

## MINUTES OF THE CITY COUNCIL

**SAN JOSÉ, CALIFORNIA**

**TUESDAY, NOVEMBER 29, 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 - Campos, Chavez, Chirco, Cortese, LeZotte, Nguyen, Pyle, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - None.

Upon motion unanimously adopted, Council recessed at 9:05 a.m. to a Closed Session in Room T1841, (A) to confer with Real Property Designated Representatives pursuant to Government Code 54956.8: (1) Property: Santa Clara Development Site (North side of Santa Clara Street between 4<sup>th</sup> and 5<sup>th</sup> Streets), Designated Representatives: Joe Guerra, Paul Krutko, Jr. for the City of San José, Harry Mavrogenes for the Redevelopment Agency of the City of San José and the City of San José, and Greg Jamison and Don Gralnek for SVSE LLC, Under Negotiation: The direction will concern price and terms of payment. (2) Property: Training Facility Site (Southwest corner of Park Avenue/Montgomery Street. Designated Representatives: Joe Guerra, Paul Krutko, Jr. for the City of San José, Harry Mavrogenes for the Redevelopment Agency of the City of San José and the City of San José, and Greg Jamison and Don Gralnek for SVSE LLC, Under Negotiation: The direction will concern price and terms of payment. (B) Public employee performance evaluation pursuant to Government Code Section 54957, Title: City Manager. (C) 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) SCS Development Company dba Citation Homes and Shapell Industries of Northern California v. City of San José, et al. (D) to confer with Legal Council pursuant to Government Code Section 54956.9, subsection (c) with respect to initiation of litigation in one (1) matter. (E) 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.

By unanimous consent, Council reconvened from the Closed Session and recessed at 10:45 a.m. and reconvened at 1:34 p.m. in the Council Chambers.

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

Absent: Council Members - None.

## **INVOCATION**

The Castellero Middle School Chamber Singers led by Mr. David Finch, Choir Director. (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 Pyle, and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (10-0-1. Absent: Reed.)

## **CEREMONIAL ITEMS**

### **1.1 Presentation of commendations recognizing San José Fire Department and Code Enforcement personnel deployed to assist with rescue, recovery and rebuilding efforts in the Gulf Coast as a result of Hurricane Katrina. (Mayor/Chavez)**

Action: Mayor Gonzales and Vice Mayor Chavez recognized and commended the San José Fire Department and Code Enforcement personnel deployed to the Gulf Coast to assist with the victims and aftereffects of Hurricane Katrina.

### **1.2 Presentation of commendation to DHL Express and Teamsters Local 287 in recognition of their contributions and services provided during the Winter Jacket Drive through the Renew Hope Project. (Mayor/Chavez/Campos)**

Action: Mayor Gonzales, Vice Mayor Chavez and Council Member Campos recognized and commended DHL Express and the Teamsters Local 287 for their contributions and service to the community.

**1.3 Presentation of a commendation to the Camera Cinemas for their 30<sup>th</sup> Anniversary in Downtown San José. (Mayor/Chavez/Cortese)**

Action: Mayor Gonzales, Vice Mayor Chavez and Council Member Cortese recognized the Camera Cinemas on their 30<sup>th</sup> Anniversary in Downtown San José.

**1.4 Presentation of a commendation to the Indian Health Center of Santa Clara Valley in recognition of the organization's pivotal role in providing equitable and accessible comprehensive healthcare for the American Indian Community and in honor of November being Native American Heritage Month. (Yeager)**

Action: Mayor Gonzales and Council Member Yeager recognized and commended the Indian Health Center of Santa Clara Valley for their vital role in providing accessible healthcare for the American Indian Community and in honor of "Native American Heritage Month".

**1.5 Presentation of a proclamation declaring the week of November 29 – December 6, 2005 "Family Week" in the City of San José. (Williams)**

Action: Mayor Gonzales and Council Member Williams proclaimed the week of November 29, 2005 through December 6, 2005 as "Family Week" in the City of San José.

**1.6 Presentation of a commendation for Myrtle McKenna in celebration of her 101<sup>st</sup> birthday on November 30, 2005. (Campos)  
(Deferred from 11/15/05 – Item 1.3)**

Action: Mayor Gonzales and Council Member Campos recognized Ms. Myrtle McKenna in honor of her 101<sup>st</sup> birthday.

**1.7 Presentation of a commendation recognizing the 20th Anniversary of People Acting in Community Together (PACT). (Nguyen)**

Action: Mayor Gonzales and Council Member Nguyen recognized and commended People Acting in Community Together on their 20<sup>th</sup> Anniversary.

**1.8 Presentation of a commendation to the Almaden Valley Athletic Club and Hospice of the Valley for their joint collaboration in 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 Valley Athletic Club and Hospice of the Valley for their service and commitment to the residents of District 10.

**1.9 Presentation of commendation to History San José recognizing their achievement in preserving San José’s History. (Chavez)**

Action: Mayor Gonzales and Vice Mayor Chavez recognized and commended History San José for preserving the City of San José’s history.

**1.10 Presentation of a grant to History San José and José Pantoja in celebration and recognition of Founders Day. (Reed)**

Documents Filed: Publication from the Hispanic Genealogical and Historical Society of Santa Clara County, dated November 29, 2005.

Action: Mayor Gonzales and Council Member Reed recognized and commended Mr. José Pantoja in celebration of “Founders Day”.

**CONSENT CALENDAR**

Upon motion by Council Member Williams, seconded by Council Member Pyle, and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (10-0-1. Absent: Yeager.)

**2.1 Approval of minutes:**

- (a) Regular minutes of May 3, 2005
- (b) Regular minutes of May 10, 2005
- (c) Regular minutes of May 17, 2005
- (d) Regular minutes of May 24, 2005
- (e) Joint San José/Financing Authority minutes of May 24, 2005

Documents Filed: The Regular Minutes of May 3, 2005, May 10, 2005, May 17, 2005, and May 24, 2005 and the Joint San José/Financing Authority minutes of May 24, 2005.

Action: The Minutes were approved. (10-0-1. Absent: Yeager.)

