

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, NOVEMBER 15, 2005

The Council of the City of San José convened in regular session at 9:00 a.m. in the Mayor's Conference Room T1841, at City Hall.

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

Absent: Council Members - Campos. (Excused)

Upon motion unanimously adopted, Council recessed at 9:04 a.m. to a Closed Session in Room T1841, (A) Public employee performance evaluation pursuant to Government Code Section 54957, Title: City Attorney. (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9 subsection (a) with respect to existing litigation to consider the case of: (1) Bui, et al. v. City, et al; (2) Comcast of California II, L.L.C. v. City of San José; (3) City of San José, et al. v. County of Santa Clara, et al.; (4) County of Santa Clara v. City of San José, et al. (C) to confer with Real Property Designated Representatives pursuant to Government Code 54956.8: Property: New City Hall Retail Space, Designated Representatives: Paul Krutko, Jr. for the City of San José and Imwalley Stegner, Under Negotiation: Price and terms of payment. (D) to confer with Labor Negotiator pursuant to Government Code Section 54957.6, City Negotiator: City Manager designee Alex Gurza, and the following Employee Organizations: (1) San José Police Officers' Association; (2) International Association of Firefighters; (3) Municipal Employees Federation.

By unanimous consent, Council reconvened from the Closed Session and recessed at 10:32 a.m. and reconvened at 1:33 p.m. in the Council Chambers.

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

Absent: Council Members - Campos. (Excused)

INVOCATION

Pastor Carol Vincent, Almaden Hills United Methodist Church. (District 10)

PLEDGE OF ALLEGIANCE

Mayor Gonzales led the Pledge of Allegiance.

ORDERS OF THE DAY

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

CEREMONIAL ITEMS

1.2 Presentation of a proclamation designated November 13 to 19, 2005 as National Hunger and Homelessness Awareness Week. (Housing)

Action: Mayor Gonzales declared November 13-19, 2005 as “National Hunger and Homelessness Awareness Week” and presented Director of Housing Lesyle Krutko with a proclamation.

1.3 Presentation of a commendation for Myrtle McKenna in celebration of her 101st birthday on November 30, 2005. (Campos)

Action: Deferred.

1.4 Presentation of a commendation to Comcast Corporation in recognition of their recent nomination as one of the “Top 40 Companies for Hispanics”, by *Hispanic Business* magazine. (Campos)

Action: Mayor Gonzales, Vice Mayor Chavez and Council Member Cortese recognized and commended Comcast Corporation as one of the Top 40 Companies for employing Hispanics.

1.8 Presentation of a commendation to Nick Donofrio, Executive Vice President, Innovation and Technology, to acknowledge IBM Corporation’s contributions to the intellectual and economic development of San José, Silicon Valley and the World, with the invention of the Random Access (RAMAC) Storage Device. (Williams) (Rules Committee referral 11/9/05)

Action: Mayor Gonzales and Council Member Williams recognized IBM Corporation’s contributions to the intellectual and economic development of San José, Silicon Valley and the World.

**1.10 Presentation of a commendation to Design Response. (Cortese)
(Rules Committee referral 11/9/05)**

Action: Mayor Gonzales and Council Member Cortese recognized and commended Design Response, for its creative and effective contributions that benefit the City of San José.

1.12 Presentation of a commendation to the Almaden Hills United Methodist Church for 45 years of service to the community and their commitment to reach out through numerous events that benefit the District 10 community. (Pyle)

Action: Mayor Gonzales and Council Member Pyle recognized and commended the Almaden Hills United Methodist Church for 45 years of service to the community of San José.

CONSENT CALENDAR

Upon motion by Vice Mayor Chavez, seconded by Council Member Reed, and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (10-0-1. Absent: Campos.)

2.2 (a) ORD. NO. 27594 – Rezones certain real property situated at the northeast corner of Bramble Wood Lane and Silk Wood Lane (Tract 9618) to a A(PD) Planned Development Zoning District. PDC05-096

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on November 8, 2005, submitted by the City Clerk.

Action: Ordinance No. 27594 was adopted. (10-0-1. Absent: Campos.)

(b) ORD. NO. 27595 – Amends Section 3.36.550 of Chapter 3.36 of Title 3 of the San José Municipal Code to authorize 501(c)(2) title holding corporations as a vehicle in which the board of administration for the Police and Fire department retirement plan may invest in and take title to real estate investments.

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on November 11, 2005, submitted by the City Clerk.

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

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Cortese and carried unanimously, Ordinance No. 27595 was adopted. (9-0-2. Absent: Campos, Yeager.)

- 2.3 (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.**
- (c) **Negotiate and execute an amendment to the agreement between Developer and City for the 2nd and Santa Clara site entered into April 18, 2004, to clarify the references to the budget for the Block 3 Project.**

**CEQA: Resolution No. 71039.1. Council District 3. (Economic Development)
(Deferred from 10/4/05 – Item 2.7 and 10/18/05 – Item 2.3)**

Documents Filed: (1) Memorandum from Director of Economic Development Paul Krutko, dated September 14, 2005, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Economic Development Paul Krutko, dated October 31, 2005, transmitting additional information.

Action: Resolution No. 72963, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute Agreements for Public Art for the CIM Project”, was adopted. (10-0-1. Absent: Campos.)

- 2.4 (a) **Approval of an extension of the permit with the U.S. General Services Administration for premises used by the Transportation Security Administration located at both Terminals A and C from November 19, 2005 through June 30, 2006, with annual revenue to the City of \$561,977.**
- (b) **Adoption of a resolution authorizing the City Manager to negotiate and execute up to four amendments to extend the term of the permit for additional one-year terms through June 30, 2010, at an annual rental rate consistent with the annual Airport Rates and Charges Resolution.**

CEQA: Resolution Nos. 67380 and 71451, PP 05-166. (Airport)

Action: Deferred to November 29, 2005.

2.5 **Adoption of the following 2005-2006 appropriation ordinance and funding sources resolution amendments in the Services for Redevelopment Capital Projects Fund (City-side Redevelopment Fund):**

- (a) **Increase the appropriation to the Department of Public Works for the Office of Equality Assurance Audit Services Project (PSM 422) by \$80,000.**
- (b) **Increase the estimate for Earned Revenue by \$80,000.**

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

Documents Filed: Memorandum from Budget Director Larry Lisenbee, dated October 18, 2005, recommending adoption of an appropriation ordinance and funding sources resolution amendment.

2.5 (Cont'd.)

Action: Ordinance No. 27599, entitled: “An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Monies in the Services for Redevelopment Capital Projects Fund for the Office of Equality Assurance Audit; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”, and Resolution No. 72964, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 72762 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2005-2006 to Adjust Revenues in the Services for Redevelopment Capital Projects Fund”, were adopted. (10-0-1. Absent: Campos.)

2.6 Approval of City Manager Del D. Borgsdorf’s travel requests to the:

- (a) CEOs for Cities National meeting in Chicago, Illinois on December 1 and 2, 2005.**
 - (b) National League of Cities Congress of Cities and Exposition meeting in Charlotte, North Carolina on December 6 to 10, 2005.**
- (City Manager’s Office)**

Documents Filed: Memorandum from City Manager Del Borgsdorf, dated November 1, 2005, requesting approval of travel.

Action: The travel requests were approved. (10-0-1. Absent: Campos.)

2.7 Adoption of a resolution certifying that the:

- (a) City of San José’s Revolving Loan Fund (RLF) Plan is consistent with and supportive of the area’s current economic adjustment strategy, and**
 - (b) RLF is being operated in accordance with the policies and procedures contained in the RLF plan and the loan portfolio meets the standards.**
- CEQA: Not a Project. (Economic Development)**

Documents Filed: Memorandum from Director of Economic Development Paul Krutko, dated October 25, 2005, recommendation adoption of a resolution.

Action: Resolution No. 72965, entitled: “A Resolution of the Council of the City of San José Certifying that (1) The City’s Revolving Loan Fund is Consistent with and Supportive of the Area’s Current Economic Adjustment Strategy and (2) That the Revolving Loan Fund is being Operated in Accordance with Certain Policies and Procedures”, was adopted. (10-0-1. Absent: Campos.)

