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, OCTOBER 18, 2005

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

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

Absent: Council Members: None.

Upon motion unanimously adopted, the City Council recessed to Closed Session at 9:35 a.m. in Room T1841 to (A) to confer with Legal Counsel regarding anticipated litigation (a) of two matters where there is significant exposure to litigation pursuant to subsection (c) of Section 54956.9 of the Government Code.

By unanimous consent, Council reconvened from Closed Session and recessed at 10:45 a.m. and reconvened at 1:32 p.m. in Council Chambers, City Hall.

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

Absent: Council Members: None.

INVOCATION (DISTRICT 9)

Union Middle School Music Program, under the direction of Mr. Chris Kay delivered a performance from Sohyun Ahn, Simone Horne, Emily Stuart and Whitney Jones.

PLEDGE OF ALLEGIANCE

Mayor Gonzales led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Chavez, seconded by Council Member Camops, and unanimously carried, the Order of the Day and the Amended Agenda were approved, with a deferral of Item 11.1(e) to November 15, 2005, requested by Council Member Yeager. (10-0-1). Absent: Gonzales.

CEREMONIAL ITEMS

- 1.1 Presentation of a commendation honoring Leigh Weimers, columnist for the San José Mercury News, for his outstanding career in journalism and extensive community involvement. (Chavez)
(Deferred from 10/4/05 – Item 1.7)**

Action: Mayor Gonzales and Vice Mayor Chavez presented a commendation honoring Leigh Weimers, columnist for the San Jose Mercury News, for his outstanding career in journalism and extensive community involvement.

- 1.2 Presentation of a commendation to Mexicana Airlines. (Airport)**

Action: Mayor Gonzales, Council Member Reed, and Director of Economic Development Paul Krutko presented a commendation to Miguel Duarte of Mexicana Airlines.

- 1.5 Presentation of a commendation to Symphony Silicon Valley in recognition of the organization's invaluable contributions to the cultural life of San José and to commemorate the start of the 2005-2006 symphony season. (Yeager)**

Action: Council Member Yeager joined Mayor Gonzales to present a commendation to Symphony Silicon Valley recognizing the organization's invaluable contributions to the cultural life of San Jose and to commemorate the start of the 2005-2006 symphony season.

- 1.6 Presentation of a commendation to United Shredding Services of San José for their service to the community and support of the American Heart Association. (Cortese)**

Action: This item was dropped.

- 1.7 Presentation of a commendation to Lenders for Community Development on the occasion of their 10th Anniversary. (Cortese)**

Action: Council Member Cortese presented a commendation to Lenders for Community Development on the occasion of their 10th Anniversary.

- 1.8 Presentation of a commendation to Meril Smith for his contributions to the community's youth through Adopt-A-College Program. (Williams)
(Rules Committee referral 10/12/05)**

Action: Mayor Gonzales and Council Member Williams presented a commendation to Meril Smith for his contributions to the Edenvale community's youth through Adopt-A-College Program.

- 1.9 Presentation of a commendation to Westmont High School for raising over \$1,000.00 and collecting over 1,000 bags of clothes, food and other items for the victims off Hurricane Katrina. (LeZotte)
(Rules Committee referral 10/12/05)**

Action: This item was deferred to a future date.

- 1.10 Presentation of a commendation to Viet Heritage Society, United Vietnamese Americans, and BeyondFun for their fundraising efforts for victims of Hurricanes Katrina and Rita. (Cortese)**

Action: Council Member Cortese and Council Member Nguyen presented a commendation to Viet Heritage Society, United Vietnamese Americans and BeyondFun for their fundraising efforts for victims of Hurricane Katrina and Rita.

- 1.11 Presentation of a proclamation celebrating the success of the Leukemia and Lymphoma Society in fighting blood cancers and encouraging residents of San José to become involved in the “Light the Night Walk” on October 22, 2005, at Cesar Chavez Plaza. (Chavez)**

Action: Mayor Gonzales and Vice Mayor Chavez presented a proclamation celebrating the success of the Delora Wiley of the Leukemia and Lymphoma Society in fighting blood cancers and encouraging residents of San Jose to become involved in the “Light the Night Walk” on October 22, 2005, at Cesar Chavez Plaza.

Mayor Gonzales left the meeting at 2:07 p.m. Vice Mayor Chavez presided.

CONSENT CALENDAR

Upon motion by Council Member Reed, seconded by Council Member Pyle and unanimously carried, the Consent Calendar was approved as indicated with the exception of, Item 2.8; pulled by Council Member Cortese. (10-0-1). Absent: Gonzales.

2.1 Approval of minutes:

- (a) Regular minutes of April 5, 2005.**
- (b) Regular minutes of April 12, 2005.**
- (c) Joint Council/Financing Authority minutes of April 12, 2005.**
- (d) Regular minutes of April 19, 2005.**
- (e) Regular minutes of April 26, 2005.**

Documents Filed: Regular minutes of April 5, 12, 19, and 26, 2005 and Joint Council/Financing Authority minutes of April 12, 2005.

Action: The minutes were approved. (10-0-1). Absent: Gonzales.

2.2 Final adoption of ordinances:

- (a) **ORD. NO. 27554 – Amends Section 4.24.010 of Chapter 4.24 of Title 4 of the San José Municipal Code to authorize the City Attorney to compromise and settle claims related to sanitary sewer backup intrusions in which the amount to be paid by the City does not exceed twenty-five thousand dollars (\$25,000). [Referred from 10/4/05 – Item 2.2(e)]**

Documents Filed: Proof of publication of title of Ordinance No. 27554 executed on October 4, 2005, submitted by the City Clerk.

Action: Ordinance No. 27554 was adopted. (10-0-1). Absent: Gonzales.

- (b) **ORD. NO. 27562 – Establishes Combination Rule 20A/In-Lieu Fee (Rules 20B) Underground Utility District on Taylor Street from First Street to Tenth Street; Jackson Street from Seventh Street to Ninth Street; Seventh Street from Jackson Street to Taylor Street; and Sixth Street from Taylor Street to Empire Street. [Referred from 10/4/05 – Item 2.2(f)]**

Documents Filed: Proof of publication of title of Ordinance No. 27562 executed on October 4, 2005, submitted by the City Clerk.

Action: Ordinance No. 27562 was adopted. (10-0-1). Absent: Gonzales.

- (c) **ORD. NO. 27575 – Rezoning certain real property situated on the north side of Lincoln Court approximately 200 feet west of Terra Bella Avenue to A(PD) Planned Development Zoning District. PDC05-067**

Documents Filed: Proof of publication of title of Ordinance No. 27575 executed on October 11, 2005, submitted by the City Clerk.

Action: Ordinance No. 27575 was adopted. (10-0-1). Absent: Gonzales.