**2.2 (a) ORD. NO. 27606 – 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, 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.**

Documents Filed: (1) Memorandum from City Attorney Richard Doyle, dated November 23, 2005, transmitting technical clarification. (2) Proof of Publication of Notice of Public Hearing, executed on November 22, 2005, submitted by the City Clerk.

Action: Ordinance No. 27606 was adopted. (10-0-1. Absent: Yeager.)

- 2.2 (b) **ORD. NO. 27607** – Amends 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 sections 20.90.060, 20.90.210 and 20.90.220 of chapter 20.90 of title 20 of the San José Municipal Code to modify the parking provisions for uses within industrial districts.

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on November 22, 2005, submitted by the City Clerk.

Action: Ordinance No. 27607 was adopted. (10-0-1. Absent: Yeager.)

- (c) **ORD. NO. 27608** – Rezones 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. C05-089

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on November 22, 2005, submitted by the City Clerk.

Action: Ordinance No. 27608 was adopted. (10-0-1. Absent: Yeager.)

- (d) **ORD. NO. 27609** – Prezones 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 Carlo Street (278 Grand Avenue) to CN Commercial Neighborhood Zoning District. C05-092

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on November 22, 2005, submitted by the City Clerk.

Action: Ordinance No. 27609 was adopted. (10-0-1. Absent: Yeager.)

- (e) **ORD. NO. 27610** – Rezones 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. PDC05-022

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on November 22, 2005, submitted by the City Clerk.

Action: Ordinance No. 27610 was adopted. (10-0-1. Absent: Yeager.)

- 2.2 (f) **ORD. NO. 27611** – Rezones 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. PDC05-012

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on November 22, 2005, submitted by the City Clerk.

Action: Ordinance No. 27611 was adopted. (10-0-1. Absent: Yeager.)

- (g) **ORD. NO. 27612** – Rezones certain real property situated at the southeast corner of Fleming Avenue and Morrie Drive (1351 Fleming Avenue) to A(PD) Planned development Zoning District. PDC05-043

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on November 22, 2005, submitted by the City Clerk.

Action: Ordinance No. 27612 was adopted. (10-0-1. Absent: Yeager.)

- (h) **ORD. NO. 27613** – Rezones certain real property situated on the east side of north Ninth Street between Taylor Street and Jackson Street (680 North 9<sup>th</sup> Street) to A(PD) Planned Development Zoning District. PDC05-059

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on November 22, 2005, submitted by the City Clerk.

Action: Ordinance No. 27613 was adopted. (10-0-1. Absent: Yeager.)

- (i) **ORD. NO. 27581** – 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 (PDC05-036) and rescinding City Council action on November 1, 2005 in connection with the rezoning of this same real property.

Documents Filed: None.

Action: Ordinance No. 27581 was adopted. (10-0-1. Absent: Yeager.)

- 2.3 (a) Adoption of a resolution authorizing the City Manager to negotiate and execute 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 20, 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)  
(Deferred from 11/15/05 – Item 2.4)

### 2.3 (Cont'd.)

Documents Filed: None.

Action: Resolution No. 72977, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Extension of the Permit with the U.S. General Services Administration for Premises Used by the Transportation Security Administration at the Norman Y. Mineta San José International Airport for the Period November 20, 2005 through June 30, 2006 with Annual Revenue of \$561,977", and Resolution No. 72978, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute up to Four Amendments to Extend the Term of the Permit with the U.S. General Services Administration for Premises Used by the Transportation Security Administration for Additional One Year Terms Through June 30, 2010 at an Annual Rent Consistent with the Annual Airport Rates and Charges Resolution", were adopted. (10-0-1. Absent: Yeager.)

### 2.4 **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) (Deferred from 11/15/05 – Item 2.9)**

Documents Filed: Letter from the Treatment Plant Advisory Committee, November 7, 2005, recommending approval of the first amendment, increase of contingency budget and Change Order No. 8.

Action: The first amendment to the agreement was approved. (10-0-1. Absent: Yeager.)

### 2.5 (a) **Approval of a second amendment to extend the lease for office and storage space in the hangar building located at 1277 Airport Boulevard with Mexicana Airlines for the period commencing December 15, 2005 to December 31, 2010, subject to termination by either party on thirty day written notice, with annual revenue to the City in the amount of \$1,742.** (b) **Approval of a seventh amendment to the Scheduled Airline Operating Agreement and Terminal Building Lease with Compania Mexicana De Aviacion S.A. De C.V. (Mexicana Airlines) to reduce the square footage of certain leased operations and ticket counter space occupied by Mexicana in Terminal C, and to amend provisions regarding the City's Airport Noise Control Program, with annual revenue to the City in the amount of \$292,078. CEQA: Resolution Nos. 67380 and 71451, PP 05-175 and PP 05-209. (Airport)**

Documents Filed: Memorandum from Director of Aviation William Sherry, dated November 7, 2005, recommending approval of a second amendment and a seventh amendment.

Action: The second amendment and the seventh amendment were approved. (10-0-1. Absent: Yeager.)

**2.6 Adoption of the following appropriation ordinance amendments in the General Fund:**

**(a) Establish a City-Wide “Emergency Response and Preparedness Risk/Threat Assessment” appropriation to the Office of the City Manager in the amount of \$500,000.**

**(b) Decrease the Contingency Reserve by \$500,000.**

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

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

Action: Ordinance No. 27614, entitled: “An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Monies in the General Fund for the Emergency Response and Preparedness Risk/Threat Assessment; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”, was adopted. (10-0-1. Absent: Yeager.)

**2.7 Adoption of the following amendments to the annual appropriation ordinance and funding sources resolution in the Workforce Investment Act Fund:**

**(a) Increase Rapid Response appropriation by \$207,132.**

**(b) Increase earned revenue estimate by \$207,132.**

**CEQA: Not a Project. (Economic Development)**

Documents Filed: Memorandum from Budget Director Larry Lisenbee and Director of Economic Development Paul Krutko, dated November 9, 2005, recommending adoption of the annual appropriation ordinance and funding sources resolution.

Council Member Williams abstained from the vote due to conflicting interests with Henkel and McCoy leasing a space in his Church and also that Henkel and McCoy has been awarded a contract by WIN.

