

**MINUTES OF THE CITY COUNCIL**

**SAN JOSE, CALIFORNIA**

**TUESDAY, FEBRUARY 7, 2006**

The Council of the City of San Jose convened in Regular Session at 9:30 a.m. in 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, the City Council recessed to Closed Session at 9:37 a.m. in Room T1841 to (A) confer with Legal Counsel regarding existing litigation pursuant to Government Code Section 54956.9 Subsection (a) to consider cases (1) City of San José, et al. v. County of Santa Clara, et al.; (2) County of Santa Clara, et al., v. City of San José, et al.; (3) Travelers Casualty and Surety Company of America, et al. v. City of San José, et al.; (4) SCS Development Company dba Citation Homes and Shapell Industries of Northern California v. City of San José, et al.; (B) to confer with Legal Counsel regarding anticipated litigation pursuant to Government Code Section 54956.9 subsection (c) Initiation of litigation in (1) of one matter; (C) confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager designee Alex Gurza; Employee Organizations: (1) San José Police Officers' Association, (2) International Association of Firefighters, (3) Operating Engineers, Local 3, (4) Municipal Employees Federation.

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

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

Absent: Council Members: None.

## INVOCATION (DISTRICT 2)

Valley Christian High School Theatre Arts Students, Faith Kriewall and Tyler Gonzales, directed by Matthew Demeritt performed "People Will Say" from the theatre production, Oklahoma.

## PLEDGE OF ALLEGIANCE

Mayor Gonzales led the Pledge of Allegiance.

## ORDERS OF THE DAY

Action: Upon motion by Council Member Pyle, seconded by Council Member Chavez, and unanimously carried, the Order of the Day and the Amended Agenda were approved. (11-0).

## CEREMONIAL ITEMS

- 1.2 Presentation of a commendation to Ms. Jill Buck for her leadership and tremendous successes in establishing environmental stewardship in schools across the nation. (LeZotte/Chirco)  
(Rules Committee referral 2/1/06)**

Action: Mayor Gonzales, Council Member LeZotte, Council Member Chirco and Director of Environmental Services John Stufflebean presented a commendation to Ms. Jill Buck for her leadership and successes in establishing environmental stewardship in schools across the nation.

## CONSENT CALENDAR

Action: Upon motion by Council Member Chavez, seconded by Council Member Williams and unanimously carried, the Consent Calendar was approved as indicated with the exception of, Item 2.5 (pulled by Council Member Chavez, Items 2.10 and 2.12 pulled by Council Member Campos, Item 2.18 pulled by Council Member Reed, and Item 2.22 pulled by Council Member Williams). (10-0-1). Absent: Gregory.

### 2.2 Final adoption of ordinances.

- (a) **ORD. NO.27650 – Amending Chapter 4.80 of Title 4 of the San José Municipal Code by adding 4.80 of Title 4 of the San José Municipal Code by adding Part 52 to establish the Edward Byrne Memorial Justice Assistance Grant Trust Fund.**

Documents Filed: Proof of Publication of the title of Ordinance No. 27650 executed January 31, 2006, submitted by the City Clerk.

Action: [Ordinance No. 27650](#) adopted. (11-0).

**2.2 Final adoption of ordinances (Cont'd).**

- (b) **ORD. NO. 27651 – Amending Chapter 11.48 of Title 11 of the San José Municipal Code to permanently add a total of sixteen (16) additional block segments to the Horace Mann Permit Parking Area; to permanently add a total of eighteen (18) additional block segments to the South University Permit Parking Area; to permanently add a total of four (4) additional block segments to the Cahill Park Permit Parking Area; and to add a Sherman Oaks Permit Parking Program.**

Documents Filed: Proof of Publication of the title of Ordinance No. 27651 executed January 31, 2006, submitted by the City Clerk.

Action: [Ordinance No. 27651](#) adopted. (11-0).

- (c) **ORD. NO. 27652 – Amending Chapter 3.44 of Title 3 of the San José Municipal Code by adding Section 3.44.160 to provide a flat 3% cost of living adjustment effective April 1, 2006, for persons retired from the Federated City Employees Retirement System and for survivors of members or retirees.**

Documents Filed: Proof of Publication of the title of Ordinance No. 27652 executed January 31, 2006, submitted by the City Clerk.

Action: [Ordinance No. 27652](#) was adopted. (11-0).

- (d) **ORD. NO. 27653 – Rezoning certain real property situated at the east side of Monterey Highway, approximately 600 feet southerly of Umbarger Road (2774 Monterey Highway) to A(PD) Planned Development Zoning District. PDC05-071**

Documents Filed: Proof of Publication of the title of Ordinance No. 27653 executed January 31, 2006, submitted by the City Clerk.