- (d) **ORD. NO. 27576 – Rezoning certain real property situated on the north side of George Street, approximately 140 feet easterly of Guadalupe Parkway to A(PD) Planned Development Zoning District. PDC05-072 and PD05-049**

Documents Filed: Proof of publication of title of Ordinance No. 27576 executed on October 11, 2005, submitted by the City Clerk.

Action: Ordinance No. 27576 was adopted. (10-0-1). Absent: Gonzales.

- 2.2 (e) **ORD. NO. 27577 – Rezoning certain real property situated on the northwest corner of N. 2nd Street and Devine Street to DC Downtown Primary Commercial Rezoning. C04-067**

Documents Filed: Proof of publication of title of Ordinance No. 27577 executed on October 11, 2005, submitted by the City Clerk.

Action: Ordinance No. 27577 was adopted. (10-0-1). Absent: Gonzales.

- (f) **ORD. NO. 27578 – Rezoning certain real property situated at the south side of Stevens Creek Boulevard between Ardis and South Henry Avenues to CN(PD) Planned Development Zoning District. PDC03-053**

Documents Filed: Proof of publication of title of Ordinance No. 27578 executed on October 11, 2005, submitted by the City Clerk.

Action: Ordinance No. 27578 was adopted. (10-0-1). Absent: Gonzales.

- (g) **ORD. NO. 27579 – Rezoning certain real property situated at the southwest corner of Ardis Avenue and Stevens Creek Boulevard to A(PD) Planned Development Zoning District. PDC05-028**

Documents Filed: Proof of publication of title of Ordinance No. 27579 executed on October 11, 2005, submitted by the City Clerk.

Action: Ordinance No. 27579 was adopted. (10-0-1). Absent: Gonzales.

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

- (a) **Negotiate and execute an agreement with Block 3 Development Partners LLC, assignee of CIM California Urban RE Fund LGP, LLC (“Developer”), in an amount not to exceed \$122,104 for the City’s Office of Cultural Affairs to administer a public art project at Block Three, Phase 1 in downtown San José; and**
- (b) **Negotiate and execute an amendment to the agreement between Developer and City to reflect an increase in the public art budget allocated to Phase 1 of Block Three, if the total estimated budget for the Block Three, Phase 1 Project shows an increase of more than 10% at the design development stage.**

CEQA: Resolution No. 71039.1. Council District 3. (Economic Development) (Deferred from 10/4/05 – Item 2.7)

Documents Filed: None.

Action: This item was deferred to November 15, 2005.

- 2.4 Approval of a second amendment to the lease with Trans-Pacific Aviation Services for 701 square feet of office and storage space on the premises located at 1277 Airport Boulevard, to extend the term from November 1, 2005 through October 31, 2008, with annual revenue to the City of \$4,206. CEQA: Resolution Nos. 67380 and 71451, PP 05-178. (Airport)**

Documents Filed: Memorandum from Director of Aviation William F. Sherry, A.A.E, dated September 28, 2005, recommending approval of the second amendment.

Action: The amendment was approved. (10-0-1). Absent: Gonzales.

- 2.5 Adoption of a resolution authorizing the City Attorney to negotiate and execute a third amendment to the agreement with Richard Avelar & Associates for expert services, increasing compensation by \$75,000, for a total amount not to exceed \$175,000, and extending the term through December 31, 2006. CEQA: Not a Project. (City Attorney's Office)**

Documents Filed: Memorandum from City Attorney Rick Doyle, dated October 6, 2005, recommending adoption of the resolution.

Action: Resolution No. 72930, entitled: "A Resolution of the Council of the City of San José Authorizing the City Attorney to Negotiate and Execute a Third Amendment to the Agreement with Richard Avelar & Associates to Extend the Term Through December 31, 2006 and to Increase Compensation to a Total Amount Not to Exceed \$175,000", was adopted. (10-0-1). Absent: Gonzales.

- 2.6 Acceptance of the Office of the City Auditor's Report on Sales and Business Tax Audit Results for the Quarter Ended June 30, 2005. (City Auditor)**

Documents Filed: Report of the Sales and Business Tax Audit Results for the Quarter Ended June 30, 2005, dated September 27, 2005, from the Office of the City Auditor.

Action: The report was accepted. (10-0-1). Absent: Gonzales.

- 2.7 Adoption of a resolution authorizing the City Manager to negotiate and execute a second amendment to the Agreement with History San Jose for Phase III of the development of exhibitions for New City Hall, increasing compensation by \$20,000, from \$90,420 to a total amount not to exceed \$110,420, with no change to the term of the contract. CEQA: Resolution No. 68905. (Economic Development)**

Documents Filed: Memorandum from Director of Economic Development Paul Krutko, dated September 30, 2005, recommending approval of the second amendment. .

Action: Resolution No. 72931, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Second Amendment to the Agreement with History San José for Exhibitions at New City Hall for a Total Amount Not to Exceed \$110,420", was adopted. (10-0-1). Absent: Gonzales.

- 2.8 Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with the Santa Clara Valley Water District for cost sharing associated with implementation of water conservation programs in FY 2005-2006, under which the City will receive an amount not to exceed \$280,000 from the District, and the District will be paid an amount not to exceed \$460,136 by the City, for a net cost to the City of \$180,136. CEQA: Not a Project. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated September 28, 2005, recommending approval of the agreement.

Action: Resolution No. 72932, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with the Santa Clara Valley Water District for Cost Sharing Associated with Implementation of Water Conservation Programs in Fiscal Year 2005-2006 in a Net Cost to the City Not to Exceed \$180,136”, was adopted, with direction to staff to return to Council if City’s portion of agreement needs to be increased. (10-0-1). Absent: Gonzales.

- 2.9 Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 2005-2006 #5 and authorization for the Director of Finance to execute the purchase orders. CEQA: See memo for CEQA designation(s). (Finance)**

Documents Filed: Memorandum from Finance Director Scott P. Johnson, dated September 28, 2005, recommending approval of the award.

Action: The purchase orders were approved. (10-0-1). Absent: Gonzales.

- 2.10 Adoption of a resolution authorizing the Director of General Services to prepare, execute and record a corrected deed to Richard Andrew Saso II and Kristi Saso for property located at 750 Leigh Avenue. CEQA: Not a Project. (General Services)**

Documents Filed: Memorandum from Interim Director of General Services Peter Jensen, dated September 28, 2005, recommending adoption of the resolution.

Action: Resolution No. 72933, entitled: “A Resolution of the Council of the City of San José Authorizing the Director of General Services to Prepare, Execute, and Record a Corrected Deed to Richard and Kristi Saso for Property Located at 750 Leigh Avenue”, was adopted. (10-0-1). Absent: Gonzales.