Action: Upon motion by Council Member Pyle, seconded by Council Member Chirco and carried unanimously, Ordinance No. 27615, entitled: “An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Monies in the Workforce Investment Act Fund for the Rapid Response Grant; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”, and Resolution No. 72979, 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 Workforce Investment Act Fund”, were adopted. (9-0-1-1. Disqualified: Williams. Absent: Yeager.)

**2.8 Approval of the interior expansion of the Sharks Store at HP Pavilion at San José. CEQA: Resolution No. 60199. (Economic Development)**

Documents Filed: Memorandum from Director of Economic Development Paul Krutko, dated November 9, 2005, recommending approval of the expansion.

Action: The expansion of the Sharks Store was approved. (10-0-1. Absent: Yeager.)



**2.9 Approval to reject all bids for the purchase of an Aerial Lift for City Hall and direct the Finance Director to re-solicit the requirement. CEQA: Not a Project. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated November 9, 2005, recommending rejection of all bids and to re-solicit.

Action: The action to reject all bids and re-solicit the requirement was approved. (10-0-1. Absent: Yeager.)

**2.10 Approval to reject all proposals received for the Integrated Cashiering Solution RFP, and authorization for the Director of Finance to re-solicit proposals. CEQA: Not a Project. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated November 15, 2005, recommending rejection of proposals and to re-solicit.

Action: The action to reject all proposals and re-solicit was approved. (10-0-1. Absent: Yeager.)

**2.11 Adoption of the following amendments to the annual appropriation ordinance and funding sources resolution in the Home Investment Partnership Program Fund and the Low and Moderate Income Housing Fund:**

**(a) In the Home Investment Partnership Program Fund:**

- (1) Increase the Teacher/First Time Homebuyer Loans appropriation by \$2,600,000**
- (2) Increase the earned revenue estimate by \$2,600,000.**

**(b) In the Low and Moderate Income Housing Fund:**

- (1) Decrease the Loans, Grants and Site Acquisition appropriation by \$2,600,000.**
- (2) Increase the Ending Fund Balance by \$2,600,000.**

**CEQA: Not a Project. Council District 5. (Housing/City Manager's Office)**

Documents Filed: Memorandum from Director of Housing Leslye Krutko and Budget Director Larry Lisenbee, dated November 10, 2005, recommending adoption of amendments to the annual appropriation ordinance and funding sources resolution.

Action: Ordinance No. 27616, entitled: "An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Monies in the Home Investment Partnership Program Fund and the Low and Moderate Income Housing Fund for the Teacher/First Time Homebuyer Loans; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption", and Resolution No. 72980, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. Amending Resolution No. 72762 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2005-2006 to Adjust Revenues in the Home Investment Partnership Program Fund", were adopted. (10-0-1. Absent: Yeager.)

- 2.12 (a) **Adoption of a resolution authorizing the City Manager to accept the following grant awards and to negotiate and execute any necessary documents related to the grants:**
- (1) **A \$5,000 grant from the National Trust for Historic Preservation (NTHP) Johanna Favrot Fund for Historic Preservation;**
  - (2) **A \$5,000 grant from the State of California, Office of Historic Preservation (OHP) for Certified Local Governments;**
- (b) **Adoption of the following appropriation ordinance and funding sources resolution amendments in the General Fund:**
- (1) **Increase the revenue estimate from the State of California by \$5,000.**
  - (2) **Increase the estimate for Other Revenue in the General Fund by \$5,000.**
  - (3) **Establish a City-wide “Japantown Phase II Historic Resources Survey” appropriation to Planning, Building and Code Enforcement in the amount of \$10,000.**

**CEQA: Not a Project. (Planning, Building and Code Enforcement/City Manager’s Office)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase and Budget Director Larry Lisenbee, dated November 7, 2005, recommending adoption of a resolution and appropriation ordinance and funding sources resolution amendments.

Action: Resolution No. 72981, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Accept Grants for the Japantown Historic Resources Survey and to Execute All Related Documents”, Ordinance No. 27617, entitled: “An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Monies in the General Fund for the Japantown Phase II Historic Resources Survey; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”, and Resolution No. 72982, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. Amending Resolution No. 72762 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2005-2006 to Adjust Revenues in the General Fund”, were adopted. (10-0-1. Absent: Yeager.)

- 2.13 **Adoption of a resolution initiating proceedings and setting December 13, 2005 at 1:30 p.m. for council consideration on the reorganization of territory designated as Evergreen No. 190 which involves the annexation to the City of San José of 4.10 acres of land more or less, located on the east side of Yerba Buena Road, approximately 1870 feet of Verona Road, and adjacent to the City of San José annexations Evergreen Nos. 151 and 152 and the detachment of the same from Central Fire Protection, Area No. 01 (Library Services) County Services. CEQA: Resolution No. 63179, File No. PDC98-035. Council District 8. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated November 3, 2005, recommending adoption of a resolution.

**2.13 (Cont'd.)**

Action: Resolution No. 72983, entitled: “A Resolution of the Council of the City of San José Initiating Reorganization Proceedings for the Annexation and Detachment of Certain Uninhabited Territory Designated as Evergreen No. 190 Described Herein and Setting the Date, Time and Place for Consideration of Such Reorganization”, was adopted. (10-0-1. Absent: Yeager.)

- 2.14 (a) Approval of an agreement with Virginia K. Gerbino to provide horse and rider training for the Police Horse Mounted Unit for the period of October 1, 2005 through September 30, 2006, inclusive, for an amount not to exceed \$39,500; and**
- (b) Adopt a resolution authorizing the City Manager to execute five one-year options to renew without further Council action other than the appropriation of funds.**

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

Documents Filed: Memorandum from Police Chief Robert Davis, dated November 7, 2005, recommending approval of an agreement and adoption of a resolution.

Action: The agreement was approved, and Resolution No. 72984, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Execute Five One-Year Renewal Options to an Agreement with Virginia K. Gerbino to Provide Horse and Rider Training for the Police Horse Mounted Unit”, was adopted. (10-0-1. Absent: Yeager.)