Action: [Ordinance No. 27653](#) was adopted. (11-0).

**2.3 Adoption of a resolution calling for a Regular Municipal Election on June 6, 2006 and a Run-Off Municipal Election on November 7, 2006, if need be, for the purpose of electing a Mayor and Council Members for Districts 1, 3, 5, 7, and 9 and requesting consolidation with the County of Santa Clara. (City Clerk)**

Documents Filed: Memorandum from City Clerk Price, dated January 27, 2006, recommending Council adopt a resolution calling for a regular Municipal Election on June 6, 2006.

## 2.3 (Cont'd)

Action: [Resolution No. 73051](#), entitled: "A Resolution of the Council of the City of San José Calling and Giving Notice of a Regular Municipal Election to be Held in the City of San José on June 6, 2006 for the Purpose of Electing One Person to the Office of Mayor, One Person Each from Council Districts One, three, Five, Seven and Nine to the Council of the City of San José for Full Four-Year Terms; Requesting the Consolidation of Said Election with the State Direct Primary Election to be Held in Santa Clara County on June 6, 2006 Requesting the Board of Supervisors of the County of Santa Clara to Canvass the Returns of Said Election and to Permit the County Registrar of Voters to Render Certain Services to the City of San José Relating to the Conduct of Said Election and a Runoff Municipal Election if Necessary and Directing that Certain Other Actions Be Taken with Regard to the Election", was adopted. (11-0).

## 2.4 **Appoint Larry D. Lisenbee, Budget Director, as the Administration Representative to the Police and Fire Retirement Board. CEQA: Not a Project. (City Manager's Office)**

Documents Filed: Memorandum from City Manager Borgsdorf, dated January 18, 2006, recommending appointment of Larry Lisenbee, Budget Director, as the Administration Representative to the Police and Fire Retirement Board.

Action: The appointment of Budget Director Lisenbee to the Police and Fire Retirement Board as Administration Representative was approved. (11-0).

## 2.5 **Approval of fiscal actions for Redevelopment Capital Projects.**

(a) **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):**

(1) **Establish an appropriation to the Department of Parks, Recreation, and Neighborhood Services for the Plata Arroyo Park Improvement project (PSM 430) in the amount of \$108,000.**

(2) **Increase the estimate for Earned Revenue by \$108,000.**

(b) **Adoption of a resolution making certain determinations regarding the related expenditure of Redevelopment Agency funds on certain public improvements in connection with the Plata Arroyo Park Improvement project, as more specifically described in the memorandum from the Redevelopment Agency, dated December 1, 2005.**

**Council District: 5. SNI Area: Gateway East. CEQA: Not a Project. (City Manager's Office)**

Documents Filed: Memorandum from Budget Director Lisenbee, dated January 13, 2006, recommending approval of fiscal actions for Redevelopment Capital Projects.

## 2.5 (Cont'd)

Action: [Ordinance No. 27654](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Moneys in the Services for Redevelopment Capital Projects Fund for the Plata Arroyo Park Improvement Project; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption”; [Resolution No. 73052](#), 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”, and [Resolution No. 73053](#), entitled: “Resolution of the Council of the City of San José Making Certain Determinations Regarding the Expenditure of Redevelopment Agency Funds for Certain Public Improvements in the Gateway East Area in the Strong Neighborhoods Initiative Redevelopment Project Area”, were adopted. (11-0).

## 2.6 Approval of fiscal actions for the Welch Park Improvements Project.

- (a) **Report on bids and award of contract for the Welch Park Improvements Project to the low bidder, Suarez and Munoz Construction, to include the base bid and Add Alternate Nos. 1 and 2 in the total amount of \$432,750, and approval of a contingency in the amount of \$36,000.**
- (b) **Adoption of the following Appropriation Ordinance and Funding Resolution Amendments in the Services for Redevelopment Capital Projects Fund (Citywide Redevelopment Fund):**
  - (1) **Increase the appropriation to the Department of Parks, Recreation and Neighborhood Services for the Welch Park Improvements Project (PSM#3641) in the amount of \$157,000.**
  - (2) **Increase the Estimate for Earned Revenue by \$157,000.**

**Council District: 8. SNI Area: KONA. CEQA: Exempt, PP04-320. (City Manager's Office/Public Works/Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Public Works Allen, Director of Parks, Recreation and Neighborhood Services Hensley, and Budget Director Lisenbee, dated January 18, 2006, recommending approval of fiscal actions for the Welch Park Improvements Project.