- 2.11 Approval of nominations to the San José Silicon Valley Workforce Investment Network Board of Directors. (Mayor)**

Documents Filed: Memorandum from Mayor Gonzales, dated September 30, 2005, recommending approval of the nominations.

Action: The nominations were approved. (10-0-1). Absent: Gonzales.

- 2.12 Adoption of a resolution authorizing the City Manager to apply for, accept, and negotiate and execute a State of California Proposition 50 grant for an amount not to exceed \$1,200,000 for the Los Gatos Creek Trail Reach 4 (Lincoln Avenue to Auzerais Avenue) project. CEQA: Mitigated Negative Declaration, PP04-01-014. Council District 6. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara L. Hensley, dated September 30, 2005, recommending adoption of the resolution.

Action: Resolution No. 72934, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Apply For, Accept, Negotiate and Execute a State of California Proposition 50 Grant for an Amount Not to Exceed \$1,200,000 for the Los Gatos Creek Trail Reach 4 (Lincoln Avenue to Auzerais Avenue) Project”, was adopted. (10-0-1). Absent: Gonzales.

- 2.13 Adoption of a resolution ordering the reorganization of territory designated as Cambrian No. 34 which involves the annexation to the City of San José of 0.70 acres of land more or less, located on the east side of Bercau Lane, approximately 450 feet southerly of Camden Avenue, and adjacent to the City of San José annexations Cambrian Nos. 27 and 8 and the detachment of the same from Central Fire Protection, Area No. 01 (Library Services) County Services, County Lighting County Services and West Valley Sanitation. CEQA: Resolution No. 65459, File No. C05-044. Council District 9. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Stephen M. Haase, dated September 28, 2005, recommending adoption of the resolution.

Action: Resolution No. 72935, entitled: “A Resolution of the Council of the City of San José Ordering the Reorganization of Certain Un-Inhabited Territory Designated as Cambrian No. 34, Subject to Liability for General Indebtedness of the City”, was adopted. (10-0-1). Absent: Gonzales.

- 2.14 Report on bids and award of contract for the State Route 101/Bailey Avenue Interchange Riparian Mitigation Project to the low bidder, Watkin and Bortolussi, Inc., in the amount of \$327,051, and approval of a contingency in the amount of \$33,000. CEQA: Resolution No. 68705. Council District 2. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated September 28, 2005, recommending approval of the report on bids and award.

Action: The report on bids and award were approved. (10-0-1). Absent: Gonzales.

2.15 Adoption of a resolution summarily vacating the Public Service Easement that was reserved with the vacation of a portion of Ninth Street (Resolution No. 50932) and located along the southside of Hedding Street at Ninth Street. CEQA: Mitigated Negative Declaration, PDC04-007. Council District 3. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated September 28, 2005, recommending adoption of the resolution.

Action: Resolution No. 72936, entitled: ‘A Resolution of the Council of the City of San José Summarily Vacating the Public Service Easement at Ninth and Hedding Streets’, was adopted. (10-0-1). Absent: Gonzales.

STRATEGIC SUPPORT SERVICES

3.2 Report of the Rules Committee – September 28, 2005
Vice Mayor Chavez, Chair

Documents Filed: The Rules Committee report of September 28, 2005.

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting
- (b) City Council
 - (1) Review October 11, 2005 Council Agenda
MEETING CANCELLED
 - (a) Adds to the October 11, 2005 Draft Agenda
MEETING CANCELLED
 - (2) Add New Items to October 4, 2005 Agenda
The Committee recommended six additions to the October 4, 2005 Agenda.
 - (3) List of Reports Outstanding. Attachment: Report from the City Manager’s Office, dated September 28, 2005, listing eight staff reports outstanding for the October 4, 2005 City Council meeting.

The Committee noted and filed the City Manager’s Report.
- (c) Legislative Update
 - (1) State
 - (a) 2005 League of California Cities Resolutions
HEARD BY COUNCIL ON 10/4/05
 - (2) Federal
There was no report.

3.2 (Cont'd.)

- (d) Meeting Schedules
There were none.
- (e) The Public Record. Attachment: Memorandum from the City Clerk Lee Price, dated September 22, 2005, transmitting items filed for the Public Record for the period September 14-20, 2005.

The Committee noted and filed the Public Record.

- (f) Appointments to Boards, Commissions and Committees
There were none.
- (g) Rules Committee Reviews, Recommendations and Approvals. Attachment:
 - (1) Approval of Travel by Vice Mayor Chavez to Denver, Colorado, October 12-14, 2005, to attend the San José Silicon Valley Chamber of Commerce/City of San José City to City Trip. Source of Funds: Mayor and City Council Travel Fund. Attachment: Memorandum from Vice Mayor Chavez, dated September 14, 2005, requesting authorization to travel to Denver, Colorado on October 12-14, 2005, to attend the San José Silicon Valley Chamber of Commerce City Trip 2005. Source of Funds: Mayor & Council Travel Fund.

The Committee recommended approval to travel and use of the Mayor and Council Travel Fund.

- (2) Approval of request to use District 5 Special Events Account to Support the Prusch Farm Park Foundation's 10th Annual Harvest Festival. Attachment: Memorandum from Council Member Campos, dated September 19, 2005, regarding the Tenth Annual Harvest Festival.

The Committee recommended authorization of the transfer of \$1,500.00 from the District Five Special Event Account to the Prusch Farm Park Foundation to support the Tenth Annual Harvest Festival.

- (3) Revision of Definition of Surviving Child Follow-Up.

The Committee deferred this item to the 10-5-05 Rules Committee meeting.

3.2(g) (Cont'd.)

- (4) Allocation Request from the Community Gift Trust Fund. Attachment: Memorandum from Council Member Nguyen, dated September 23, 2005, regarding an Allocation Request from the Community Gift Trust Fund.

The Committee recommended authorization of the allocation of \$1,500 from District 7's portion of the Community Gift Trust Fund for payment to the Franklin McKinley Education Foundation for miscellaneous cost associated with the annual "Family Day" activities on October 2, 2005.

- (h) Open Forum
Bill Chew said that people watching the Committee may not understand what this Committee does. He also asked if there is a feedback forum for comments on the web broadcasting.
- (i) Adjournment
The meeting adjourned at 2:22 p.m.

Action: Upon motion by Council Member Campos, seconded by Council Member Pyle, and unanimously carried, the Rules Committee report and actions of September 28, 2005 was accepted. (10-0-1). Absent: Gonzales.