- 2.15 Approval of the Purchase and Sale Agreement with Jose and Rita Velasco for the purchase of two parcels located at 961 East Santa Clara Street in the area of the proposed Roosevelt Park Expansion Project, in the purchase amount of \$800,000, and adoption of a resolution authorizing the Director of Public Works to accept the deed, to settle any relocation claims arising from the City’s purchase of these properties, and to execute all documents. CEQA: Mitigated Negative Declaration, File No. PP03-12-397. Council District 3. SNI: Five Wounds/Brookwood Terrace. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated November 7, 2005, recommending approval of the agreement and adoption of a resolution.

Action: Purchase and Sale Agreement was approved, and Resolution No. 72989, 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 Roosevelt Park Multi-Purpose Community Center Project”, was adopted. (10-0-1. Absent: Yeager.)

- 2.16 (a) **Approval of a month-to-month lease agreement with the Peninsula Corridor Joint Powers Board (JPB) for approximately 29,057 square feet of land to create a landscape buffer between Fuller Avenue Park and the JPB right-of way and allow the City to install and maintain a 6 foot tall chain link fence on a portion of the leased property.**
- (b) **Adoption of the following appropriation ordinance and funding sources resolution amendments in the Services for Redevelopment Capital Projects Fund (City-wide Redevelopment Fund):**
- (1) **Increase the appropriation to the Department of Parks, Recreation and Neighborhood Services for the Fuller Avenue Park Project (PSM 356#2) in the amount of \$66,000.**
- (2) **Increase the estimate for Earned Revenue by \$66,000.**
- (c) **Approval of an increase in the construction contingency in the amount of \$60,000, including the cost of the change order for fence installation, and an increase of the project delivery costs in the amount of \$6,000.**
- CEQA: Exempt, PP04-03-089. Council District 6. SNI: Greater Gardner. (Public Works/ Parks, Recreation and Neighborhood Services/City Manager's Office)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, Director of Parks, Recreation and Neighborhood Services Sara Hensley and Budget Director Larry Lisenbee, dated November 9, 2005, recommending approval of the lease agreement and adoption of an appropriation ordinance and funding sources resolution amendment.

Action: The lease agreement was approved and Ordinance No. 27618, 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 Fuller Avenue Park Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”, and Resolution No. 72985, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 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; and the construction contingency was approved. (10-0-1. Absent: Yeager.)

2.17 **Approval of an appointment to the Downtown Parking Board.  
(Mayor)**

Documents Filed: Memorandum from Mayor Gonzales, dated November 22, 2005, recommending approval of the appointment.

Public Comment: Ross Signorino asked for information regarding the hybrid parking privileges.

Action: Upon motion by Council Member Pyle, seconded by Vice Mayor Chavez and carried unanimously, the appointment of Diana Beechie was approved. (10-0-1. Absent: Yeager.)

**2.18 Acceptance of the Office of the City Auditor's Report of Activities and Findings for the period September 16 through October 15, 2005. (City Auditor)**

Documents Filed: City Auditor's Report for the period September 16 through October 15, 2005.

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

**2.19 Approval of Mayor Gonzales' travel to Chicago, Illinois for the meeting of the CEOs for Cities on December 1 - 2, 2005. Funding Source: Mayor's Office. (Mayor)**

Documents Filed: Memorandum from Mayor Gonzales, dated November 21, 2005, requesting approval of travel.

Action: Mayor Gonzales' travel was approved. (10-0-1. Absent: Yeager.)

**2.20 Approval of the proposed designation of Betsy Shotwell, Director of Intergovernmental Relations, as the voting delegate at the December 10, 2005 Annual Business Meeting for the National League of Cities. (City Clerk/City Manager's Office)**

Documents Filed: Memorandum from City Clerk Lee Price, dated November 18, 2005, recommending approval of the proposed designation, 2) Memorandum from Mark Linder, Assistant City Manager, dated November 10, 2005 recommending approval of the proposed designation.

Action: The designation of Betsy Shotwell as the voting delegate was approved. (10-0-1. Absent: Yeager.)

**END OF CONSENT CALENDAR**

**STRATEGIC SUPPORT SERVICES**

**3.2 Report of the Rules Committee - November 16, 2005  
Vice Mayor Chavez, Chair**

Documents Filed: The Rules Committee Reports dated November 16, 2005 and November 9, 2005.

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting
- (b) City Council
  - (1) Review November 29, 2005 Draft Agenda

The Committee recommended approval of the November 29, 2005 City Council Agenda with nine additions.

**3.2 Report of the Rules Committee - November 16, 2005 (Cont'd)  
Vice Mayor Chavez, Chair**

- (b) City Council (Cont'd.)
  - (2) Add New Items to November 22, 2005 Agenda
  - (3) List of Reports Outstanding

There were none. The Council Meeting for November 22, 2005 was cancelled.

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

- (d) Meeting Schedules
  - (1) Proposed 2006-2007 City Budget Calendar. Attachment: Memorandum from Budget Director Larry Lisenbee, dated November 7, 2005, recommending adoption of the proposed City Budget calendar.

The Committee recommended the adoption of the proposed 2006-2007 City Budget Calendar.

- (2) Council Meeting Schedule January – July 2006. Attachment: Memorandum from Council Liaison for City Manager's Office Nadine Nader, dated November 10, 2005, recommending approval of the City Council Meeting Schedule.

The Committee recommended approval of the City Council Meeting Schedule for the period January through July 2006.

- (e) The Public Record. Attachment: Memorandum from City Clerk Lee Price, dated November 10, 2005, transmitting items for public record and administration for the period of November 2-8, 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 - There were none.
- (h) Open Forum

Bill Chew suggested that exercise programs for City employees be reinstated to ensure a healthy, productive work force.

- (i) Adjournment -The meeting was adjourned at 2:11 p.m.

**3.2 Report of the Rules Committee - November 9, 2005**  
**Vice Mayor Chavez, Chair**

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting
- (b) City Council
  - (1) Review November 22, 2005 Council Agenda

The Council Meeting was cancelled.

- (2) Add New Items to November 15, 2005 Agenda

The Committee recommended four additions to the November 15, 2005 City Council Agenda.