Action: Upon motion by Council Member Cortese, seconded by Council Member Chirco, and unanimously carried, [Ordinance No. 27655](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Moneys in the Services for Redevelopment Capital Projects Fund for the Welch Park Improvements Project; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption”, and [Resolution No. 73054](#), 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. (11-0).

**2.7 Approval of the 2005 Edward Byrne Memorial Justice Assistance Grant Spending Plan.**

- (a) **Approval of the proposed 2005-07 Spending Plan for the 2005 Edward Byrne Memorial Justice Assistance Grant Trust (JAG) Fund.**
- (b) **Adoption of the following 2005-2006 Appropriation Ordinance and Funding Sources Resolution amendments in the Edward Byrne Memorial Justice Assistance Grant Trust Fund:**
  - (1) **Establish the estimate for Earned Revenue in the amount of \$381,780;**
  - (2) **Establish the JAG 2005-07 appropriation to the Police Department in the amount of \$381,780.**

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

Action: This item was deferred to March 14, 2006.

**2.8 Adoption of a resolution declaring certain property located at the Northeast corner of 21<sup>st</sup> Street and Taylor Street, comprising approximately 1,888 square feet, surplus to the needs of the City, approving an agreement for the sale of the property to the adjacent property owners, Paul Garcia, Jeremy C. Garcia, Maria S. Garcia, Paul Garcia Jr., and Maria Magdalena Garcia for Twenty-Eight Thousand Dollars (\$28,000); and delegating authority to the Director of General Services to execute all documents necessary to complete the transfer of the property. Council District: 3. CEQA: Exempt. (General Services)**

Documents Filed: Memorandum from Director of General Services Jensen, dated January 18, 2006, recommending adoption of a resolution declaring City-owned property located at the northeast corner of 21<sup>st</sup> Street and East Taylor Street surplus and approval of the sale of said property.

Action: [Resolution No. 73055](#), 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 Owners, Paul Garcia, Jeremy C. Garcia, Maria S. Garcia, Paul Garcia Jr., and Maria Magdalena Garcia", was adopted. (11-0).

**2.9 Adoption of a resolution amending the Schedule of Fees to establish the fees associated with the *Off-Sale of Alcoholic Beverage Establishments Inspection Program* with an annual fee of \$287.00, and if applicable, a reinspection fee of \$70.52 on the third and subsequent inspections. CEQA: Not a Project. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Acting Director of Planning, Building and Code Enforcement Horwedel, dated January 18, 2006, recommending adoption of the resolution.

**2.9 (Cont'd)**

Action: [Resolution No. 73056](#), entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 72737, the 2005-2006 Schedule of Fees and Charges, to Establish an Off-Sale of Alcoholic Beverage Establishments Inspection Program Fee", was adopted. (11-0).

**2.10 Approval of a master agreement with RossDrulisCusenbery Architecture, Inc. for consultant services including program review, verification and conceptual design services for the Emergency Communications & Dispatch Center Renovation Project, from the date of execution to August 1, 2008, in a total amount not to exceed \$500,000. CEQA: Not a Project. (Public Works)**

Documents Filed: (1) Memorandum from Director of Public Works Allen, dated January 18, 2006, recommending approval of an agreement for consultant services for the Emergency Communications & Dispatch Center Renovation Project. (2) Supplemental memorandum from Police Chief Davis, dated January 31, 2006, clarifying one item in the "Background" section of the master agreement recommended in this item, i.e., that the Police Department will pursue federal or state funds for upgrades which do not meet the restrictions on the use of bond monies..

Action: Upon motion by Council Member LeZotte, seconded by Council Member Reed, and unanimously carried, the master agreement with RossDrulisCusenbery Architecture, Inc., was approved. (11-0).

**2.11 Report of the bids and award of contract for the Citywide Accessible Sidewalk Ramps 2005B Project, to the low bidder CB Construction Company, in the amount of \$224,265, and approval of a 5% contingency in the amount of \$11,213 for a total contract amount not to exceed \$235,478.00. CEQA: Exempt, File No. PP05-064. (Transportation)**

Documents Filed: Memorandum from Director of Transportation Helmer, dated January 18, 2006, recommending award of the contract.

Public comments: Ross Signorino spoke in support of the sidewalk repair program.

Action: The report of bids and award of said contract to the low bidder. CB Construction Company, including a 5% contingency, was approved and its execution authorized, and Staff directed to provide Council with a list of outstanding sidewalk ramp projects, by district. (11-0).