3.4 Approval of actions regarding the 2004-2005 Annual Report.

- (a) **Acceptance of the 2004-2005 City Manager's Annual Report of the Finances and Administrative Activities of the City of San José, pursuant to the City Charter Section 701(f).**
- (b) **Adoption of appropriation ordinance and funding sources resolution amendments in various operating and capital funds to implement 2004-2005 Annual Report recommendations and provide appropriate technical adjustments.**

CEQA: Not a Project. (City Manager's Office)

Documents Filed: Hardcopy of the 2004-2005 Annual Report, dated September 2005, from the Office of the City Manager.

Discussion: Budget Director Larry D. Lisenbee presented a brief overview of the 2004-2005 Annual Report.

Lengthy Council discussion and questions to staff ensued.

Council Member Cortese asked staff to provide a list of capital projects funded by the General Fund.

3.4 (Cont'd.)

Vice Mayor Chavez requested staff ensure that land use strategies are embedded in the budget process, provide a list of General Fund Capital Projects, consider affected populations in the next budget cycle, study impacts of the 911 fees, look further into the \$205,000 needed for the Gardner Community Center, and for staff to ensure there is a follow-up on the state legislature's "true-up" issue

Public Comments: Rudy Martinez, Gardner Advisory Council, inquires about potential capital improvements to the Gardner Center utilizing remaining funding that had been allocated to the original bond project. He expressed the need for repairs and security improvements at the center.

Action: Upon motion by Council Member Yeager, seconded by Vice Mayor Chavez, and unanimously carried, the report was accepted and Ordinance No. 27580, entitled: "An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Moneys in the Various Funds to Implement 2004-2005 Annual Report Recommendations and Make Appropriate Technical Adjustments; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", and Resolution No. 72937, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 72762 to Implement the 2004-2005 Annual Report Recommendations and Make Appropriate Technical Adjustments to Adjust Revenues in Various Operating Funds", were adopted, with direction to staff to provide a list of capital projects funded by the General Fund, ensure that land use strategies are embedded in the budget process, provide a list of General Fund Capital Projects, consider affected populations in the next budget cycle, study impacts of the 911 fees, look further into the \$205,000 needed for the Gardner Community Center, and for staff to ensure there is a follow-up on the state legislature's "true-up" issue. (10-0-1). Absent: Gonzales.

3.5 **Approval of the purchase of 78 new Ford Police Special Service vehicles, utilizing the State of California, Department of General Services, Special Service Vehicles Contract from Folsom Lake Ford, for a total amount not to exceed \$1,995,998.93, including warranty, tax, and freight, and authorize the Director of Finance to execute the purchase order. CEQA: Not a Project. (Finance)**

Documents Filed: Memorandum from Finance Director Scott P. Johnson, dated October 5, 2005, recommending approval of the purchase.

Public Comments: Daniel McCall spoke off-topic.

Discussion: Vice Mayor Chavez requested staff to survey local auto sale dealers to get feedback on their ability to competitively bid on public safety vehicles and to report back to the Driving a Strong Economy Committee.

Action: Upon motion by Council Member Williams, seconded by Council Member Yeager, and unanimously carried, the purchase was approved with direction to staff to survey local auto sale dealers to get feedback on their ability to competitively bid on public safety vehicles and to report back to the Driving a Strong Economy Committee.

COMMUNITY & ECONOMIC DEVELOPMENT

4.3 Direction to staff to issue an RFP to select a Fund Manager to establish and manage an Economic Development Catalyst Fund. CEQA: Not a Project. (Economic Development)

Documents Filed: Memorandum from Director of Economic Development Paul Krutko, dated October 3, 2005, recommending direction to staff. .

Action: Upon motion by Council Member Pyle, seconded by Council Member Campos, and unanimously carried, Direction to staff was approved. (10-0-1). Absent: Gonzales.

4.4 Acceptance of the Progress Report on the operations of the Dolce Hayes Mansion for the Fiscal Year ending June 30, 2005. CEQA: Not a Project. (Finance)

Documents Filed: Memorandum from Finance Director Scott P. Johnson, dated September 29, 2005, recommending acceptance of the report.

Discussion: Deputy City Manager Kay Winer and Finance Director Scott P. Johnson presented an overview presentation on the Dolce Hayes Mansion Progress Report.

Council Member LeZotte requested staff address questions raised by Council, as follows: “How does Hayes Mansion compare to similar properties?” and “What is the average daily room rates of local hotels?”.

Vice Mayor Chavez requested staff provide an informational memo outlining the status of where the Hayes Mansion is today versus where they were earlier.

Council Member Williams asked staff to review option for reducing the existing debt by Hayes Mansion and to return by March 2006 or earlier with a status update on the issue.

Action: The report was accepted with direction to staff to review option for reducing the existing debt by Hayes Mansion and to return by March 2006 or earlier with a status update on the issue, to address questions raised by Council, as follows: “How does Hayes Mansion compare to similar properties?” and “What is the average daily room rates of local hotels?”, and to provide an informational memo outlining the status of where the Hayes Mansion is today versus where they were earlier. (10-0-1). Absent: Gonzales.

4.5 Approval of agreements related to the Habitat Conservation Plan.

- (a) **Approval of the Planning Agreement for the Santa Clara Valley Habitat Conservation Plan (HCP)/Natural Community Conservation Plan (NCCP) for signature at the public signing ceremony planned for October 20, if there are no substantive changes to the document made between this Council action and the signing ceremony; and**
 - (b) **Approval of Non-Voting Partner Agreements with the City of Gilroy and the City of Morgan Hill regarding preparation of the Santa Clara Valley Habitat Conservation Plan and Related Environmental Document.**
- CEQA: Not a Project. (Planning, Building and Code Enforcement).**

4.5 (Cont'd.)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Stephen M. Haase, dated September 29, 2005, recommending approval of the agreements.

Action: Upon motion by Council Member Williams, seconded by Council Member Pyle, and unanimously carried, the agreements were approved. (10-0-1). Absent: Gonzales.

TRANSPORTATION & AVIATION SERVICES

6.1 Report of the Building Better Transportation Committee – October 3, 2005 Council Member Campos, Chair

Documents Filed: None.

- (a) Expansion and Improvement of Transit and Transportation Systems
 - (1) Report and follow-up discussion on the Coleman 880 Interchange Landscape
SEE ITEM 6.3 FOR COUNCIL ACTION TO BE TAKEN
- (b) Traffic Relief/Safe Streets
 - (1) Presentation and discussion of Transportation Incident Management Center Proposed Relocation
- (c) Support Smart Growth
 - (1) No items.
- (d) Regional Relationships/Funding/Policy
 - (1) Status Report of the Capitol Expressway Relinquishment Agreement
- (e) Oral Petitions
- (f) Adjournment

Public Comments: William Garbett spoke in opposition of Item (a)(1) - Report and follow-up discussion on the Coleman 880 Interchange Landscape.