- (3) List of Reports Outstanding. Attachment: Report from the City Manager dated November 8, 2005, transmitting reports outstanding for November 15, 2005.

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

- (c) Legislative Update
  - (1) State. Attachment: Special Statewide Election Ballot Measures, dated November 8, 2005.

The Committee directed Staff to review pending initiatives for next year's ballot that may impact the City of San José as soon as possible to determine if the City should take any positions on the petitions for new initiatives. The Committee noted and filed the Statewide and Santa Clara County Returns.

- (2) Federal - There was no report.

- (d) Meeting Schedules - There were none.

- (e) The Public Record. Attachment: Memorandum from City Clerk Lee Price, dated November 3, 2005, transmitting items for public record and administration for the period of October 26 - November 1, 2005.

The Committee noted and filed the Public Record.

- (f) Appointments to Boards, Commissions and Committees
  - (1) Small Business Development Commission. Attachment: Memorandum from Council Member Reed, dated October 25, 2005, recommending the reappointment of the incumbents.

The Committee recommended the reappointment of incumbents Daisy Chu, Jordan Dancer and Joyce Puopolo to terms ending December 31, 2005.

**3.2 Report of the Rules Committee - November 9, 2005 (Cont'd)**  
**Vice Mayor Chavez, Chair**

- (f) Appointments to Boards, Commissions and Committees (Cont'd.)  
(2) Request for Leave of Absence by Arts Commissioner. Attachment: Memorandum from Director of Economic Development Paul Krutko, dated October 31, 2005, recommending approval of the leave of absence.

The Committee recommended approval of a one month leave of absence for Arts Commissioner Jess Moreles, for a period November 1 through 29, 2005.

- (g) Rules Committee Reviews, Recommendations and Approvals  
(1) Addition to Auditor's Work Plan – Review of HP Pavilion Arena Fees. Attachment: Memorandum from City Attorney Richard Doyle and City Auditor Gerald Silva, dated November 2, 2005, recommending the review of the HP Pavilion records.

The Committee recommended that the review of the HP Pavilion records to verify the appropriate payment of Arena fees to the City of San José be added to the Auditor's Work Plan.

- (2) Workload Assessment Report to Review Ordinances for Illegal Tree Removal and to Evaluate the Feasibility of Increasing Fines and Other Mitigations for Illegal Tree Removals. Attachment: Memorandum from Director of Transportation James Helmer and Director of Planning, Building and Code Enforcement Stephen Haase, dated November 4, 2005, recommending acceptance of the report.

The Committee recommended acceptance of the Workload Assessment Report and the alternative process in which Staff would perform a limited level of case and date review to assess potential trends and reasons for illegal tree removals and to determine if increasing fines and mitigation levels would act as an additional disincentive for property owners to violate the tree removal ordinances.

- (h) Open Forum - There were none presented.  
(i) Adjournment - The meeting was adjourned at 2:11 p.m.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Campos and carried unanimously, the Rules Committee Reports and the actions of November 9, 2005 and November 16, 2005, were accepted. (9-0-2. Absent: Williams, Yeager.)



**3.3 Report of the Making Government Work Better Committee  
Council Member Reed, Chair**

- (a) Consent Calendar
  - (1) FY 2004-06 First Quarterly Debt. Report and Proposed Amendments to the Multifamily Housing Revenue Bond Policy  
See Item 3.7 for Council action to be taken.
  - (2) Quarterly Investment Report
- (b) Update on Northside Community Center Operations
  - (1) Provide Direction as to Preferred Terms for Funding Certain Operating Expenses for Filipino-American Senior Opportunities Development Council ("Fil-Am SODC") in a amount not to exceed \$58,354
  - (2) Accept the Status Report Related to Documentation Regarding Operations at JTS Northside Community Center than has been Requested by the City, but not yet Received from the Fil-Am SODC.  
See Item 3.8 for Council action to be taken.
- (c) Discussion on Major IT Projects
- (d) Request for Proposal Procedures and Other Procurement Reforms (Follow-up from September 15)  
See Item 3.9 for Council action to be taken.
- (e) Oral Petitions
- (f) Adjournment

Action: Deferred to December 6, 2005.

**3.4 Review employee election results and make appointments to the following Boards and Commissions:**

- (a) **Federated Retirement Board: 1 employee/member to a four year term ending 11/30/09.**
  - (b) **Police & Fire Retirement Board: 1 Police Department employee/member to a four year term ending 11/30/09.**
  - (c) **Civil Service Commission: 1 employee representative to a four year term ending 12/1/09.**
- (City Clerk)**

Documents Filed: (1) Memorandum from City Clerk Lee Price, dated November 17, 2005, recommending appointments to the boards and commissions. (2) Supplemental Memorandum from City Clerk Lee Price, dated November 28, 2005, transmitting additional information.

Public Comments: Brad Imamura spoke in opposition to the appointment of Tim Callahan to the Federated Retirement Board. Deborah Powell spoke in favor of Mr. Callahan's appointment.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Pyle and carried unanimously, Tim Callahan was appointed to the Federated Retirement Board. Bret Muncy was appointed to the Police and Fire Retirement Board. Bill Brill was appointed to the Civil Service Commission. (10-0-1. Absent: Yeager.)

- 3.5 (a) **Adoption of a resolution authorizing the Director of Finance to:**
- (1) **Execute Schedule 4 to the Software License and Services Agreement between the City of San José and Oracle USA for the purchase of additional software modules and maintenance services in support of the Consolidated Utility Billing System and Employee Services/Payroll Human Capital Management Upgrade Projects, in an amount not to exceed \$419,901 for the first year.**
  - (2) **Execute Schedule 5 to the Software License and Services Agreement between the City of San José and Oracle USA for the purchase of additional software modules and maintenance services in support of the Employee Services/Payroll Human Capital Management Upgrade Project, in an amount not to exceed \$148,856 for the first year.**
  - (3) **Exercise the renewal of support services for the additional software modules included in the agreement for years two through ten contingent upon Council appropriation of funding each year.**
- (b) **Adoption of the following 2005-2006 appropriation ordinance and funding source resolution amendments:**
- (1) **Increase the estimate for Franchise Fees in the General Fund in the amount of \$264,000.**
  - (2) **Increase the Payroll/Human Resources Project appropriation in the Finance Department in the General Fund in the amount of \$121,194.**
  - (3) **Decrease the Non-Personal/Equipment appropriation in the Information Technology Department in the General Fund in the amount of \$101,194.**
  - (4) **Increase the CUSP Project appropriation in the Finance Department in the General Fund in the amount of \$244,000.**

**CEQA: Not a Project. (Finance/Employee Services/City Manager's Office)**

Documents Filed: Memorandum from Director of Finance Scott Johnson, Director Employee Services Mark Danaj and Budget Director Larry Lisenbee, dated November 17, 2005, recommending adoption of a resolution and appropriation ordinance and funding source resolution amendments.