**2.12 Approval of actions for the Fire Station No. 12 Project.**

- (a) **Approval of an agreement with Don Dommer Associates, Architects, for consultant services including design services for the new Fire Station No. 12 Project, from the date of execution to January 31, 2008, in a total amount not to exceed \$296,259.**
- (b) **Adoption of a resolution approving the Fire Station No. 12 Project and incorporating environmental mitigation measures as set forth in the Mitigation Monitoring and Reporting Program for the project.**

**CEQA: Mitigated Negative Declaration, PP#05-071. Council District: 10. (Public Works/Fire)**

**(Deferred from 1/31/06 – Item 2.4)**

Documents Filed: Memorandum from Director of Public Works Allen and Fire Chief Clet, dated January 31, 2006, recommending approval of an agreement for design consultant services for Fire Station No. 12.

Action: The agreement with Don Dommer Associates, Architects, for consultant services was approved, and Resolution No. 73057 approving the project was adopted. (11-0).

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

**(Rules Committee referral 2/1/06)**

Documents Filed: Memorandum from Mayor Gonzales, dated January 30, 2006, recommending approval of the following nominations to the San José Silicon Valley Workforce Investment Network Board of Directors for the Public Sector: Rachel I. Perez, Gavilan Joint Community College, and Deborah Sweeney, Department of Rehabilitation, State of California.

Action: The nominations to the San José Silicon Valley Workforce Investment Network Board of Directors were approved. (11-0).

**2.14 Setting Salaries and Benefits for City Council Appointees, including the Interim City Manager and approving preliminary activities for recruitment and selection of the next City Manager.**

- (a) **Adoption of a resolution setting salaries and benefits for City Council Appointees.**
- (b) **Direct the City Clerk to execute employment contract for Interim City Manager Les White with the total compensation package not to exceed former City Manager Borgsdorf's total compensation package of \$285,906.20.**
- (c) **Start the preliminary activities for a national recruitment and selection process for the next City Manager in Fall 2006, so that the next Mayor and City Council can make an appointment by Spring 2007.**

**(Mayor/Chavez)**

**(Rules Committee referral 2/1/06)**

## 2.14 (Cont'd)

Documents Filed: Memorandum from Mayor Gonzales and Vice Mayor Chavez, dated February 2, 2006, recommending adoption of a resolution setting the salaries and benefits for City Council Appointees and the Interim City Manager and approving a broad timetable and next steps to recruit the next city manager.

The City Council agreed to discuss and vote separately on recommendations relating to Council Appointees' salaries, the salary and benefits for the Interim City Manager, and initial steps in beginning a nationwide recruitment for a new City Manager.

Motion: Council Member Chavez moved approval of Items 2 and 3 of the Mayor's memorandum, Items (b) and (c) on the agenda. Council Member seconded the motion. The motion was amended to include: (1) Direction to Mayor's Office to bring no less than two executive search firms for the full Council's consideration; (2) Interim City Manager Les White was requested to sit in on the interviews, and (3) Staff directed to get Council input on the candidate profile and to also ensure an ethnically diverse pool.

Public Comments: *Speaking in opposition to merit raises for the Council Appointees:* Deborah Powell (President of CEO-AFSCME), Erik Larsen ((President of the Municipal Employees Federation), Ross Signorino, and Linda Diddes (Business Agent of ASCME 101).

Council discussion on the motion on the floor continued.

Action: On a call for the question, Items 2:14(b) and (c) were approved, as amended, and [Resolution No. 73060](#), entitled: "A Resolution of the Council of the City of San José Setting the Salary and Benefits for the Interim City Manager Les White", was adopted. (11-0).

Council discussion followed regarding salaries and benefits for the Council Appointees. Director of Employee Services Mark Daney responded to questions from the Council relating to salary surveys and pay raises for other City employee groups.

Council Members Williams, Pyle and Chirco spoke in favor of the Mayor's recommendations for merit increases.

Debate ensued regarding the methodology for determining pay raises.

Motion by Council Member Williams, seconded by Council Member Pyle, to approve the suggested merit pay for Council Appointees as presented, with the exception of former City Manager Del Borgsdorf.

Council Members Reed, Yeager, Nguyen and Campos indicated they were unable to support the Mayor's recommendation.

## 2.14 (Cont'd)

Deputy City Manager Kay Winer answered more questions relating to pay increases for senior/executive Staff.

City Auditor Gerald Silva spoke in support of the Mayor's recommendations and provided history regarding the Council Appointees' salaries over the past several years. Motion to approve the raises failed (4-7-0). Noes: Campos, Chavez, Cortese, LeZotte, Nguyen, Reed, Yeager.