Action: Staff directed to expand the minutes to include more discussion on agenda items (a)(1) and (b)(1), and to return the minutes to Council on October 25, 2005, and further, to refer back to the Building Better Transportation Committee the Capitol Expressway item (d)(1), and also to involve stakeholders. (10-0-1). Absent: Gonzales.

6.2 Approval to reject all bids for the Norman Y. Mineta San José International Airport- USO/Parking Revenue Control Modular Offices (Revised) contract. CEQA: Resolution Nos. 67380 and 71451, PP 05-075. (Public Works/Airport) (Deferred from 9/27/05 – Item 6.2 and 10/4/05 – Item 6.3)

6.2 (Cont'd.)

Documents Filed: (1) Supplemental memorandum from Director of Public Works Katy Allen and Director of Aviation William F. Sherry, A.A.E, dated October 14, 2005, changing the recommendation based upon new information to approval to reject all bids. (2) Memorandum from Director of Public Works Katy Allen and Director of Aviation William F. Sherry, A.A.E, dated August 10, 2005, recommending approval of the report on bids and award of contract.

Action: Upon motion by Council Member LeZotte, seconded by Council Member Reed and unanimously carried, the bids were rejected. (10-0-1). Absent: Gonzales.

**6.3 Adoption of a resolution authorizing the City Manager to negotiate and execute an amendment to the agreement with the Santa Clara Valley Transportation Authority related to the I-880/Coleman Avenue Interchange Project to redesign the landscaping plans consistent with the Airport Landscape Master Plan, at a cost not to exceed \$400,000 and to be funded by cost savings within the original agreement. (Transportation)
[Building Better Transportation Committee referral 10/3/05, Item 6.1(d)]**

Documents Filed: None.

Action: This item was deferred to November 1, 2005.

ENVIRONMENTAL & UTILITY SERVICES

7.1 Public Hearing and approval of actions related to Recycle Plus Rate Increases and Commercial Franchise Fees.

- (a) **Public Hearing on the Recycle Plus program rate increases effective August 1, 2005, and on potential increases for Fiscal Years 2006-07 and 2007-08.**
- (b) **Adoption of a resolution revising Recycle Plus rates for integrated waste management services beginning August 1, 2005, increasing single-family rates by approximately 3% and multi-family rates by approximately 2%.**

**CEQA: Not a Project. (City Manager's Office/Environmental Services)
[Continued from 6/21/05 - Item 10.1 (a) and (b) and 8/30/05 – Item 7.1]**

Documents Filed: None.

Action: This item was deferred to January 2006.

7.2 Adoption of a resolution approving a Council Policy on Post-Construction Hydromodification Management to require the management of development-related increases in peak runoff flow, runoff volume and duration, where such hydromodification is likely to cause increased erosion, silt pollutant generation or other impacts to beneficial uses of local rivers, streams and creeks. CEQA: Exempt, File No. PP 05-175. (Planning, Building and Code Enforcement/Environmental Services/Public Works).

7.2 (Cont'd.)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Stephen M. Haase, Director of Public Works Katy Allen, and Director of Environmental Services John Stufflebean, dated September 28, 2005, recommending adoption of the Council Policy.

Action: Upon motion by Council Member Reed, seconded by Council Member Pyle, and unanimously carried, Resolution No. 72938, entitled: "A Resolution of the Council of the City of San José Approving a Council Policy on Post-Construction Hydromodification Management", was adopted. (10-0-1). Absent: Gonzales.

OPEN FORUM

- (1) Ray Shavazand expressed an interest in amending his restaurant's conditional use permit to increase operating hours.
- (2) Carol Slain voiced concerns regarding homeless loitering at VTA lightrail stations.
- (3) Daniel McCall commented on medical marijuana.
- (4) Robert Apgar spoke on a variety of personal issues and provided personal opinions on religion and government.

RECESS/RECONVENE

The City Council recessed at 5:06 p.m. and reconvened at 7:04 p.m. Council Chambers, City Hall.

Present: Council Members: Campos, Chirco, Cortese, LeZotte, Pyle, Reed, Williams, Yeager; Gonzales.

Absent: Council Members: Chavez (Excused).

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

CEREMONIAL ITEMS

1.3 **Presentation of a commendation to Girl Scout Troop 1450 for generously sending 20 cartons of Girl Scout Cookies to troops serving in Baghdad, Iraq. (LeZotte)** **HEARD IN THE EVENING**

Action: Mayor Gonzales and Council Member LeZotte presented a commendation to Girl Scout Troop 1450 for generously sending 20 cartons of Girl Scout Cookies to troops serving in Baghdad, Iraq.

**1.4 Presentation of a commendation to Charlene Arvizu, Berryessa Union School District in celebration of receiving the Teach of the Year Award. (Reed)
HEARD IN THE EVENING**

Action: Mayor Gonzales and Council Member Reed presented a commendation to Charlene Arvizu, Berryessa Union School District in celebration of receiving the Teacher of the Year Award.

GENERAL PLAN PUBLIC HEARINGS

- 10.2 Public Hearing on Tentative approval of General Plan Amendment request to change the Land Use/Transportation Diagram designation from Medium Density Residential (8-16 DU/AC) to Medium High Density Residential (12-25 DU/AC) and addition of a Floating Park designation. (Grace R. Nola Trustee & et al, Owner/City of San Jose, Applicant). CEQA: Resolution to be adopted. Director of Planning, Building and Code Enforcement recommends approval of a General Plan Amendment to change the Land Use/Transportation Diagram designation from Medium Density Residential (8-16 DU/AC) to Medium High Density Residential (12-25 DU/AC) with no Floating Park designation on a 3.7-acre site. Planning Commission recommends approval of a General Plan Amendment to change the Land Use/Transportation Diagram designation from Medium Density Residential (8-16 DU/AC) to Medium High Density Residential (12-25 DU/AC) with the addition of Floating Park designation on a 3.7-acre site (7-0-0).
GP03-04-07 - District 4
(Continued from 12/7/04 – Item 12.2)**

Documents Filed: (1) Memorandum from Council Member Reed, dated October 17, 2005, recommending no changes to the General Plan. (2) Memorandum from Secretary of the Planning Commission Stephen Haase, dated September 29, 2005, recommending adoption of the amendment. (3) Department of Planning, Building, and Code Enforcement Staff Report on Project File Number GP03-04-07, dated November 12, 2004, recommending approval of the amendment.

Public Comments: Mike Flaughner and Kerri Hamilton spoke in support of the amendment.

Action: Upon motion by Council Member Reed, seconded by Council Member Cortese, and unanimously carried, Council approved a memorandum from Council Member Reed, dated October 17, 2005, recommending No Change to the General Plan. (10-0-1).
Absent: Chavez.