2.8 Approval of ticket distribution program reports for the San José Arena Authority for the 3rd Quarter 2005. CEQA: Resolution No. 60199. (Economic Development)

Documents Filed: Memorandum from Director of Economic Development Paul Krutko, dated October 26, 2005, recommending approval of the Ticket Distribution Program Reports.

Action: The ticket distribution program reports were approved. (10-0-1. Absent: Campos.)

- 2.9 Approval of the first amendment to the agreement with CH2M Hill for professional engineering services at the San José/Santa Clara Water Pollution Control Plant, extending the term of the agreement for a period of twenty-four months through December 31, 2007 at no increase in the maximum compensation payable by the City. CEQA: Not a Project. (Environmental Services)**

Action: Deferred to November 29, 2005.

- 2.10 Adoption of a resolution declaring a 5,300 square foot portion of City-owned land as:**
- (a) Surplus to the needs of the City;**
 - (b) Authorizing its sale to Greg Blackwell Homes for \$39,750; and,**
 - (c) Delegating authority to the Director of General Services to execute all documents necessary to complete the transfer of the property.**
- CEQA: Exempt, File No. PP00-023. Council District 6. SNI: Greater Gardner. (General Services)**

Documents Filed: Memorandum from Interim Director of General Services Peter Jensen, dated October 26, 2005, recommending adoption of a resolution.

Action: Resolution No. 72966, entitled: "A Resolution of the Council of the City of San José Declaring Certain City-Owned Property Surplus and Authorizing the Director of General Services to Execute an Agreement to Sell and All Necessary Documents Necessary for the Transfer of Such Property to the Adjacent Property Owner, Greg Blackwell Homes", was adopted. (10-0-1. Absent: Campos.)

- 2.11 Adoption of a resolution authorizing the City Manager to execute all documents necessary to convey title of portions of Montague Expressway to the County of Santa Clara. CEQA: Resolution No. 66985. Council District 4. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated October 26, 2005, recommending adoption of a resolution.

Action: Resolution No. 72967, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute All Documents Necessary to Convey Title to Portions of Montague Expressway to the County of Santa Clara", was adopted. (10-0-1. Absent: Campos.)

- 2.12 (a) Increase the contingency budget for the South Bay Water Recycling - San Fernando Pipeline Project by \$17,792.66 from \$158,000 to \$175,792.66.**
- (b) Approval of Contract Change Order No. 8 with Pacific Underground Construction, Inc., for the South Bay Water Recycling - San Fernando Pipeline Project in the amount of \$25,844.90 for a total contract amount of \$1,232,242.66.**

CEQA: Resolution No. 64667, PP03-11-350. Council District 3. SNI: University. (Public Works/Environmental Services)

2.12 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen and Acting Director of Environmental Services John Stufflebean, dated November 1, 2005, recommending approval of the increase in the contingency budget and approval of the contract change order. (2) Letter from the Treatment Plant Advisory Committee, dated November 7, 2005, stating concurrence with the Staff recommendation.

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

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Cortese and carried unanimously, the increase in the contingency budget and the contract change order were approved. (9-0-2. Absent: Campos, Yeager.)

2.13 **Report on bids and award of contract for the Traffic Signal Modification at 11th Street and Route 280 NB Off-Ramp Project to the low bidder, Golden Bay Construction, Inc., in the amount of \$286,635, and approval of a contingency in the amount of \$28,670. CEQA: Resolution No. 68905, PP 98-03-072. SNI: Spartan/Keyes and University. Council District 3. (Public Works/Transportation)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, and Director of Transportation James Helmer, dated November 1, 2005, recommending approval of the contract.

Action: The award of the contract to Golden Bay Construction, Inc. was approved. (10-0-1. Absent: Campos.)

2.14 **Approval to rescind Resolution No. 72599 related to the establishment of speed limits in the City of San José, and adoption of a resolution establishing speed limits with changes to the following roadways within the City of San José, including:**

- (a) **Re-establish speed limit on Pine Avenue, between Cottle Avenue and Lincoln Avenue, from 30 MPH to 25 MPH.**
- (b) **Establish speed limit on Palmia Drive, between Cottle Road and Palm Valley Blvd., 30 MPH.**

CEQA: Exempt, File No. PP05-030. Council Districts 2 and 6. (Transportation)

Documents Filed: Memorandum from Director of Transportation James Helmer, dated October 28, 2005, recommending adoption of a resolution.

Action: Resolution No. 72968, entitled: "A Resolution of the Council of the City of San José Reestablishing Speed Limits on a Section of Pine Avenue, Establishing Speed Limits on Palmia Drive, Reestablishing, Without Change, Speed Limits on Other Streets Within the City of San José and Repealing Resolution No. 72599", was adopted. (10-0-1. Absent: Campos.)

- 2.15 (a) **Adoption of the following appropriation ordinance amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purpose Council District 8:**
- (1) **Decrease the Reserve: PAL Stadium Synthetic Playing Field appropriation by \$100,000.**
 - (2) **Decrease the Ending Fund Balance by \$28,000.**
 - (3) **Establish a Trail: Silver Creek/Dobern Bridge appropriation to the Parks, Recreation and Neighborhood Services Department in the amount of 128,000.**
- (b) **Adoption of the following appropriation ordinance amendments in the General Fund:**
- (1) **Decrease the Trail: Silver Creek/Dobern Bridge capital appropriation by \$128,000.**
 - (2) **Establish a City-Wide appropriation to the Parks, Recreation and Neighborhood Services Department for PAL Maintenance in the amount of \$128,000.**

**CEQA: Not a Project. Council Districts 5 and 8. (City Manager's Office)
(Referred from 11/8/05 – Item 2.8)**

Documents Filed: Memorandum from Budget Director Larry Lisenbee, dated November 9, 2005, recommending adoption of appropriation ordinance amendments.

Action: Ordinance No. 27600, entitled: “An Ordinance of the City of San José Amending 27474 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund for Parks Purposes in Council District No. 8 for the Silver Creek/Dobern Bridge Trail Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”, and Ordinance No. 27601, entitled: “An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Monies in the General Fund for PAL Maintenance; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”, were adopted. (10-0-1. Absent: Campos.)

- 2.16 (a) **Adoption of a resolution approving the Lucretia Avenue Widening Project and incorporating environmental mitigation measures as set forth in the mitigation monitoring and reporting program for the project.**
- (b) **Approval of eight purchase agreements for the purchase of portions of eleven parcels located on the west side of Lucretia Avenue between Story Road and Fair Avenue, for a total of \$612,410 for the purchases and closing costs, and adoption of a resolution authorizing the Director of Public Works to execute any additional documents necessary to complete the transactions.**

CEQA: Mitigated Negative Declaration, PP05-003. Council District 7. SNI: Tully/Senter. (Public Works)

Action: Renumbered to 6.3. See Page 18.

- 2.17 (a) **Approval to reject all bids received on September 8, 2005 for the Norman Y. Mineta San José International Airport General Engineering Contract 05-06.**
(b) **Report on bids received on October 27, 2005 and award of contract for the Norman Y. Mineta San José International Airport General Engineering Contract 05-06 to O' Grady Paving, Inc. in an amount not to exceed \$520,000.**

CEQA: Resolution Nos. 67380 and 71451. PP 05-0152. (Public Works/Airport)

Action: Renumbered to 6.4. See Page 19.

- 2.18 (a) **Report on bids and award of contract for the Oakland Road Widening Project to the low bidder, Top Grade Construction, Inc. in the amount of \$2,568,669, and approval of a contingency in the amount of \$129,000.**
(b) **Adoption of a resolution approving the Oakland Road Widening Project and incorporating environmental mitigation measures set forth in the Mitigated Negative Declaration.**

CEQA: Mitigated Negative Declaration, PP03-06-209. Council District 4. (Public Works/ Transportation)

Action: Renumbered to 6.5. See Page 19.

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

**3.2 Report of the Rules Committee – November 2, 2005
Vice Mayor Chavez, Chair**

Documents Filed: The Rules Committee Report dated November 2, 2005.