Council Member Cortese and Vice Mayor Chavez suggested Staff come back to Council with additional information. Motion by Council Member Cortese, seconded by Council Member Chavez, to direct the City Manager to return in return in five weeks with the following: (1) Options and/or best practices for indexing cost of living adjustments for Council appointees, in the future; (2) Feedback on how merit increases for Council appointees are used in relation to base salary adjustments; (3) Clarification about other Unit 99 employees' base and merit increases over the past few years; and (4) Alternative methodologies for surveys. (9-2-0). Noes: Gonzales, Williams.

## 2.15 Approval of out of State travel by Council Member Williams to:

- (a) **Dallas, Texas, on February 9-10, 2006 to visit INVESCO, the FCERS Investment Committee will be conducting onsite, due diligence interview of managers to oversee a \$15 million real estate portfolio for the System.**
  - (b) **Stamford CT and New York City, on February 21-23, 2006, to visit G.E. Asset Management in Stamford, CT and JP Morgan in New York City, the FCERS Investment Committee will be continuing due diligence interviews.**
- (Rules Committee referral 2/1/06)**

Documents Filed: Two memoranda from Council Member Williams, dated January 31, 2006, requesting approval of travel to Dallas, Texas, Stamford, Connecticut and New York City on behalf of the City of San José Federated Retirement Services Board of Administration.

Action: The travel request by Council Member Williams was approved. (11-0).

## 2.16 Approval of an agreement for the Solari Park Master Plan Project.

- (a) **Approval of an agreement with Anderson Brulé Architecture, Inc. for consultant design services for the Solari Park Master Plan Project, from the date of execution to March 31, 2007, in an amount not to exceed \$250,000.**
- (b) **Adoption of the following Appropriation Ordinance amendments in the District 7 Construction and Conveyance Tax Fund:**
  - (1) **Increase the Solari Park Master Plan appropriation by \$125,000.**
  - (2) **Decrease the Ending Fund Balance by \$125,000.**

**CEQA: Not a Project. Council District: 7. (Public Works/City Manager's Office)**

## 2.16 (Cont'd)

Documents Filed: Memorandum from Director of Public Works Allen and Budget Director Lisenbee, dated January 31, 2006, recommending approval of an agreement for consultant services and adoption of appropriation ordinance amendments for the Solari Park Master Plan Project.

Action: The agreement with Anderson Brulé, Inc., was approved and [Ordinance No. 27656](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 27474 to Appropriate Moneys in the construction Tax and Property Conveyance Tax Fund: Parks Purposes, Council District #7 Fund for the Solari Park Master Plan Project; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption”, was adopted. (11-0).

### END OF CONSENT CALENDAR

## STRATEGIC SUPPORT SERVICES

### 3.2 Report of the Rules Committee – January 25, 2006 Vice Mayor Chavez, Chair

Documents Filed: The Rules Committee Report, dated January 25, 2006.

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting
- b) City Council

- (1) Review February 7, 2006 Draft Council Agenda

The Committee recommended approval of the February 7, 2006 City Council Agenda with no additions.

- (2) Add New Items to January 31, 2006 Council Agenda

The Committee recommended four additions to the January 31, 2006 City Council Agenda.

- (3) List of Reports Outstanding

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.

**3.2 Report of the Rules Committee – January 25, 2006 (Cont'd)**  
**Vice Mayor Chavez, Chair**

(d) Meeting Schedules

- (1) Approval of the revised 2006-2007 City Budget Calendar

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

- (2) Approval of the 2006-2007 Budget Study Session Schedule

The Committee recommended approval of the Council Study Session on the Mayor's Budget Messages and the City Service Area/Appointee Review for the proposed 2006-2007 City and Redevelopment Agency Operating Budgets and the City Capital Improvement Program Budget.

- (3) Approval of Mayor and Council Emergency Preparedness Training, February 13 and February 16, 2006

The Committee recommended approval of Mayor and Council Emergency Preparedness Training.

(e) The Public Record - 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

- (1) All Children Achieve  
(Deferred from 1/18/06 Rules Committee Meeting)

The Committee recommended approval of the All Children Achieve work plan for the period February through June 2006 and setting the meeting schedule on the second Thursday of each month at 1:30 p.m. in City Hall Committee Room W119.

- (2) Approval to travel by Council Member Campos to attend the League of California Cities Board of Director's Meeting in Universal City, February 10-11, 2006

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

(h) Open Forum

Bill Chew pointed out that viewers of the Rules Committee on the Civic Center Television Channel cannot see the documents being discussed.

**3.2 Report of the Rules Committee – January 25, 2006 (Cont'd)  
Vice Mayor Chavez, Chair**

(i) Adjournment

The meeting adjourned at 2:11 p.m.

Action: Upon motion by Council Member Chavez, seconded by Council Member Campos, and unanimously carried, the Rules Committee report and actions of January 25, 2006 were accepted. (10-0-1). Absent: Yeager.