Director of Finance Scott Johnson presented an outline of the Consolidated Utility Billing System.

Council Member Williams requested that Staff advise Council of any concerns or problems as they arise.

Action: Upon motion by Council Member Williams, seconded by Council Member Reed and carried unanimously, Resolution No. 72986, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Finance to Execute Schedules 4 and 5 to the Software License and Services Agreement with Oracle USA for the Purchase of Additional Software Modules and Maintenance Services in Support of the Consolidated Utility Billing System and Employee Services/Payroll Human Capital Management

### 3.5 (Cont'd.)

Upgrade Projects”, Ordinance No. 27619, entitled: “An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Monies in the General Fund for the Payroll/Human Resources Project and the CUSP Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”, and Resolution No. 72987, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. Amending Resolution No. 72762 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2005-2006 to Adjust Revenues in the General Fund”, were adopted. (11-0.)

### 3.6 **Direct staff to display the photos and plaques of former Council Members and Mayors in the New City Hall. (Reed)**

Documents Filed: Memorandum from Council Member Reed, dated November 28, 2005, recommending that the City of San José display photos and plaques as described above.

Action: Upon motion by Council Member Reed, seconded by Council Member LeZotte and carried unanimously, the action to display photos and plaques of former Council Members and Mayors in the New City Hall was approved. (11-0.)

### 3.7 **Approval of the following changes to the City’s Policy for the Issuance of Multifamily Housing Revenue Bonds:**

- (a) **Addition of a new Tax Equity and Fiscal Responsibility Act (“TEFRA”) Hearing fee of \$5,000 to be paid by project sponsors of multifamily housing projects located in San José in circumstances where the City is not the bond issuer; and**
- (b) **Amendment of the City’s Annual Monitoring Fee policy by permitting a one-time reduction in the annual monitoring fee for nonprofit and governmental agency developers under certain circumstances following project completion and lease-up, subject to an annual minimum monitoring fee of \$7,500.**

[Making Government Work Better Committee referral 11/17/05 – Item 3.3(a)]

Action: Deferred to December 13, 2005.

### 3.8 **Acceptance of a follow-up report from the City Auditor summarizing the June 28, 2005 audit report, follow-up memorandums presented to the Making Government Work Better Committee, work completed to date, and outstanding items still remaining;**

- (a) **Acceptance of a Report from the Director of Parks, Recreation and Neighborhood Services summarizing post-audit actions taken by the Department with respect to Fil-Am and outstanding items still remaining;**
- (b) **Consideration of two proposed options for alternative operation of the JTS Northside Community Center and the terms of a proposed grant agreement to Fil-Am.**

(Parks, Recreation, and Neighborhood Services)

[Making Government Work Better Committee referral 11/17/05 – Item 3.3(b)]

**3.8 (Cont'd.)**

Action: Deferred to December 6, 2005.

- 3.9 (a) Approval of the Making Government Work Better Committee reports dated September 8 and November 3 on modifications to the City's Request for Proposal Procedures and other Procurement Reforms.**  
**(b) Direction to the City Attorney and City Manager to take the necessary actions to implement recommendations outlined in these reports.**  
**[Making Government Work Better Committee referral 11/17/05 – Item 3.3(d)]**

Action: Deferred to December 6, 2005.

- 3.10 Adoption of the Statement of Policy and City Council Questions related to the selection of a new Environmental Services Director as described in this memo, in compliance with City Charter Section 411.1. (City Manager's Office)  
(Rules-in-lieu referral 11/23/05)**

Documents Filed: Memorandum from City Manager Del Borgsdorf dated November 22, 2005, recommending adoption the Statement of Policy and City Council Questions as described above.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member LeZotte and carried unanimously, the adoption of the Statement of Policy and City Council Questions related to the selection of a new Environmental Services Director was approved. (11-0.)

**COMMUNITY & ECONOMIC DEVELOPMENT**

- 4.3 Report on the establishment of the Hotel Business Improvement District and acceptance of public comment on the establishment of the Hotel Business Improvement District. CEQA: Exempt, PP05-203. (Economic Development)**

Documents Filed: Memorandum from Director of Economic Development Paul Krutko, dated November 18, 2005, recommending acceptance of the report.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Chirco and carried unanimously, the report was accepted. (11-0.)

## NEIGHBORHOOD SERVICES

### 5.1 Report of the All Children Achieve Committee – November 10, 2005 Council Member Yeager, Chair

Documents Filed: The All Children Achieve Committee Report dated November 10, 2005.

- (a) Mayor’s Gang Prevention Task Force Policy Session

The Committee accepted the report.

- (b) Discussion of Citywide School Safety Programs and Gaps

The Committee accepted the report.

- (c) Input on Implementation of San José’s High School Initiative

The Committee accepted the report. Staff will return to the All Children Achieve Committee in February 2006 to present an update.

- (d) Discuss City’s Role in Advocating for Small Learning Community Schools

Dropped.

- (e) Oral Petitions - None were presented.

- (f) Adjournment - The meeting was adjourned at 3:07 p.m.

Public Comment: Daniel McCall spoke on various unrelated topics.

Action: Upon motion by Council Member Yeager, seconded by Vice Mayor Chavez and carried unanimously, the All Children Achieve Committee Report and the actions of November 10, 2005 were accepted. (11-0.)