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting
- (b) City Council
(1) Review November 15, 2005 Council Agenda. Attachment: Memorandum from Vice Mayor Chavez, dated November 2, 2005, requesting approval of Municipal Code Changes be agendized.

The Committee recommended approval of the November 15, 2005 City Council Agenda with five additions.

- (2) Add New Items to November 8, 2005 Agenda

The Committee recommended approval of the November 8, 2005 City Council Agenda with five additions.

**3.2 Report of the Rules Committee – November 2, 2005 (Cont'd.)
Vice Mayor Chavez, Chair**

(b) City Council (Cont'd.)

- (3) List of Reports Outstanding. Attachment: Report from the City Manager dated November 1, 2005, transmitting reports outstanding for November 8, 2005.

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

(c) Legislative Update

- (1) State - There was no report.
(2) Federal - There was no report.

(d) Meeting Schedules

- (1) Request to schedule the Service Delivery Models Study Session, January 12, 2006. Attachment: Memorandum from Mayor Gonzales, dated November 1, 2005, recommending approval of the study session date.

The Committee recommended approval to schedule a day long study session to examine service delivery models to ensure that the City is prepared to evolve and adapt to fluctuating resources and the changing needs of our residents for January 12, 2006, 8:00 a.m. to 5:00 p.m. in Room W120.

- (e) The Public Record. Attachment: Memorandum from City Clerk Lee Price, dated October 27, 2005, transmitting items for public record and administration for the period of October 19-25, 2005.

The Committee noted and filed the Public Record.

(f) Appointments to Boards, Commissions and Committees

- (1) Housing Advisory Commission. Attachment: Memorandum from Council Member Cortese, dated October 26, 2005, recommending reappointment the incumbents.

The Committee recommended the reappointment of incumbents Linda Moreno and Katherine Bock to terms ending December 31, 2008.

- (2) Human Rights Commission. Attachment: (1) Memorandum from Council Member LeZotte, dated October 27, 2005, recommending reappointment the incumbents, (2) Memorandum from Council Member LeZotte, dated October 27, 2005, recommending Robert Bailey.

The Committee recommended the reappointment of incumbents Tahir Anwar and Robert Bailey, Jr. to terms ending December 31, 2008.

**3.2 Report of the Rules Committee – November 2, 2005 (Cont'd.)
Vice Mayor Chavez, Chair**

- (f) Appointments to Boards, Commissions and Committees (Cont'd.)
- (3) Mobile Home Advisory Commission. Attachment: Memorandum from Council Member Reed, dated October 25, 2005, recommending Fran Hirsh, Paula Merloa and Vernon Stewart.
- The Committee recommended the reappointment of incumbent Vernon Stewart, Jr. as the neutral representative, to a term ending December 31, 2008; Fran Hirsch, as the landlord representative, to a term ending December 31, 2008, and Paula Merloa, as the resident representative, to a term ending December 31, 2008.
- (4) Small Business Development Commission
- Deferred to the 11-9-05 Rules Committee Meeting.
- (g) Rules Committee Reviews, Recommendations and Approvals
- (1) Approval of request to transfer \$1,089.29 from District 5 Special Events Account to cover the costs of celebration of the Opening of Plaza de San José. Attachment: Memorandum from Council Member Campos, dated October 24, 2005, requesting approval of the transfer.
- The Committee recommended the approval request to transfer \$1,089.29 from the District 5 Special Events Account.
- (2) Approval of travel by Council Member Campos to San Francisco, California, October 8, 2005, to attend the League of California Cities Annual Conference. Source of Funds: Mayor and City Council Travel Fund. Attachment: Memorandum from Council Member Campos, dated October 25, 2005, requesting approval of travel.
- The Committee recommended the approval to travel and use of the Mayor and Council Travel Fund.
- (3) Approval of travel by Council Member Campos to San Diego, California, November 17-19, 2005, to attend the League of California Cities Leader Workshop and Board of Director's Meeting. Source of Funds: Mayor and City Council Travel Fund. Attachment: Memorandum from Council Member Campos, dated October 27, 2005, requesting approval of travel.
- The Committee recommended the approval to travel and use of the Mayor and Council Travel Fund.
- (h) Oral Communications - There were none presented.

**3.2 Report of the Rules Committee – November 2, 2005 (Cont'd.)
Vice Mayor Chavez, Chair**

- (i) Adjournment - The meeting was adjourned at 2:15 p.m.

Report of the Rules Committee – October 26, 2005
Vice Mayor Chavez, Chair

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

(b) City Council

- (1) Review November 8, 2005 Draft City Council Agenda

The Committee recommended approval of the November 8, 2005 City Council Agenda with three additions.

- (2) Add New Items to November 1, 2005 City Council Agenda

The Committee recommended approval of the November 1, 2005 City Council Agenda with six additions.

- (3) List of Reports Outstanding. Attachment: Report from the City Manager dated October 25, 2005, transmitting reports outstanding for November 1, 2005.

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

(c) Legislative Update

- (1) State - There was no report.

- (2) Federal - There was no report.

(d) Meeting Schedules - There were none.

- (e) The Public Record. Attachment: Memorandum from City Clerk Lee Price, dated October 20, 2005, transmitting items for public record and administration for the period of October 12-18, 2005.

The Committee noted and filed the Public Record.

**3.2 Report of the Rules Committee – October 26, 2005 (Cont'd.)
Vice Mayor Chavez, Chair**

(f) Appointments to Boards, Commissions and Committees. Attachment: Memorandum from Council Member Yeager, dated October 18, 2005, recommending appointment of Emily Hopper.

(1) Youth Commission

(a) Reappoint 3 Commissioners

The Committee recommended the following appointments: Lydia Kim, District 2, for a term ending October 31, 2008. Van Le, District 4, for a term ending October 31, 2008. Emily Hopper, District 6, for a term ending October 31, 2008.

(g) Rules Committee Reviews, Recommendations and Approvals

(1) Workload Assessment for Referral from the Small Business Development Commission Regarding Payment and Performance Bond Program for Small Business Contractors Workload Assessment. Attachment: Memorandum from Director of Public Works Katy Allen and Director of Economic Development Paul Krutko, dated October 20, 2005, recommending acceptance of the report.

Accept the work load assessment and refer it to the Small Business Development Commission (SBDC) along with the other five recommendations to improve Disadvantaged Business Enterprise participation submitted by the SBDC to the Driving a Strong Economy Committee on October 24, 2005 (and referred to the Rules Committee), with direction to prioritize their requests. The Committee concurrently directed Staff to determine if some or all of the work load effort could be outsourced to ensure that other projects stay on track, and if so at what cost; directed Staff to identify work impacts if not outsourced, and that the Commission's feedback and Staff analysis come back to Rule at the earliest opportunity.

(h) Oral Communications

Mark Trout requested that the speaking time for members of the public at City Council meetings be extended from 2 minutes to 3 minutes.

(i) Adjournment

(Deferred from 11/8/05 – Item 3.2)

The meeting was adjourned at 2:35 p.m.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Williams and carried unanimously, the Reports of the Rules Committees and the actions of November 2, 2005 and October 26, 2005 were accepted. (9-0-2. Absent: Campos, Yeager.)

3.4 Adoption of an urgency ordinance amending Sections 6.02.130 and 6.02.250 of Chapter 6.02 of Title 6 of the San José Municipal Code to specify additional grounds for the denial, suspension or revocation of a license or permit and to authorize the designated department head to immediately suspend a license or permit under specified circumstances. CEQA: Not a Project. (Police/City Attorney)

Documents Filed: (1) Memorandum from Mayor Gonzales and Vice Mayor Chavez, dated November 15, 2005, recommending adoption of the urgency ordinance and direction to Staff. (2) Memorandum from Council Member Cortese, dated November 15, 2005, recommending additional direction to Staff. (3) Memorandum from City Attorney Richard Doyle, dated November 10, 2005, recommending adoption of an urgency ordinance. (4) Two letters from the public, dated November 15, 2005, regarding the urgency ordinance.

Motion: Vice Mayor Chavez moved approved of the memorandum she cosigned with Mayor Gonzales. Council Member Pyle seconded the motion. Discussion followed.