**COMMUNITY & ECONOMIC DEVELOPMENT**

**4.4 Approval of Contract Change Order (CCO) No. 29 for the 60-Inch Brick Interceptor Replacement Phase IB Project in an amount not to exceed \$750,000, for a total contract amount of \$17,941,117.76. Council District: 4. CEQA: Negative Declaration, PP03-12-374. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Allen, dated January 18, 2006, recommending approval of Contract Change order No. 29.

Action: Upon motion by Council Member Reed, seconded by Council Member Yeager, and unanimously carried, Contract Change Order No. 29 for the 60-Inch Brick Interceptor Replacement Phase IB Project, was approved and its execution authorized. (11-0).

**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 receipt of the following Final Maps for review:

Tract	Location	Council District	Developer	Lots/Units	Type
9715	Southwest corner Chynoweth Avenue and Cedar Grove Circle	2	Vang Van Ho	7 Lots/6 Units	SFD

## JOINT COUNCIL/REDEVELOPMENT AGENCY

The Redevelopment Agency Board convened at 3:22 p.m. to consider Item 9.1 in a Joint Session.

**9.1 Report on the San José Earthquakes and discussion with Major League Soccer (MLS) concerning the San José Earthquakes and an Expansion Franchise for San José. (City Manager's Office/Redevelopment Agency)  
(Deferred from 1/10/06 – Item 9.5)**

Documents Filed: (1) Memorandum from Assistant City Manager Linder and Redevelopment Agency Executive Director Mavrogenes, dated February 2, 2006, reporting on the San José Earthquakes and discussion with Major League Soccer (MLS) concerning the San José Earthquakes and an expansion franchise for San José. (2) Letter from Helen Chapman, Chair of the Parks and Recreation Commission and Chair of the Measure P Citizens Oversight Committee, dated February 6, 2006, opposing the use of Measure P funds for the construction or operation of a professional sports stadium in San José.

Economic Development Director Paul Krutko and Redevelopment Harry Mavrogenes presented the Staff recommendations and responded to Council questions.

Public comments: Jeffrey Baxter urged the Council to acquire the property for a youth sports stadium initiative.

Don Gagliardi (Soccer Silicon Valley) expressed support and encouraged the Council to bring the Earthquakes back to San José.

Ross Signorino cautioned the Council against taking action given the City's current financial status.

Melanie Richardson and G.M. Harding (Measure P Citizens Oversight Committee) argued against the recommendation and the use of Measure P funds for this purpose.

Leonardo Calderon spoke in favor and in support of Major League Soccer.

End of Public Comments.

Action: Upon a motion made by Vice Mayor Chavez, seconded by Council Member Campos, the report was accepted with staff direction to provide regular updates on the status of the expansion franchise for San José and for staff to continue conversations with the City of Santa Clara. (11-0).

The Redevelopment Agency Board portion of the meeting adjourned at 4:27 p.m.

## **OPEN FORUM**

- (1) Ross Signorino delivered information regarding the State of the City address.
- (2) Bill Chew welcomed Interim City Manager Les White back to the City of San Jose and requested a program guide for Channel 26, Civic Center Television.
- (3) Mark Trout shared personal viewpoints.
- (4) Robert Apgar expressed personal commentary.

## **ADJOURNMENT**

The Council afternoon session adjourned at 4:28 p.m.

## RECESS/RECONVENE

The Council of the City of San José convened in Joint Session with the Redevelopment Agency Board and San José Financing Authority at 4:29 p.m., recessed at 4:37 p.m. and reconvened at 7:00 p.m. in an evening session.

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 the East Hill Youth Football Junior Pee Wees and the East Hill Youth Football Pee Wees for winning the San José PAL Football Championship in 2005. (Cortese)**  
**(Deferred from 1/10/06 – Item 1.4 and 1/24/06 – Item 1.2)**

Action: Mayor Gonzales, Council Member Cortese and Council Member Campos presented a commendation to the East Hill Youth Football Junior Pee Wees and the East Hill Youth Football Pee Wees for winning the San José PAL Football Championship in 2005.

- 1.3 Presentation of a commendation to the Silicon Valley Yankees 10U Team for their success in winning the National Title in the Super Series Winter National Tournament in Phoenix, Arizona. (Pyle)**  
**(Rules Committee referral 2/1/06)**

Action: Mayor Gonzales and Council Member Nancy Pyle presented a commendation to the Silicon Valley Yankees 10U Team for their success in winning the National Title in the Super Series Winter National Tournament in Phoenix, Arizona.