## TRANSPORTATION & AVIATION SERVICES

### 6.2 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:

*(Item continued on the next page)*

- 6.2 (a) (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.
- (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 and 11/15/05 Item 6.6)**

## 6.2 (Cont'd.)

Documents Filed: (1) Memorandum from Mayor Gonzales, Vice Mayor Chavez, Council Members Campos and Williams, dated November 28, 2005, recommending approval of the staff report with modifications and/or revisions. (2) Memorandum from Mayor Gonzales, dated November 28, 2005, transmitting a replacement copy of Attachment A. (3) Memorandum from Council Member Yeager, dated November 21, 2005, transmitting additional information regarding Caltrain Electrification. (4) Supplemental memorandum from Director of Transportation James Helmer, dated November 10, 2005, providing updated recommendation and analysis. (5) Memorandum from Santa Clara Valley Transportation Authority, dated August 30, 2005, regarding the unanimously adopted nine recommendations on August 29, 2005. (6) Letter from the public, dated November 15, 2005, regarding the Measure A funding for a people mover at San José Mineta International Airport.

Director of Transportation James Helmer presented an outline of the Proposed VTA Measure A expenditure Plan. Deputy Director of Transportation Hans Larsen outlined the nine staff recommendations.

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

Public Comment: Ross Signorino urged the delay of the Alum Rock project because of the expense and encouraged the Council to make improvements to buses and get BART to San José instead. Aaron Morrow expressed support and stated that Staff's plan is a good regional solution.

Council Member Cortese requested the motion be amend to advance the construction of the Capital lightrail to Eastridge. Vice Mayor Chavez and Council Member Campos accepted the amendment.

Action: On a call for the question, the motion carried unanimously and the Mayor et al memorandum was approved, with the following additions, modifications and/or revisions: (1) That the accelerated construction of BART before 2018 but no sooner than 2015 be the first funding priority if and when: (a) Measure A and/or revenues from any 2006 tax measure exceed projections; (b) new revenue sources are identified; or (c) there are Measure A cost savings. (2) Move the People Mover into the initial program, even if it cannot be constructed by 2018. Once in the initial program, Council to authorize the City Staff to work with the VTA to explore the possibility of using the City's bonding capacity, or possibly other resources, to accelerate the construction schedule on the condition that VTA will re-pay the advanced amount (and interest) within a time frame acceptable to the City. The Staff recommendation to use pavement management funds to construction the People Mover was not approved. (3) After the environmental review and community input processes for Alum Rock-Santa Clara corridor have been completed, amend the expenditure plan before the ¼-cent 2006 tax measure is placed before the

## 6.2 (Cont'd.)

voters to include the fully-funded preferred transit mode for this corridor in the initial program with a concurrent VTA commitment to construct the preferred mode consistent with the construction schedule for BART. (4) Advance final design of the Capital lightrail to Eastridge project to be completed by 2008 to have the project shelf ready if savings or additional funds become available to accelerate its construction *earlier than 2012*, and commit to complete the construction of the Capitol Light Rail to Eastridge project by 2012. (5) If San Francisco and San Mateo Counties have not secured their shares of the Caltrain electrification project by 2016, reallocate this funding in the expenditure plan to other Measure A projects in the region ready for construction, except BART.

## ENVIRONMENTAL AND UTILITY SERVICES

- 7.1 (a) **Approval of the following recommendations on policy direction for the Request for Proposals for Recycle Plus integrated waste management services, to be issued in the event that the extension to one or more of the Recycle Plus contractors, is not approved by Council or if one or more of the contractors decide not to accept the extension:**
- (1) **Approval of a six-year contract term from July 1, 2007 to June 30, 2013.**
  - (2) **Approval to allow the use of used collection vehicles in good condition.**
  - (3) **Approval to eliminate the Alternate Fuel Premium Payment.**
  - (4) **Approval to maintain the current days of collection.**
  - (5) **Approval to require that prevailing wages be paid under the new agreements including MRF workers.**
  - (6) **Approval to maintain the employee retention requirements of the existing contracts.**
  - (7) **Approval to maintain the labor peace requirements of the existing contracts.**
- (b) **Direction to staff to return to Council for final approval and issuance of the Request for Proposals for Recycle Plus integrated waste management services if needed.**

**CEQA: Mitigated Negative Declaration, PP92-05-98. (Environmental Services**

Documents Filed: Acting Director of Environmental Services John Stufflebean, dated November 21, 2005, recommending policy direction.

Acting Director of Environmental Services John Stufflebean presented an outline of the Recycle Plus Integrated Waste Management Services.

Discussion and questions from the Council Members ensued.



## 7.1 (Cont'd.)

City Attorney Richard Doyle and Senior Deputy City Attorney Susan Devencenzi responded to questions from Councilmember LeZotte about penalties or the sanctions for failure to ensure labor peace. Council Member LeZotte asked if there is anything in the RFP that would preclude Norcal from responding to it. City Attorney Richard Doyle replied no.

Motion: Vice Mayor Chavez moved approval of the Staff recommendation. Council Member Yeager seconded the motion. Council Member LeZotte stated since the City Attorney said Norcal could respond to items in the RFP to the benefit of Norcal, she would not be supporting the motion.

Action: On a call for the question, the motion carried and the contract was approved, with Staff to return to Council for final approval. (10-1. Noes: LeZotte.)

- 7.2 (a) **Report on bids and award of contract for the Alma Storm Drain Improvement Project to the low bidder, Stoloski & Gonzalez, Inc., in the amount of \$1,118,658.20, and approval of a contingency in the amount of \$120,000.**
- (b) **Adoption of the following appropriation ordinance and funding sources resolution amendments in the Services for Redevelopment Capital Projects Fund (City-side Redevelopment Fund):**
- (1) **Establish an appropriation to the Department of Public Works for the SNI WA 03: Alma Storm Drain Improvement Project (PSM #402) in the amount of \$625,000.**
  - (2) **Increase the estimate for Earned Revenue by \$625,000.**
- CEQA: Exempt, PP05-129. Council District 7. SNI: Washington. (Public Works/ City Manager's Office)**

Documents Filed: Memorandum from Director of Public Works Katy Allen and Budget Director Larry Lisenbee, dated November 7, 2005, recommending award of the contract and adoption of an appropriation ordinance and funding sources resolution.