Public Comment: Tony Boskovich, Reverend Reginald Swilley, Walter Wilson, Jeff Moore, NAACP, Paul Higgins, Gail Chandler, Dave Powell, Mauricio Mejia, Scott Knies, San José Downtown Association, William Garbett and Albert Karow expressed opposition to the urgency ordinance.

Ross Signorino, Jack Van Zandt, Henry Cord, San José Downtown Association, Dan Doherty, and Edna Elkins expressed support for the urgency ordinance.

Council Member Cortese requested to amend the motion by asking Staff to begin, as appropriate, referring complaints under the Administrative Nuisance Abatement ordinance for violations at various downtown venues to the City Attorney for enforcement. Council Member Reed requested to add to the motion that Staff be directed to report back to the Council every three weeks with a status report via the Rules Committee. Council Member Williams requested to add that Staff be directed to provide an update, as appropriate, on the outcome of investigations into complaints of racial profiling.

Vice Mayor Chavez, the maker of the motion and Council Member Pyle, the second, accepted the amendments to the motion.

Action: On a call for the question, the motion carried unanimously and (1) Urgency Ordinance No. 27602, entitled: “An Ordinance of the City of San José Amending Sections 6.02.130 and 6.02.250 of Chapter 6.02 of Title 6 of the San José Municipal Code to Specify Additional Grounds for the Denial, Suspension or Revocation of a License or Permit and to Authorize the Designated Department Head to Immediately Suspend a License or Permit Under Specified Circumstances and Setting Forth the Facts

3.4 (Cont'd.)

Constituting Such Urgency”, was adopted to sunset at the end of 90 days, with Staff directed to: (a) Work with relevant stakeholders to review and develop amendments, if appropriate, to the proposed Municipal Code language. (b) Bring back proposed changes to the Municipal Code to Council for adoption prior to the sunset of this urgency ordinance. (2) Staff encouraged, as appropriate, to begin referring complaints under the Administrative Nuisance Abatement ordinance for violations at various downtown venues to the City Attorney for enforcement. (3) Staff directed to report back to the Council every three weeks with a status report via the Rules Committee. (4) Staff directed to provide an update, as appropriate, on the outcome of investigations into complaints of racial profiling. (10-0-1. Absent: Campos.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.4 (a) **Final adoption of ORD. NO. 27564 - Repealing the provisions set forth in Part 7 of Chapter 20.80 of Title 20 of the San José Municipal Code pertaining to gasoline service station combined uses; amending Part 11 of Chapter 20.80 of Title 20 of the San José Municipal Code to amend the locational criteria for uses involving the off sale alcoholic beverages; amending Table 20-90 within Section 20.40.100 of Chapter 20.40 and amending Table 20-140 within Section 20.70.100 of Chapter 20.70, all within Title 20 of the San José Municipal Code, to distinguish off sale of beer and/or wine uses from off sale of all types of alcoholic beverages uses, and adding a new Chapter 6.84f to Title 6 of the San José Municipal Code to set forth considerations when making a determination of public convenience or necessity under a California State Liquor License Application, all effective February 1, 2006.**
- (b) **Approval of an ordinance further modifying the provisions of Title 6 and Title 20 of the San José Municipal Code, to be effective February 1, 2006, related to the off-sale of alcoholic beverages, in response to Council direction provided under Item 4.3 of the Council's agenda on October 4, 2005, as follows:**
- (1) **Amending Section 6.84.030 of Chapter 6.84 of Title 6 to include a reference to Strong Neighborhood Initiative and Neighborhood Revitalization areas and other similar target law enforcement areas; and**
 - (2) **Further amending Chapter 6.84 of Title 6 to include provisions for the City Council, on appeal, to consider the greater public benefits in determining public convenience or necessity; and**
 - (3) **Amending Title 6 to add a new Chapter 6.86 to establish minimum operating regulations applicable to establishments engaged in the off-sale of alcoholic beverages and establishing a related inspection program; and**
 - (4) **Amending Section 20.80.600 of Chapter 20.80 of Title 20 to provide that the use permit requirement for gasoline service station conversions is applicable to conversions of the stations in whole or in part.**

- 4.4 (c) **Adoption of a resolution rescinding City Council Resolution No. 67881 related to census tracts of special concern about Alcoholic Beverage Licenses, to be effective February 1, 2006.**
- (d) **Adoption of a resolution amending the Administrative Schedule of Fines to establish administrative fine amounts for violations of Chapter 6.86 and for violations of transient CUP condition violations related to off-sale of alcoholic beverages, and repealing Resolution No. 72833, to be effective February 1, 2006.**

**CEQA: Exempt, File No. PP05-161. (Planning, Building and Code Enforcement)
(Referred from 10/4/05 – Item 4.3)**

Action: Deferred to December 6, 2005. To be heard in the evening.

- 4.5 (a) **Adoption of a resolution:**
- (1) **Appointing an advisory board to advise the City Council on all issues related to a Hotel Business Improvement District and;**
- (2) **Declaring its intent to establish the Hotel Business Improvement District and set a public meeting for November 29, 2005 at 1:30 p.m. and a public hearing for January 10, 2006 at 1:30 p.m. for the establishment of the Hotel Business Improvement District.**
- (b) **Subject to the establishment of the Hotel Business Improvement District:**
- (1) **Preliminary approval of the budget report of the Advisory Board for the remainder of Fiscal Year (ended June 30) 2005-2006; and**
- (2) **Adoption of a resolution of intention to levy an assessment for the remainder of Fiscal Year (ended June 30) 2005-2006; and setting a public hearing for January 10, 2006 at 1:30 p.m. on the levy of assessments for the remainder of Fiscal Year (ended June 30) 2005-2006.**
- (c) **Direct the City Clerk to publish the required notice of the public meeting and public hearings.**

CEQA: Exempt, PP05-203. (Economic Development)

Documents Filed: (1) Memorandum from Director of Economic Development Paul Krutko, dated October 26, 2005, recommending adoption of resolutions. (2) Supplemental memorandum from Director of Economic Development Paul Krutko, dated November 14, 2005, transmitting additional information. (3) Proof of Publication of Notice of Public Hearing, executed on November 18, 2005, submitted by the City Clerk.

Public Comment: Speaking in support of the issue were Clifton Clark, San José Marriott and Dan Fenton, San José Convention and Visitors Bureau.

Action: Upon motion by Council Member Reed, seconded by Council Member Williams and carried unanimously, Resolution No. 72969, entitled: "A Resolution of the Council of the City of San José Declaring Its Intent to Establish the Hotel Business Improvement

4.5 (Cont'd.)

District Pursuant to the Parking and Business Improvement Area Law of 1989; Appointing an Advisory Board to Advise the City Council on All Issues Related to the Hotel Business Improvement District; and Fixing the Time and Place of a Public Meeting and Public Hearing and Giving Notice Thereof”, and Resolution No. 72970, entitled: “A Resolution of the Council of the City of San José Declaring Its Intent to Levy Assessments, Subject to the Establishment of the Hotel Business Improvement District, for the Remainder of Fiscal Year (Ended June 30) 2005-2006 at the January 10, 2006 Public Hearing Pursuant to the Parking and Business Improvement Area Law of 1989”, were adopted. (10-0-1. Absent: Campos.)