- 1.4 Presentation of a commendation to the Young People's Theatre Program in recognition of the program's ongoing success and years of enriching the lives of the children of San José. (Chirco/Yeager)**  
**(Rules Committee referral 2/1/06)**

Action: Council Member Chirco and Council Member Yeager joined Mayor Gonzales to present a commendation to the Young People's Theatre Program in recognition of the program's ongoing success and years of enriching the lives of the children of San José.

## COMMUNITY & ECONOMIC DEVELOPMENT

- 4.3 Appointment of individuals to the San José Medical Center Stakeholder Advisory Committee and direction to Staff to work together with the Committee and consultants to conduct the San José Medical Center Land Use Healthcare Study. (Planning, Building and Code Enforcement)**

Action: This item was deferred to February 14, 2006 to be heard in the evening.

## PUBLIC SAFETY SERVICES

- 8.1 Adoption of an urgency ordinance extending Ordinance No. 27602 adopted by Council on November 15, 2006 by extending the effectiveness of the amended Sections 6.02.130 and 6.02.250 of Chapter 6.02 of Title 6 of the San José Municipal Code to authorize denial, suspension, revocation or summary suspension of permits or licenses as a result of public nuisance, criminal activity or imminent threat to public safety, until May 14, 2006. CEQA: Not a Project. (Chavez)  
HEARD IN THE EVENING**

Documents Filed: (1) Memorandum from Vice Mayor Chavez, dated February 1, 2006, recommending adoption of an urgency ordinance extending Ordinance No. 27602 for an additional 90 days. (2) Letter from Michel Amaral, O'Melveny & Myers, LLP, and Alan Schlosser, ACLU of Northern California, dated February 1, 2006, regarding concerns alleging procedural due process defects in the requested urgency ordinance. (3) Memorandum from City Attorney Doyle, dated February 2, 2006, recommending extension of Urgency Ordinance No. 27602 for an additional 90 days. (4) Memorandum from Vice Mayor Chavez, dated February 3, 2006, reporting the Urgency Ordinance Task Force's feedback on the 90-day extension of Ordinance No. 27602. (5) Memorandum from City Attorney Doyle, dated February 7, 2006, responding to the February 1, 2006 ACLU letter concerning Urgency Ordinance No. 27602.

Vice Mayor Chavez spoke in favor of extending the ordinance for an additional ninety days.

Public Comments: Mauricio Mejia and David Powell, San José Restaurant and Entertainment Association, spoke in support of the ordinance. William Garbett spoke in opposition to the ordinance.

End of Public Comments.

Staff responded to brief questions from the Council.

## 8.1 (Cont'd.)

Action: Upon motion by Council Member Chavez, seconded by Council Member Reed, and unanimously carried, Ordinance No. 27657, entitled: “An Urgency Ordinance of the City of San José Amending Ordinance No. 27602 Adopted by the City Council on November 15, 2005 by Extending the Effectiveness of the Amended Sections 6.02.130 and 6.02.250 of Chapter 6.02 of Title 6 of the San José Municipal code until May 14, 2006 Unless Prior to this Date Action is Taken by the City Council to Extend or Amend the Provisions of This Urgency Ordinance and Setting Forth the Facts Constituting Such Urgency”, was adopted. (11-0).

## PUBLIC HEARINGS ON CONSENT CALENDAR

City Clerk Price read the requests for continuances of applications and other actions as recommended. Upon motion by Council Member Chavez, seconded by Council Member Yeager, and unanimously carried, the below noted continuances were granted. (11-0).

### 11.1 Public Hearings on Consent Calendar.

- (a) **Consideration of an ordinance rezoning the real property located on the north side of State Street, on both the east and west sides of Archer Street and south of Dearborne and Clark Streets of the historic “New Chicago” subdivision (Multiple Property Owners), from CN Commercial Neighborhood Zoning District to LI Light Industrial Zoning District to allow industrial uses on a 9.94 gross acre site. Director of Planning, Building and Code Enforcement recommend approval. No Planning Commission action required. CEQA: Resolution No. 68577.  
CC05-040 - District 4**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CC05-040, dated January 17, 2006, recommending approval of the subject property. (2) Proof of Publication of Notice of Public Hearing, executed on January 20, 2006, submitted by the City Clerk.

Action: Upon motion by Council Member Reed, seconded by Council Member Pyle, and unanimously carried, the recommendation of the Planning Director was approved, and [Ordinance No. 27658](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated North Side of State Street, on Both the East and West Sides of Archer Street and South of Dearborne and Clark Streets of the Historic “New Chicago” Subdivision, from CN Commercial Neighborhood Zoning District to LI Light Industrial Zoning District”, was passed for publication. (11-0).