Action: Upon motion by Council Member Nguyen, seconded by Vice Mayor Chavez and carried unanimously, the contract was approved, and Ordinance No. 27620, 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 SNI WA 03: Alma Storm Drain Improvement Project; and Providing that This Ordinance Shall

## 7.2 (Cont'd.)

Become Effective Immediately Upon Adoption” and Resolution No. 72988, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 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. (11-0.)

## PUBLIC SAFETY SERVICES

- 8.1 (a) **Approval of a site designated as the proposed Driver Training site at the Water Pollution Control Plant (WPCP) buffer-lands as the preferred location for a proposed Driver Safety Training Facility; and**
- (b) **Direction to staff to develop a Request for Proposal to solicit consulting firms to conduct an Environmental Review of the proposed project and return to City Council with a contract for award if needed; and**
- (c) **Direction to staff to work with WPCP member agencies to develop a long-term lease agreement for the use of the land at the preferred location, including business terms for operation and use of the facility and return to City Council with a contract for award if needed.**

**CEQA: Not a Project. (Police/Fire/Environmental Services)**

Documents Filed: (1) Memorandum from Acting Director of Environmental Services John Stufflebean, Fire Chief Jeffrey Clet and Police Chief Robert Davis, dated November 7, 2005, recommending approval of the site identified in Attachment A, and direction to staff. (2) Letter from the Treatment Plant Advisory Committee, dated November 7, 2005, stating concurrence with the Staff recommendation.

Action: Upon motion by Council Member Reed, seconded by Vice Mayor Chavez and carried unanimously, the site identified was approved, Staff was directed to develop a Request for Proposal and to work with WPCP member agencies. (11-0.)

- 8.2 (a) (1) **Approval of policy recommendation to provide homicide reports to the Independent Police Auditor (IPA) for officer-involved shooting and death-in-custody cases**
- (2) **Approval of policy recommendations that San José Police Department develop taser policy to be included in the use of force policy in the San José Police Department Duty Manual.**
- (Independent Police Auditor)**
- (b) **Acceptance of the Police Department response to the IPA 2005-Mid-Year Report recommendations. (Police)**

## 8.2 (Cont'd.)

Documents Filed: (1) Memorandum from Independent Police Auditor Barbara Attard, dated November 18, 2005, transmitting 2005 IPA Mid Year Report. (2) Memorandum from Independent Police Auditor Barbara Attard, dated November 21, 2005, transmitting two corrected pages for the report. (3) Memorandum from Police Chief Robert Davis, dated November 21, 2005, regarding the response to the IPA Mid Year Report 2005. (4) Staff Slide Presentation for the 2005 Mid Year Report, dated November 29, 2005.

Independent Police Auditor Barbara Attard presented the IPA 2005 Mid Year Report. Chief Robert Davis presented an overview of the Police Department's Response to the IPA 2005 Mid Year Report recommendations.

Public Comment: Kyra Kazantzis proposed that tasers not be used on unconscious people. Bob Applebaum endorsed the taser policy reforms. Sunjeev Bery stated that specific rules need to be put in place. Kevin Fanning declared that tasers be banned to San José. Aram James voiced his opinion that tasers are dangerous and should be banned. Daniel McCall voiced support for the report. Anne Rosenzweig expressed concern for using tasers, but supports very careful guidelines. Bob Sippel, Human Rights Commission, expressed support for Police Chief Davis' recommendations.

A short discussion followed.

Motion: Council Member Cortese moved acceptance of the Police Chief's report but with the intent on Page 2 directing the IPA and City Attorney to reference those guidelines in a blanket form. Vice Mayor Chavez seconded the motion.

Mayor Gonzales suggested that Council take the intent of the motion, with the IPA and City Attorney to proceed but return to Council no later than January 10, 2006 for further discussion. The amendment was accepted by Council Member Cortese and Vice Mayor Chavez.

Council Member Pyle stated that the Police Department should do more education with the public about tasers.

Council Member Reed suggested obtaining input from the officers in the field on the use of tasers.

Motion: Vice Mayor Chavez moved approval to accept the IPA's Report but to pull out the recommendations. Council Member LeZotte seconded the motion.

Council Member Cortese suggested an ongoing dialogue continue between the City Attorney Richard Doyle, Police Chief Robert Davis and Independent Police Auditor Barbara Attard.

## 8.2 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, and The Independent Police Auditor's 2005 Mid Year Report was accepted; the policy recommendations were not approved; the Police Chief's Response was accepted and the City Attorney, Independent Police Auditor and Police Chief were directed to confer, develop and return to Council no later than January 10, 2006 with a recommendation for codifying or otherwise adopting by reference the San Jose Police Department Taser Use Guidelines. (11-0.)

### CLOSED SESSION REPORT

City Attorney Doyle disclosed the following Closed Session action(s) of November 29, 2005:

#### A. Pending Litigation – Settlement Authorized:

Case Name: Estate of Cau Bich Tran, et al. v. City of San José, et al.

Substance of Settlement: Approval of settlement. City to pay the total sum of \$1,825,000 in full settlement of the lawsuit.

Council Vote: Ayes: Campos, Chavez, Chirco, Cortese, LeZotte, Nguyen, Pyle, Reed, Williams, Yeager; Gonzales.

Noes: None.

Disqualified: None.

Absent: None.

Public Comment: Ross Signorino expressed his opinion on Closed Sessions.

### OPEN FORUM

- (1) Kevin Fanning voiced his personal opinions on skateparks.
- (2) Daniel McCall voiced his personal viewpoints.

## **ADJOURNMENT**

The Council of the City of San José was adjourned at 6:03 p.m. in memory of Augustine (Gus) Rivas, Maintenance Worker in the Department of Transportation and Avelino “Lino” Legaspi, a San José activist in the West Evergreen Strong Neighborhoods Initiative; in memory of Lawrence Taylor, employee of the Redevelopment Agency for 15 years; and Manuel Chacon, a long time resident of San José and President of the Center for Employment Training, a national non-profit vocational school.

**RON GONZALES, MAYOR**

**ATTEST:**

**LEE PRICE, CMC, CITY CLERK**

smd/11-29-05min

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