- 10.3 Public Hearing on Tentative Denial of General Plan Amendment request to change the Land Use/Transportation Diagram designation from Industrial Park with Mixed Industrial Overlay to Medium High Density Residential (12-25 DU/AC) for property located on the northwest corner of the intersection of Old Oakland Road and Rock Avenue (2059 Oakland Road) on approximately a 4.7 acre site (Ernest E. Pestana, Owner/Bob Hencken, Summerhill Homes, Applicant). CEQA: Mitigated Negative Declaration, GP05-04-01. Director of Planning, Building and Code Enforcement recommends denial of a General Plan Amendment to change the Land Use/Transportation Diagram designation from Park with Mixed Industrial Overlay to Medium High Density Residential (12-25 DU/AC) on a 4.7-acre site. Planning Commission recommends approval of a General Plan Amendment to change the Land Use/Transportation Diagram designation from Park with Mixed Industrial Overlay to Medium High Density Residential (12-25 DU/AC) on a 4.7-acre site (5-2-0; Zito and Levy opposed).
GP05-04-01 - District 4**

Documents Filed: (1) Memorandum from Secretary of the Planning Commission Stephen Haase, dated September 30, 2005, recommending approval of the amendment. (2) Department of Planning, Building, and Code Enforcement Staff Report on Project File Number GP05-04-01, dated September 22, 2005, recommending approval of the amendment.

Public Comments: Joe Head, Applicant, presented an overview of the proposed amendment property.

Shiloh Ballard, Silicon Valley Leadership Group, spoke in support of the amendment.

Andrew Willeskie, Colliers Intl., spoke in opposition to the amendment.

Action: Upon motion by Council Member Reed, seconded by Council Member Cortese, and unanimously carried, the Planning Commission recommendation was tentatively approved. (10-1-1). Noes: LeZotte. Absent: Chavez.

- 10.4 (a) Public Hearing on Tentative Approval of General Plan Amendment request to change the Land Use/Transportation Diagram designation from Industrial Park to Medium High Density Residential (12-25 DU/AC) for property located on the northeast corner of Samaritan Drive (2039 Samaritan Drive) and Clydelle Avenue on approximately 12.4-acre site and Public Park and Open Space on a minimum of one acre. (Berg & Berg Developers, Owner/Bob Hencken, Summerhill Homes, Applicant). CEQA: Mitigated Negative Declaration, GP05-09-01. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval of a General Plan Amendment to change the Land Use/Transportation Diagram designation from Industrial Park to Medium High Density Residential (12-25 DU/AC) on approximately 12.4 acres and Public Park and Open Space on a minimum of one acre (7-0-0).
GP05-09-01 - District 9**

10.4(a)(Cont'd.)

Documents Filed: (1) Memorandum from Council Member Chirco, dated October 18, 2005, recommending approval of staff recommendation with direction to staff contained therein. (2) Supplemental memorandum from Secretary of the Planning Commission Stephen Haase, dated October 13, 2005, providing additional public comments that were received after September 29, 2005. (3) Memorandum from Secretary of the Planning Commission Stephen Haase, dated September 29, 2005, recommending adoption of the amendment and approval of the rezoning. (4) Department of Planning, Building, and Code Enforcement Staff Report on Project File Number GP05-09-01 and PDC05-036, dated September 21, 2005, recommending approval of the General Plan amendment and planned development rezoning. (5) Proof of publication of Notice of Public Hearing, executed on September 16, 2005, submitted by the City Clerk.

Discussion: City Attorney Rick Doyle stated they had received a letter from Whitward and Park, protesting the mitigated negative declaration in connection with this project, which was issued on August 25, 2005. The time to protest has expired, therefore the protest is not timely.

- (b) **Public Hearing on Planned Development Rezoning from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow up to 226 single-family detached and attached residences and to allow a minimum one-acre public park on approximately 12.4 gross-acre site. CEQA: Mitigated Negative Declaration, PDC05-036. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval of a Planned Development Rezoning from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow up to 226 single family detached and attached residences and to allow a minimum one-acre public park on approximately 12.4 gross-acre site (5-2-0; Zito and Levy opposed).
PDC05-036 - District 9
ITEM 11.5 HEARD UNDER 10.4(b)**

Documents Filed: See Item 10.4(a) for Documents Filed.

Public Comments: Shiloh Ballard, Robert Hansen, and Phil Quon spoke in support of the rezoning.

Bob Hencken, Paul Prickett, Rebecca Haggerty, David Groubert, Vince Finnato, Shelley Waddington, Richard Popejoy Jr., Elaine Cotton, Vicki Alexander, Cheryl Choate, Anita Flores, Mary Hathaway, Linda Simms, Frank Schueininger, and Kay Crehore spoke in opposition to the rezoning.

10.4(b)(Cont'd.)

Action: Upon motion by Council Member Chirco, seconded by Council Member Williams, and unanimously carried, Council approved a memorandum from Council Member Chirco, dated October 18, 2005, recommending approval of the staff recommendation on GP05-09-01 and PDC05-036 with the following recommendations: (a) Traffic Mitigation on Samaritan Drive – (1) Direct the Department of Transportation (DOT) and Department of Public Works (DPW) to work with the Applicant to design and install an enhanced pedestrian crosswalk to ensure safe passage across Samaritan Drive. Timeline for installation shall be included in the PD Permit to ensure safe passage by the earlier of park completion, or first occupancy of the Development; (2) Direct DOT and DPW to explore additional ways to reduce the pre-existing speed condition on Samaritan Drive including but not limited to: on-street parking on Samaritan Drive (both the north and south side of Samaritan); reduce speed limit from 35 MPH to 25 MPH; traffic calming measures along Samaritan as appropriate; and a study for a three way stop sign at Cooper and Samaritan Drive, or elsewhere along Samaritan Drive. (b) Parkland Dedication –(1) Direct Parks, Recreation, and Neighborhood Services (PRNS) to work with the community and the Applicant to design the 1.3 acre park with amenities; (2) Build out of the park to be completed no later than completion of the residential portion of the Development. (C) Neighborhood Traffic Calming – (1) Direct DPW and DOT to work with the community, and Santa Clara County Department of Roads and Airport, to study traffic conditions in the surrounding neighborhood and determine appropriate traffic calming measures to be implemented. Consensus-building effort shall include comprehensive neighborhood representation by all streets in the study area. The study area should include but not be limited to: Dickens, Cooper, Charlotte, Clydelle, Winton, and Carlton; (2) To the extent that there are measures that can be taken immediately to address cut-through traffic, speeding problems or pedestrian safety concerns in the study area that process is to begin as soon as possible. There may be issues that are better addressed at project completion and occupancy, and should be taken up at that time, and Ordinance No. 27581, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Northeast Corner of Samaritan Drive and Clydelle Avenue (2039 Samaritan Drive) to A(PD) Planned Development Zoning District”, was passed for publication and Staff/Planning Commission recommendation was tentatively approved. (10-0-1). Absent: Chavez.