TRANSPORTATION & AVIATION SERVICES

- 6.2
- (a) **Accept this status report on recommended revisions to the implementation of the Airport Master Plan.**
 - (b) **Authorize staff to prepare and return to Council with proposed amendments to the Airport Master Plan, project design/construction agreements, and other actions as necessary to implement the recommended development program revisions.**
 - (c) **Approval of a common-use gate management strategy for the Airport terminal operation.**
 - (d) **Adoption of the following appropriation ordinance amendments in the Airport Renewal and Replacement Fund:**
 - (1) **Establish the Public Parking appropriation in the amount of \$350,000.**
 - (2) **Establish the Terminal Area Development appropriation in the amount of \$700,000.**
 - (3) **Establish the West Side Airfield Reconstruction appropriation in the amount of \$95,000.**
 - (4) **Decrease the Relocate Parking Control Buildings appropriation in the amount of \$1,145,000.**
 - (e) **Adoption of the following appropriation ordinance amendments in the Airport Revenue Bond Improvement Fund:**
 - (1) **Establish the Rental Car Garage Design appropriation in the amount of \$350,000.**
 - (2) **Decrease the Ending Fund Balance by \$350,000.**
 - (f) **Accept recommendation that preliminary planning for the Terminal Area Development projects indicates that utilizing the Design-Build procurement process may save money or result in faster project completion than if the City used a procurement process involving its normal competitive bidding procedures, and direct staff to conduct outreach with the Design-Build stakeholder group prior to returning to Council for approval of the Request for proposals.**

**CEQA: Resolution Nos. 67380 and 71451, PP05-215 and PP05-062. (Airport/Public Works/City Manager’s Office)
(Referred from 10/4/05 – Item 6.2)**

6.2 (Cont'd.)

Documents Filed: (1) Memorandum from Mayor Gonzales, Vice Mayor Chavez, and Council Members Reed and Yeager, dated November 14, 2005, recommending approval of Staff's proposed revisions. (2) Memorandum from Director of Aviation William Sherry, Director of Public Works Katy Allen and Budget Director Larry Lisenbee, dated November 10, 2005, transmitting the Staff report.

Director of Aviation William Sherry presented an overview of the San José City Airport Improvement Program and responded to Council questions.

Public Comment: Speaking in support of the issue were Greg Gillis, Kathy Smith, Steve Holt, Alaska Airlines, Former Vice Mayor Pat Dando, Dan Fenton and Ross Signorino. William Garbett spoke in opposition to the issue.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Williams and carried unanimously, the Staff report was accepted, Staff was authorized to prepare and return to Council with proposed amendments to the Airport Master Plan, a common-use gate management strategy for the Airport terminal operation was approved; Ordinance No. 27603, entitled: "An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Monies in the Airport Renewal and Replacement Fund for Public Parking, Airport Terminal Area Development and the West Side Airfield Reconstruction; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption", and Ordinance No. 27604, entitled: "An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Monies in the Airport Revenue Bond Improvement Fund for the Rental Car Garage Design Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption", were adopted; and preliminary planning for the Terminal Area Development projects was accepted. (10-0-1. Absent: Campos.)

- 6.3 (a) **Adoption of a resolution approving the Lucretia Avenue Widening Project and incorporating environmental mitigation measures as set forth in the mitigation monitoring and reporting program for the project.**
- (b) **Approval of eight purchase agreements for the purchase of portions of eleven parcels located on the west side of Lucretia Avenue between Story Road and Fair Avenue, for a total of \$612,410 for the purchases and closing costs, and adoption of a resolution authorizing the Director of Public Works to execute any additional documents necessary to complete the transactions.**

CEQA: Mitigated Negative Declaration, PP05-003. Council District 7. SNI: Tully/Senter. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated October 26, 2005, recommending adoption of the resolutions and approval of agreements.

Item 6.3 was renumbered from 2.16.

6.3 (Cont'd.)

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Williams and carried unanimously, the Purchase Agreements were approved, Resolution No. 72971 and Resolution No. 72972, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Public Works to Execute Certain Documents for the Purchase of Properties Pertaining to the Lucretia Avenue Widening Project", were adopted. (10-0-1. Absent: Campos.)

- 6.4 (a) Approval to reject all bids received on September 8, 2005 for the Norman Y. Mineta San José International Airport General Engineering Contract 05-06.**
(b) Report on bids received on October 27, 2005 and award of contract for the Norman Y. Mineta San José International Airport General Engineering Contract 05-06 to O' Grady Paving, Inc. in an amount not to exceed \$520,000.

CEQA: Resolution Nos. 67380 and 71451. PP 05-0152. (Public Works/Airport)

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen, dated October 26, 2005, transmitting the report on bids. (2) Supplemental memorandum from Director of Public Works Katy Allen and Director of Aviation William Sherry, dated November 8, 2005, providing additional information and recommending award of the contract to the low bidder.

Item 6.4 was renumbered from 2.17.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Williams and carried unanimously, the award of the contract to O'Grady Paving, Inc. was approved. (10-0-1. Absent: Campos.)

- 6.5 (a) Report on bids and award of contract for the Oakland Road Widening Project to the low bidder, Top Grade Construction, Inc. in the amount of \$2,568,669, and approval of a contingency in the amount of \$129,000.**
(b) Adoption of a resolution approving the Oakland Road Widening Project and incorporating environmental mitigation measures set forth in the Mitigated Negative Declaration.

CEQA: Mitigated Negative Declaration, PP03-06-209. Council District 4. (Public Works/ Transportation)

Documents Filed: Memorandum from Director of Public Works Katy Allen and Director of Transportation James Helmer, dated November 1, 2005, recommending award of the contract to the low bidder and adoption of a resolution.

Item 6.5 was renumbered from 2.18.

6.5 (Cont'd.)

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Williams and carried unanimously, the award of the contract to Top Grade Construction, Inc. was approved and Resolution No. 72973, entitled: "A Resolution of the Council of the City of San José Approving the Oakland Road Widening Project, For Which an Initial Study/Mitigated Negative Declaration was Prepared in Accordance with the California Environmental Quality Act of 1970 and Adopting a Mitigation Monitoring and Reporting Program", was adopted. (10-0-1. Absent: Campos.)

6.6 Acceptance of staff recommendations on proposed Regional Transportation Expenditure Plan advocating that the Santa Clara Valley Transportation Authority Board consider the following items at their December 1, 2005 Board meeting:

- (a) Allocate funding for the "Airport People Mover Connection to BART/Caltrain" Project in the Initial Program in the amount of \$248 million by pursuing the following:
 - (1) Drop "Interim Airport Shuttle" Project (\$41 million).
 - (2) Reduce the period of funding in the Initial Program from 30 years to 10 years for the "Pavement/Expressway/Bike/Pedestrian" program, retaining funding levels at \$15 million per year for a total of \$150 million. Include the remaining 20 years in the Completion Program (\$221 million). VTA should develop a strategy to secure funding from regional, state, and federal sources to finance the Completion Program for long-term local pavement maintenance needs, expressway improvements and enhanced bicycle/pedestrian facilities.
- (b) Continue to pursue accelerated development of the BART to Silicon Valley project to preserve options for completion earlier than 2018 if Program cost savings or further project cost savings are identified and/or new revenues are secured such as through joint development efforts, or increased Federal or State grants.
- (c) Allow the environmental review process for the "Santa Clara/Alum Rock Transit Corridor" Project to proceed so as to determine the preferred transit mode and then pursue amending the VTA Expenditure Plan to fully fund the approved project, as needed. Retain \$85 million in the Initial Program.
- (d) Pursue accelerated development of the "Capitol LRT Extension to Eastridge" Project to preserve options for project delivery earlier than 2019 if Program cost savings or project cost savings are identified and/or new revenues secured.
- (e) Accept placement of the "Capitol LRT Extension from Eastridge to Neiman" Project in Completion Program (for future funding) with the condition that connecting bus service be provided from development in the Neiman area to the Eastridge Transit Center.
- (f) Pursue funding of Caltrain electrification as part of the California High Speed Rail Project to save costs for the San Francisco to San José and the San José to Gilroy segments.

(Item continued on the next page)

6.6 (Cont'd.)

- (g) Support the VTA proposal for an annual review of the Expenditure Plan allowing flexibility to strategically respond to changing circumstances, needs and priorities.**
- (h) Continue support of VTA efforts to develop a Transit Expansion Policy that links transportation investment with the VTA Board's adopted evaluation criteria and supportive local land use development policies.**
- (i) That the VTA Board develop a "reward policy" for local agencies that use local and/or private development funds to implement regional transportation projects and thereby granting priority for such agencies for other regional funding allocations. This would apply in both the transit and highway programs.**

**CEQA: Not a Project. (Transportation)
(Rules Committee referral 10/19/05)
(Deferred from 11/1/05 – Item 6.4)**

Action: Deferred to November 29, 2005.

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Redevelopment Agency Board portion of the meeting convened at 4:41 p.m. to consider Item 9.1 in a Joint Session.

- 9.1 Approval of actions and recommendations related to Getting Families Back to Work III. (Mayor/Vice Mayor)
(Rules Committee referral 11/2/05)
(Deferred from 11/8/05 – Item 9.2)**

Documents Filed: Memorandum from Mayor Gonzales and Vice Mayor Chavez, dated November 10, 2005, recommending approval of the actions and recommendations related to Getting Families Back to Work III.

Motion: Vice Mayor Chavez moved approval of the memorandum she cosigned with Mayor Gonzales. Council Member Chirco seconded the motion. A short discussion followed.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Chirco and carried unanimously, and the Mayor and Vice Mayor's memorandum outlining recommendations was approved, with direction to Staff as follows: (1) The City Manager and Redevelopment Agency Director were directed to take concrete steps for continuous improvement in the City's role to help job creation and economic recovery through improvement of development services and a targeted retail strategy. (2) Establish

9.1 (Cont'd.)

performance measures to assess results. (3) Work with the City Attorney’s Office to ensure adequate noticing of agendas and compliance with the Brown Act. (4) The City Clerk was directed to compare the Planning Commission with those in other cities as it relates to the make-up of the Commission’s membership, and term lengths. (10-0-1. Absent: Campos.)

The Redevelopment Agency Board portion of the meeting was adjourned at 4:58 p.m.

NOTICE OF CITY ENGINEER’S PENDING DECISION ON FINAL MAPS

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

| <u>Tract</u> | <u>Location</u> | <u>Council District</u> | <u>Developer</u> | <u>Lots/ Units</u> | <u>Type</u> | <u>Proposed Decision</u> |
|--------------|-------------------------------------|-------------------------|-------------------|--------------------|------------------------|--------------------------|
| 9693 | NE corner Bonita Ave. and Sunny Ct. | 3 | KB Home South Bay | 80 Units | Single Family Detached | Approve |

Dropped.

OPEN FORUM

- (1) Denelle Fedor, Friends of the San José Mounted Unit, expressed concerns about the City’s General Fund and reported she would attempt to seek voter approval to put a measure on the ballot to ensure adequate funding for the Mounted Unit.
- (2) Stephen Hazel expressed his personal opinions on a variety of issues.
- (3) Mark Trout voiced his own personal religious viewpoints.
- (4) Ross Signorino congratulated Council Member Williams.
- (5) Edna Elkins complained about smoking in the Downtown and suggested that “Christmas in the Park” displays not be set up before Veteran’s Day to allow greater visibility for the Veteran’s Day Parade.

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 5:08 p.m.

RECESS/RECONVENE

The City Council recessed at 5:08 p.m. from the afternoon Council Session and reconvened at 7:02 p.m. in the Council Chambers, City Hall.

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

Absent: Council Members - None.

CEREMONIAL ITEMS

- 1.1 Presentation of a commendation to Campbell Middle School for sponsoring a coin drive and collecting \$1,170 to donate to the Red Cross to aid victims of Hurricane Katrina. (LeZotte)**
(Deferred from 11/1/05 – Item 1.2)

Action: Mayor Gonzales and Council Member LeZotte recognized and commended Campbell Middle School for their outstanding efforts to aid the victims of Hurricane Katrina.

- 1.5 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 of Hurricane Katrina. (LeZotte)**
(Rules Committee referral 10/12/05)
(Deferred from 10/18/05 – Item 1.9)

Action: Mayor Gonzales and Council Member LeZotte recognized Westmont High School for their outstanding efforts to aid the victims of Hurricane Katrina.

- 1.7 Swearing-in ceremony for Districts 5, 7, and 8 Youth Commissioners. (City Clerk)**

Action: City Clerk Lee Price administered the Oath of Office to the new Youth Commissioners, Juan Montes, District 5; Anh Tran, District 7 and Kevin Liao, District 8.

- 1.9 Presentation of a commendation to the Coalition Against Teen Tobacco (CATT) in recognition of their outstanding commitment to tobacco prevention and education in our community. (Yeager)**
(Rules Committee referral 11/9/05)

Action: Mayor Gonzales and Council Member Yeager recognized and commended the “Coalition Against Teen Tobacco” for their exceptional commitment to the community of San José.

**1.11 Presentation of a commendation to the Lake Cunningham Park Volunteers. (Cortese)
(Rules Committee referral 11/9/05)**

Action: Mayor Gonzales and Council Member Cortese recognized and commended the Lake Cunningham Park volunteers for their efforts to preserve and promote California native plants and unique natural landscapes of California by creating and nurturing a native plant nursery at Lake Cunningham Park.

1.13 Presentation of a commendation to Pioneer High School for outstanding service and commitment to the local community through a combined total of over 5,400 hours of community service. (Pyle)

Action: Mayor Gonzales and Council Member Pyle recognized and commended Pioneer High School students for their exemplary service and commitment to the City of San José and for being the recipient of the “Presidential Service Student” award.

COMMUNITY & ECONOMIC DEVELOPMENT

4.3 Public Hearing and approval of an ordinance of the City of San José, effective as of January 1, 2006 and expiring as of December 31, 2006, providing for a limited exception to Ordinance No. 21663, which precludes second units, and authorizing a temporary second unit pilot program for the issuance of a maximum of 100 second unit permits for new construction during a one-year evaluation period, which pilot project automatically terminates if 100 permits are issued during the evaluation period or no later than the expiration date of the ordinance, and which establishes specified requirements pertaining to minimum lot size, maximum unit size and number of bedrooms, parking, development standards, design standards, and applicable fees. Director of Planning, Building and Code Enforcement and Planning Commission recommended approval (7-0-0) with direction to refine the limitation on storage area to a limitation on the amount of contiguous storage area of 10% of the total floor area of the second unit. CEQA: Exempt, File No. PP05-196. (Housing/Planning, Building and Code Enforcement)

[Building Strong Neighborhoods Committee referral 10/17/05 – Item 4.1(e), Deferred from 11/1/05 – Item 4.3]

[Driving a Strong Economy Committee referral 10/24/05 – Item 4.2(a), Deferred from 11/8/05 – Item 4.3]

(Deferred from 11/1/05 – Item 4.3)

Documents Filed: (1) Memorandum from Council Liaison for City Manager’s Office Nadine Nader, dated November 3, 2005, transmitting the report on Secondary Units. (2) Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated November 3, 2005, transmitting the Staff report. (3) Supplemental

4.3 (Cont'd.)

memorandum from Director of Housing Leslye Krutko and Director of Planning, Building and Code Enforcement Stephen Haase, dated November 2, 2005, transmitting a follow-up report on the Secondary Units. (4) Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated November 10, 2005, transmitting the Planning Commission recommendation. (5) Staff Presentation, Secondary Residential Units, dated November 15, 2005. (6) Proofs of Publication of Notices of Public Hearings, executed on October 28, 2005 and November 6, 2005, submitted by the City Clerk. (7) Letter from the public, dated November 15, 2005, regarding Secondary Units.

Director of Housing Leslye Krutko presented an overview of the Secondary Residential Units. Director of Planning, Building and Code Enforcement Stephen Haase explained in more detail the Parameters of the Secondary Units and the One Year Pilot Program.

Motion: Council Member Williams moved approval of the Staff recommendation. Council Member Reed seconded the motion.

Mayor Gonzales opened the public hearing.

Public Comments: Speaking in favor of the Pilot Program were Connie Langford, Lori Prud'homme, Senior Commission, Phyllis Ward, Affordable Housing Network, Ben Cardoza, CHAM, Joe Simas, and Sharon Sweeney. Mayor Gonzales closed the public hearing.

Vice Mayor Chavez expressed concern about the overcrowding that already exists, especially in the downtown, and stated she could not support the motion. Council Member Yeager concurred and stated that legal issues should be resolved regarding owner occupancy before implementation.