10.5 Adoption of a resolution finally approving all General Plan amendment actions taken on October 18, 2005, and adoption of any related CEQA resolutions. (Planning, Building and Code Enforcement)

Documents Filed: Proof of publication of Notice of Public Hearing, executed on September 16, 2005, submitted by the City Clerk.

10.5 (Cont'd.)

Action: Upon motion by Council Member Reed, seconded by Council Member Yeager, and unanimously carried, Resolution No. 72939, entitled: "A Resolution of the Council of the City of San José Adopting Amendments to the San José 2020 General Plan Pursuant to Title 18 of the San José Municipal Code", was adopted. (10-0-1). Absent: Chavez.

PUBLIC HEARINGS

Upon motion by Council Member Campos, seconded by Council Member Williams and unanimously carried, the Consent Calendar was approved as indicated. (10-0-1). Absent: Chavez.

11.1 Public Hearings on Consent Calendar:

- (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 District to allow minor revisions (including rear and front setbacks and number of stories) to the development standards of a previously approved 12 unit single family attached project on a 0.54 gross acre site, located on the southeast corner of Alum Rock Avenue and McCreery Avenue (Tierra Encantada LP, Owner). SNI: Mayfair. CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval, with the modification that the maximum number of allowed stories be changed from two to three (6-0-1).**

PDC05-056 - District 5

[Continued from 10/4/05 – Item 11.1(c)]

Documents Filed: (1) Supplemental memorandum from Director of Planning, Building and Code Enforcement Stephen M. Haase, dated September 29, 2005, providing changes to the recommendation to approval of the proposed zoning as recommended by the Planning Commission, with the modification that the maximum number of allowed stories be changed from two to three. (2) Memorandum from Secretary of the Planning Commission Stephen Haase, dated September 15, 2005, recommending approval of the proposed rezoning. (3) Department of Planning, Building, and Code Enforcement Staff Report on Project File Number PDC05-056, dated September 7, 2005, recommending approval of the planned development rezoning. (4) Proof of publication of Notice of Public Hearing, executed on September 2, 2005, submitted by the City Clerk.

Action: Ordinance No. 27582 was passed for publication. (10-0-1). Absent: Chavez.

- (b) **Public Hearing on and consideration of approval of an ordinance on Planned Development Rezoning to rezone from R-1-8 Single Family Residence Zoning District to A(PD) Planned Development Zoning District to allow substandard lot sizes for two existing single family residences on a 0.2 gross acre site, located on the west side of Myrtle Street, approximately 200 feet northerly of West Hedding Street (927 Myrtle Street) (Judy C. McDowell, Trustee, Nguyen Nguyen Hoang and Hang Le, Owner). CEQA: Exempt. Director of Planning, Building and Code Enforcement recommend approval. No Planning Commission action required.**
PDC05-074 – District 6
[Continued from 10/4/05 – Item 11.1(d)]

Documents Filed: (1) Department of Planning, Building, and Code Enforcement Staff Report on Project File Number PDC05-074, dated September 28, 2005, recommending approval of the planned development rezoning.

Action: Ordinance No. 27583, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the West Side of Myrtle Street, Approximately 200 Feet Northerly of West Hedding Street (927 Myrtle Street) to A(PD) Planned Development Zoning District”, was passed for publication. (10-0-1). Absent: Chavez.

- (c) **Public Hearing on and consideration of approval of an ordinance on Conforming Rezoning from A Agriculture Zoning District and R-1-1 Residence Zoning District to District R-1-5 Residence Zoning District to allow residential uses on a 1.8 gross acre site, located at/on the northwest corner of Viewpoint Lane and Almaden Road (Asea Rose A Trustee, Ventling Ronald J Trustee, Morton Lane R, Grewal Jaspinder S and Sarbjeet K et al, Almaneih Naser Rahimi, Owner). CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1).**
C04-024 – District 10

Documents Filed: Proof of publication of Notice of Public Hearing, executed on September 20, 2005, submitted by the City Clerk.

Action: Ordinance No. 27584, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Northwest Corner of Viewpoint Lane and Almaden Road to R-1-5 Residence Zoning District”, was passed for publication. (10-0-1). Absent: Chavez.

- (d) **Public Hearing on and consideration of approval of an ordinance on Planning Director-Initiated Conventional Rezoning from CG Commercial General Zoning District to CP Commercial Pedestrian Zoning District to allow commercial uses on 1.23 gross acre site, located on the east side of King Road, approximately 350 feet northerly of Story Road (1733 Story Road) (Hoady Family Llc, Mr. Danny Hoady, Owner). SNI: East Valley/680 Communities. CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement recommend approval. No Planning Commission action required.**
C05-090 - District 5

Documents Filed: (1) Department of Planning, Building, and Code Enforcement Staff Report on Project File Number C05-090, dated September 29, 2005, recommending approval of the planned development rezoning. (2) Proof of publication of Notice of Public Hearing, executed on October 7, 2005, submitted by the City Clerk.

Action: Ordinance No. 27585, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated East Side of King Road, Approximately 350 Feet Northerly of Story Road to CP Commercial Pedestrian Zoning District", was passed for publication. (10-0-1). Absent: Chavez.

- (e) **Public Hearing on and consideration of approval of an ordinance on Planned Development Rezoning from A(PD) Planned Development Zoning District to A(PD) Planned Development to allow entertainment uses, at an existing assembly hall (G.I. Forum) on a 3.4 gross acre site, located 900 feet northerly of Story Road and approximately 2,300 feet westerly of McLaughlin Avenue (765 Story Road) (The American G.I. Forum, Owner). CEQA: Addendum to a Negative Declaration. Director of Planning, Building and Code Enforcement recommend approval. Planning Commission recommended denial (5-1-1, May 25, 2005).**
PDC00-030 - District 7

Documents Filed: None.

Action: This item was deferred to November 15, 2005.

- 11.2 Public Hearing on and consideration of approval of an ordinance on Planned Development Rezoning request from R-1-8 Single Family Residence District to A(PD) Planned Development to allow four single family detached residences on a 0.64 gross acre site, located on the west side of Curtiss Avenue, approximately 350 feet southerly of Willow Street (1163 Curtiss Avenue) (Willowshire LLC, Owner). Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1) with modifications:**

- (a) **Change the maximum number of stories for the western-most house from two stories to one.**

11.2 Public Hearing on and consideration of approval of an ordinance on Planned Development Rezoning request from R-1-8 Single Family Residence District to A(PD) Planned Development to allow four single family detached residences on a 0.64 gross acre site, located on the west side of Curtiss Avenue, approximately 350 feet southerly of Willow Street (1163 Curtiss Avenue) (Willowshire LLC, Owner). Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1) with modifications: (Cont'd.)