Action: On a call for the question, the motion carried, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 27606, entitled: "An Ordinance of the City of San José, Effective as of January 1, 2006 and Expiring as of December 31, 2006, Providing for a Limited Exception to Ordinance No. 21663 Which Precludes Second Units, and Authorizing a Temporary Second Unit Pilot Program for the Issuance of a Maximum of 100 Second Unit Permits for New Construction During a One-Year Evaluation Period, Which Pilot Project Automatically Terminates if 100 Permits are Issued During the Evaluation Period or No Later Than the Expiration Date of the Ordinance, and Which Establishes Specified Requirements Pertaining to Minimum Lot Size, Maximum Unit Size and Number of Bedrooms, Parking, Development Standards, Design Standards and Applicable Fees", was passed for publication. (9-2-0. Noes: Chavez, Yeager.)

- 4.6 (a) Acceptance of the status report on the City's industrial lands.
- (b) Adoption of the proposed modifications to the Framework, as a guideline, to evaluate proposed conversions of employment lands to other uses.
- (c) Approval of an ordinance amending Sections 20.50.100 and 20.50.110 of, and adding a new section 20.50.120 to, Chapter 20.50 and amending Sections 20.200.897 and 20.200.1065 of Chapter 20.200, all of Title 20 of the San José Municipal Code to further streamline required permit processes for certain uses to allow for increased amounts of commercial support uses within industrial zoning districts and amending Section 20.90.060, 20.90.210, and 20.90.220 of Chapter 20.90 of Title 20 to modify the parking provisions for uses within industrial districts. CEQA: Exempt, PP05-191.

Director of Planning, Building and Code Enforcement and Planning Commission recommended approval (6-0-0-1; Dhillon abstained).

CEQA: Not a Project. (Planning Building and Code Enforcement)

[Driving a Strong Economy Committee referral 10/24/05 – Item 4.2(f)]

(Deferred from 11/8/05 – Item 4.4)

Documents Filed: (1) Memorandum from Mayor Gonzales, Vice Mayor Chavez and Council Member Williams, dated November 15, 2005, recommending adoption of the proposed modifications with clarification. (2) Memorandum from Council Member Cortese, dated November 15, 2005, recommending acceptance of the staff report with modifications. (3) Memorandum from Planning Commission Secretary Stephen Haase, dated November 10, 2005, transmitting the Planning Commission recommendation. (4) Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated November 3, 2005, transmitting the Staff report. (5) Replacement memorandum from Council Liaison for City Manager's Office Nadine Nader, dated October 27, 2005, transmitting Status of Industrial Lands report. (6) Proofs of Publications of Notices of Public Hearings, executed on October 28, 2005 and November 6, 2005, submitted by the City Clerk.

Motion: Vice Mayor Chavez moved approval of the memorandum she cosigned with Mayor Gonzales and Council Member Williams. Council Member Williams seconded the motion.

Council Member Cortese offered a friendly amendment, which was accepted and incorporated into the "Action", as noted on Page 27.

Public Comment: Brian Boxall, AMRA and Steve Johnson, KOFT, spoke in favor of the Staff recommendations.

4.6 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, and the report was accepted, and Ordinance No. 27607, entitled: "An Ordinance of the City of San José Amending Sections 20.50.100 and 20.50.110 of, and Adding a New Section to, Chapter 20.50 and Amending Sections 20.200.897 and 20.200.1065 of Chapter 20.200, All of Title 20 of the San José Municipal Code to Further Streamline Required Permit Processes for Certain Uses to Allow for Increased Amounts of Commercial Support Uses Within Industrial Zoning Districts and Amending Sections 20.90.060, 20.90.210 and 20.90.220 of Chapter 20.909 of Title 20 of the San José Municipal Code to Modify the Parking Provisions for Uses Within Industrial Districts", was passed for publication, including the following which was approved: (1) Adopt the proposed modifications to the Framework, as a Guideline, to Evaluate Proposed Conversions of Employment Lands to Other Uses: (a) Except for the clarification that limits transit oriented development in the Berryessa Station Area Node and that this language should remain: Northeast San José subarea (east of Coyote Creek): Consider housing near the Berryessa BART Station consistent with the City of San José Transit Oriented Development Policies. (b) Except modify the Framework Elements-Subareas to promote or facilitate conversion to housing, retail mixed use, or other Household-Serving Industries such that bullet one (recommended by Staff for elimination) reads, "Agnews site in North San José 2 Subarea: Direct the Housing Department to evaluate the feasibility of a Request for Qualifications (RFQ) for this site and also include other properties consistent with the land use recommendations put forth by Keeping Our Families Together (KOFT). Staff was directed to return to Council with this information by no later than the first City Council Meeting in January, 2006.

PUBLIC HEARINGS ON CONSENT CALENDAR

City Clerk Lee Price read the requests for continuance of the applications. Upon motion by Council Member Reed, seconded by Council Member Yeager, and carried unanimously, the Public Hearings Consent Calendar was approved and the below listed actions were taken as indicated. (11-0.)

- 11.1 (a) Approval of an ordinance amending Sections 20.50.100 and 20.50.110 of, and adding a new section 20.50.120 to, Chapter 20.50 and amending Sections 20.200.897 and 20.200.1065 of Chapter 20.200, all of Title 20 of the San José Municipal Code to further streamline required permit processes for certain uses to allow for increased amounts of commercial support uses within industrial zoning districts and amending Section 20.90.060, 20.90.210, and 20.90.220 of Chapter 20.90 of Title 20 to modify the parking provisions for uses within industrial districts. CEQA: Exempt, PP05-191. Director of Planning, Building and Code Enforcement and Planning Commission recommended approval (6-0-0-1; Dhillon abstained).
Citywide**

Action: See Item 4.6(c) for Council action taken.

- 11.1 (b) **Conforming Rezoning from IP Industrial Park Zoning District to LI Light Industrial Zoning District to allow industrial uses on a 1.42 gross acre site, located on the south side of Umbarger Road, 300 feet westerly of Meadowfaire Drive (370 Umbarger Road) (Umbarger LLC, Owner). CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.**
C05-089 - District 7

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C05-089, dated October 25, 2005, recommending approval on the subject property. (2) Proof of Publication of Notice of Public Hearing, executed on November 4, 2005, 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: The recommendation of the Planning Director was approved, and Ordinance No. 27608, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the South Side of Umbarger Road, 300 Feet Westerly of Meadowfaire Drive (370 Umbarger Road) to LI Light Industrial Zoning District", was passed for publication. (11-0.)

- (c) **Conforming rezoning from County to CN Commercial Neighborhood Zoning District to allow commercial uses on a 0.15 gross acre site, located at/on the east side of Grand Avenue, approximately 300 feet northerly of West San Carlos Street (278 Grand Avenue) (Michael C. Ybarra, Owner). CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.**
C05-092 - District 6

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C05-092, dated October 18, 2005, recommending approval on the subject property. (2) Proofs of Publications of Notices of Public Hearings, executed on November 4, 2005, and November 6, 2005, 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.

11.1 (c) (Cont'd.)

Action: The recommendation of the Planning Director was approved, and Ordinance No. 27609, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the East Side of Grand Avenue Approximately 350 Feet Southerly of Park Avenue and 300 Feet Northerly of West San Carlos Street (278 Grand Avenue) to CN Commercial Neighborhood Zoning District", was passed for publication. (11-0.)

- (d) **Planned Development Rezoning from IP Industrial Park Zoning District to A(PD) Planned Development Zoning District to allow up to 98 single family attached residences on a 4.7 gross acre site, located on the northwest corner of Old Oakland Road and Rock Avenue (2059 Oakland Road) (Ernest E. Pestana, Owner). CEQA: Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2-0).**

PDC05-022 - District 4

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC05-022, dated October 20, 2005, recommending approval on the subject property. (2) Memorandum from Planning Commission Secretary Stephen Haase, dated October 27, 2005, transmitting the Planning Commission recommendation. (3) Proofs of Publications of Notices of Public Hearings, executed on October 14, 2005, October 21, 2005, and November 6, 2005, 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: The recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 27610, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Northwest Corner of Old Oakland Road and Rock Avenue (2059 Oakland Road) to A(PD) Planned Development Zoning District", was passed for publication. (11-0.)