(b) Modify the setbacks for the western-most house to require a 5-foot setback from the south property line and a 20-foot setback from the west property line for the residence and a 5-foot setback fro an attached or detached single-story garage.

CEQA: Exempt.

PDC05-031 - District 6

(Continued from 10/4/05 – Item 11.5)

Documents Filed: (1) Memorandum from Council Member Yeager, dated October 18, 2005, recommending approval of the Planning Commission's recommendation to approve PDC05-031 and to include the recommendations contained therein. (2) Memorandum from Director of Planning, Building and Code Enforcement Stephen M. Haase, dated October 14, 2005, providing supplemental information provide by the applicant regarding PDC05-031 subsequent to the transmittal of the staff report. (3) Supplemental memorandum from Secretary of the Planning Commission Stephen Haase, dated September 22, 2005, providing an alternative site plan from the surrounding neighbors of the proposed rezoning site. (4) Memorandum from Secretary of the Planning Commission Stephen Haase, dated September 15, 2005.

Public Comments: Gail Seeds and Pat Panzica spoke in support of Council's memorandum and of proposed ordinance.

David Fox spoke in support of the ordinance.

Action: Upon motion by Council Member Yeager, seconded by Council Member Pyle, and unanimously carried, Council approved a memorandum from Council Member Yeager, dated October 18, 2005, recommending approval of the Planning Commission's recommendation to approve PDC05-031 and include the following recommendations: (1) Relocate two parking spaces (currently located nearest the hammerhead) to the front of the property nearest Curtiss, (2) Ensure that the developer is required to plant adequate screening and that the property owners are required to maintain this landscaping, with the maximum of 15 feet to grade, (3) Lower the rear roof plate eave by 48 inches, (4) Remove all upper level windows at the rear yard, (5) Obscure glass and high sills on upper level bath windows, (6) Hip roof at side elevation to lower gable eave line, (7) Add specimen (minimum 15 feet tall) trees along rear yard and rear property line, (8) Add 24 inch high lattice to top of fences at the property line, and Ordinance No. 27586, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the West Side of Curtiss Avenue, Approximately 350 Feet Southerly of Willow Street (1163 Curtiss Avenue) to A(PD) Planned Development Zoning District", was passed for publication. (10-0-1). Absent: Chavez.

11.3 Public Hearing on and consideration of approval of an ordinance on Planned Development Rezoning from R-1-8 Single Family Residence District to A(PD) Planned Development Zoning District to allow up to 19 single family detached residences on a 3.3 gross acre site, located easterly of Hervey Lane, approximately 230 feet southerly of Padres Drive (Don Clemetson, et al, Owner). Director of Planning, Building and Code Enforcement and Planning Commission recommended approval (7-0-0). CEQA: Mitigated Negative Declaration. PDC04-112 - District 6

Documents Filed: (1) Memorandum from Secretary of the Planning Commission Stephen Haase, dated October 13, 2005, recommending approval of the proposed rezoning. (2) Memorandum from Director of Planning, Building and Code Enforcement Stephen M. Haase, dated October 6, 2005, transmitting the Department of Planning, Building, and Code Enforcement Staff Report on Project File Number PDC04-112, dated October 5, 2005, recommending approval of the planned development rezoning. (3) Proof of publication of Notice of Public Hearing, executed on September 30, 2005, submitted by the City Clerk.

Public Comments: Bishop Soro and Chris DeGroot spoke in support.

Gary Jansen spoke in opposition speculating possible flooding from nearby waterways.

Action: Upon motion by Council Member Yeager, seconded Council Member Reed, and unanimously carried, Ordinance No. 27587, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated East of Hervey Lane, Approximately 230 Feet South of Padres Drive to A(PD) Planned Development Zoning District", was passed for publication. (10-0-1). Absent: Chavez.

11.4 Public Hearing on and consideration of approval of an ordinance on a Planned Development Rezoning from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow the addition of a three-story unit plan and to increase the height limit for a previously approved project that allowed 213 single-family detached residences on 263,000 gross acres site, located on the north side of Metcalf Road, approximately 100 feet easterly of Highway 101 (Metcalf Partners, LLC, Owner/Developer). CEQA: EIR Resolution No. 71360, and addenda thereto, File No. PDC04-077. Director of Planning, Building and Code Enforcement and Planning Commission recommended approval (7-0-0). PDC04-077 - District 2

Documents Filed: (1) Memorandum from Secretary of the Planning Commission Stephen Haase, dated October 12, 2005, recommending approval of the subject rezoning. (2) Memorandum from Director of Planning, Building and Code Enforcement Stephen M. Haase, dated October 6, 2005, transmitting the Department of Planning, Building, and Code Enforcement Staff Report on Project File Number PDC04-077, dated October 5, 2005, recommending approval of the planned development rezoning. (3) Proof of publication of Notice of Public Hearing, executed on September 30, 2005, submitted by the City Clerk.

11.4 (Cont'd.)

Action: Upon motion by Council Member Williams, seconded by Council Member Pyle, and unanimously carried, Ordinance No. 27588, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the North Side of Metcalf Road, Approximately 100 Feet Easterly of Highway 101, to A(PD) Planned Development Zoning District”, was passed for publication. (10-0-1). Absent: Chavez.

11.5 Public Hearing on and consideration of approval of an ordinance on Planned Development Rezoning from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow up to 226 residential (single family detached and single family attached) units and a public park of minimum one acre on a 13.4 gross acre site, located at/on the northeast corner of Samaritan Drive and Clydelle Avenue (2039 Samaritan Drive) (Berg & Berg Developers, Owner). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-2-0). PDC05-036 - District 9

Documents Filed: (1) Memorandum from Secretary of the Planning Commission Stephen Haase, dated September 15, 2005, recommending approval of the proposed rezoning with staff recommendation contained therein. (2) Department of Planning, Building, and Code Enforcement Staff Report on Project File Number PDC05-031, dated September 7, 2005, recommending approval of the planned development rezoning.

Action: See Item 10.4(b) for Council action taken.

ADJOURNMENT

The Council of the City of San José was adjourned at 8:56 p.m. in memory of Katherine F. (Kay) Hernandez, mother of Debbi Warkentin, Secretary in Department of Retirement Services; and Brigadier General James S. Blais, USMC Retired, Father of Betsy Shotwell, Director of Intergovernmental Relations, City Manager’s Office.

RON GONZALES, MAYOR

ATTEST:

LEE PRICE, C.M.C, CITY CLERK
EW/10-18-05 Min.