- (e) **Planned Development Rezoning from the R-1-5, R-1-8 and R-M Residence districts to A(PD) Planned Development Zoning District to allow 56 multi family attached residences on a 2.27 gross acre site, located on the east side of Almaden Road across from the intersection with Malone Road (1992 Almaden Road) (Maurice M. and Adaleah K. Camara, Trustee, Owner.) CEQA: Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (4-1-2-0).**

PDC05-012 - District 6

11.1 (e) (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC05-012, dated October 19, 2005, recommending approval on the subject property. (2) Memorandum from Planning Commission Secretary Stephen Haase, dated October 27, 2005, transmitting the Planning Commission recommendation. (3) Proofs of Publications of Notices of Public Hearings, executed on October 14, 2005, October 21, 2005, and November 6, 2005, submitted by the City Clerk.

Public Comment: Mayor Gonzales opened the public hearing on the subject property. Speaking in opposition to the rezoning were: Kathy Guavnieri, Kristi Haight, Xavier De La Rocha, and Matt Landers.

Applicant Don Reber, The Olson Company, spoke in favor of the Staff recommendation. Mayor Gonzales closed the public hearing.

Action: Upon motion by Council Member Yeager, seconded by Council Member Reed and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 27611, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the East Side of Almaden Road Across From the Intersection with Malone Road (1992 Almaden Road) to A(PD) Planned Development Zoning District", was passed for publication. (11-0.)

11.2 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

[Continued from 10/18/05 – Item 11.1(e)]

Action: Dropped.

- 11.3 Appeal of the Planning Director's decision to approve a Site Development Permit to allow construction of a 22-story building (approximately 8,000 square feet in), which included 330 residential units, a 208,996 square foot parking garage, and approximately 8,000 square feet of retail commercial use on a 1.42 gross acre site, and to demolish two existing structures, including the Palomar Ballroom a National Register of Historic Places eligible structure. The site is zoned DC Downtown Primary Commercial and is located at/on the southwest corner of Carlisle Street and Notre Dame Avenue (47 Notre Dame Ave) (Almaden Tower Venture, LLC, Owner; KT Properties Mark Tersini, Developer). CEQA: Almaden Tower Residential Project SEIR. Director of Planning, Building and Code Enforcement recommends approval subject to the conditions related to revised design, interim parking, and historic preservation. No Planning Commission action required.
H04-050 – District 3**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. H04-050, dated October 26, 2005, recommending approval on the subject property. (2) Proofs of Publications of Notices of Public Hearings, executed on November 4, 2005, and November 6, 2005, submitted by the City Clerk.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Cortese and carried unanimously, Item 11.3 was dropped. (11-0.)

- 11.4 Public Hearing on and consideration of approval of an ordinance on Planned Development Rezoning from A Agriculture Zoning District to A(PD) Planned Development Zoning District to allow up to 12 single family detached residences on a 3.19 gross acre site, located at/on the southeast corner of Fleming Avenue and Morrie Drive (1351 Fleming Avenue) (Judith M. Wallech, Trustee & et al, Owner: Braddock & Logan Group, Mr. James Sullivan, Developer). CEQA: Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2-0).
PDC05-043 - District 5**

Documents Filed: (1) Memorandum from Council Member Campos, dated November 15, 2005, recommending approval of the Staff recommendation with additions. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC05-043, dated October 19, 2005, recommending approval on the subject property. (3) Memorandum from Planning Commission Secretary Stephen Haase, dated October 27, 2005, transmitting the Planning Commission recommendation. (4) Proofs of Publications of Notices of Public Hearings, executed on October 14, 2005, October 21, 2005, and November 6, 2005, submitted by the City Clerk.

Public Comment: Mayor Gonzales opened the public hearing. Kathy Elliot expressed concerns regarding the subject rezoning. Mayor Gonzales closed the public hearing.

11.4 (Cont'd.)

Action: Upon motion by Council Member Campos, seconded by Vice Mayor Chavez and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 27612, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Southeast Corner of Fleming Avenue and Morrie Drive (1351 Fleming Avenue) to A(PD) Planned Development Zoning District”, was passed for publication, including: (1) The Public Works Staff was directed to continue to work with the project developer at the Planned Development Permit stage on the scope and requirements of street improvements to Fleming Avenue, west of Morrie Drive and, (2) Accept developer’s offer to: (a) Design and construct off site improvements on Fleming Avenue, west of Morrie Drive to the satisfaction of the Director of Public Works Department not to exceed \$30,000. (b) Conduct a follow-up neighborhood meeting at the Planned Development Permit stage to update and solicit feedback from the community on the nature and scope of such off-site street improvements. (3) If off-site street improvements identified by Public Works are not possible within the \$30,000 limit: (a) Accept developer’s contribution of \$30,000 for off-site street improvements on Fleming Avenue, west of Morrie Drive prior to Public Works clearance for building permits. (b) Direct Public Works Staff to refer project to budget process for TDA, TSI Grant or Traffic CIP for funding of recommended improvements. (11-0.)

11.5 **Public Hearing on and consideration of approval of an ordinance on Planned Development Rezoning from LI Light Industrial Zoning District to the A(PD) Planned Development Zoning District to allow 44 single-family detached residences on a 2.79 gross acre site, located at the east side of North Ninth Street between Taylor Street and Jackson Street (680 N. 9th St.) (Le Ba Van and Nguyen Hanh Thi, et al, Bale Properties Huong Le, Martin and Neil Feldman Trustee, Owner). SNI: 13th Street. CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement recommended approval subject to the following conditions:**

- (a) **Development standards should be modified to require a 10-foot setback for buildings from the westerly, N. 9th St. property line. Private open space area would be allowed to encroach up to 5 feet into this setback area.**
- (b) **Provide a minimum of 280 square feet of private open space for each residential unit.**
- (c) **Provide a minimum of 150 square feet of common open space for each residential unit.**

Planning Commission recommended approval (5-2-0-0; Levy and Zito opposed) with conditions:

- (a) **Setback from N. 9th Street shall be 8 feet.**
- (b) **Sidewalk width on 9th Street shall be 5.5 feet.**
- (c) **Combined common and private open space shall be 430 square feet per unit, with direction to staff to include all paseos and front and side yards.**

PDC05-059 - District 3

11.5 (Cont'd.)

Documents Filed: (1) Memorandum from Vice Mayor Chavez, dated November 15, 2005, recommending approval of the Staff recommendation with conditions. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC05-059, dated November 1, 2005, recommending approval on the subject property. (3) Memorandum from Secretary of Planning Commission Stephen Haase, dated November 10, 2005, transmitting the Planning Commission recommendation of the subject property. (4) Proofs of Publications of Notice of Public Hearing, executed on October 14, 2005, and November 6, 2005, submitted by the City Clerk. (5) Letter from Mr. Charles Davidson regarding the subject rezoning.

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

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Campos and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 27613, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the East Side of North Ninth Street Between Taylor Street and Jackson Street (680 North 9th Street) to A(PD) Planned Development Zoning District”, was passed for publication, with the following conditions, which reflect the Planning Commission’s recommendation to approve: (1) The westerly building setback from North 9th Street shall be at least 8 feet. (2) The sidewalk width may be reduced to no less than 5.5 feet. (3) The project shall provide a combination of common and private open space for each residential unit. Common open space at the end of the pedestrian paseos and private open space areas at the front and rear side yard areas should be utilized to provide the maximum amount of useable open space for the unit residents. (4) Treat the 9th Street elevation with larger porches and front yards by removing the 4 foot privacy walls and expanding the currently proposed entryways. (11-0.)

OPEN FORUM

- (1) Stephen Hazel voiced his own personal opinions on a variety of issues.
- (2) Mark Trout voiced his own religious point of view.

ADJOURNMENT

The Council of the City of San José was adjourned at 9:12 p.m. in memory of Bill Santos, Co-President of the Hoffman/Via Monte NAC; and in memory of Jackson Huynh, an Andrew Hill High School student who courageously battled bone marrow cancer while attending school.

RON GONZALES, MAYOR

ATTEST:

LEE PRICE, CMC, CITY CLERK

smd/11-15-05MIN

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