- 11.1 (b) Consideration of an ordinance rezoning the real property located on the north side of Alum Rock Avenue, approximately 260 feet westerly of King Road (1665 Alum Rock Avenue) (Nguyen Binh T and Tran Helena H., Owner) from CG Commercial General Zoning District and R-2 Residential Zoning District to CP Commercial Pedestrian Zoning District to allow commercial uses on a 0.48 gross acre site. Director of Planning, Building and Code Enforcement recommend approval. No Planning Commission action required. SNI: Five Wounds/Brookwood Terrace. CEQA: Resolution No. 65459.**

**C05-110 - District 5**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C05-110, dated January 17, 2006, recommending approval of the subject property. (2) Proof of Publication of Notice of Public Hearing, executed on January 27, 2006, submitted by the City Clerk.

Action: Upon motion by Council Member Reed, seconded by Council Member Pyle, and unanimously carried, the recommendation of the Planning Director was approved and [Ordinance No. 27659](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the North Side of Alum Rock Avenue, Approximately 260 Feet Westerly of King Road (1665 Alum Rock Avenue), to CP Commercial Pedestrian Zoning District", was passed for publication. (11-0).

- 11.2 Consideration of an ordinance rezoning the real property located at/ on the southwesterly corner of State and Essex Streets (1391 State Street) (Martina Victor J., Owner) from the R-M Residential District to the A(PD) Planned Development Zoning District to allow the demolition of an existing single-family residence and the construction of three detached residential units on a 0.33 gross acre site. CEQA: Exempt.**

**PDC05-002 – District 4**

**(Continued from 12/13/05 – Item 11.2 and 1/24/06 – Item 11.2)**

Documents Filed: Proofs of Publications of Notices of Public Hearings, executed on November 25, 2005 and January 24, 2006, submitted by the City Clerk.

Action: This item was dropped, to be renoticed.

**11.3 Consideration of the following development proposals in connection with the real property located on the west side of Mahoney Drive, opposite Davenport Drive (471 Mahoney Drive), in the R-1-8 Residence Zoning District (Morgado Four Construction Inc., Owner). CEQA: Exempt.**

- (a) PDC05-116 - Consideration of an ordinance rezoning the real property from R-1-8 Residential Zoning District to the A(PD) Planned Development Zoning District to allow one existing and one new single-family detached residences on a 0.25 gross acre site.**
- (b) PD05-086 – Adoption of a resolution approving a Planned Development Permit to allow one existing and one new single-family detached residence on a 0.25 gross acre site.**
- (c) PT05-047 – Adoption of a resolution approving a Planned Development Tentative Map to allow subdivision of one lot into two for single-family detached residential uses on a 0.25 gross acre site.**

**Director of Planning, Building and Code Enforcement recommended approval. Planning Commission recommended denial (6-1-0).**

**PDC05-116/PD05-086/PT05-047 - District 5**

**(Continued from 1/24/06 – Item 11.3)**

Documents Filed: (1) Memorandum from Secretary to the Planning Commission Horwedel, dated January 13, 2006, recommending the City Council deny the Planned Development Zoning, Planned Development Permit and Tentative Map for PDC05-116, PD05-086 and PT05-047. (2) Memorandum from Acting Director of Planning, Building and Code Enforcement Horwedel, dated January 30, 2006, advising that following the Planning Recommendation for denial, the applicant submitted revised plans which respond to the Commission's safety concerns and Staff now recommends approval of the Planned Development Zoning, Planned Development Permit and Tentative Map for PDC05-116, PD05-086 and PT05-047 for reasons stated in the original Staff report. (3) Proof of Publication of Notice of Public Hearings, executed on December 30, 2005, submitted by the City Clerk.

Public Comment: Mayor Gonzales opened the public hearing. Manuel Margada, Applicant, spoke in support of the rezoning and addressed concerns by the property owners of the neighborhood relating to traffic issues. Scott Cunningham (Scott Designs), Tina Souza Morgado, and Yitka Simple also spoke to the merits of the project.

Dan McCorquodale and Larry Soto voiced objections citing concerns regarding lot size, and traffic impacts.

Mayor Gonzales closed the public hearing.

Council Member Yeager suggested the project was incompatible with the neighborhood. Brief discussion ensued.

Action: Upon motion by Council Member Campos, seconded by Council Member Yeager, and unanimously carried, the recommendation of the Planning Commission to deny was upheld. (11-0).

- 11.4 Consideration of an ordinance rezoning the real property located at/on the west side of South Winchester Boulevard, approximately 550 feet southerly of Stevens Creek Boulevard (369 Winchester Boulevard) (Dennee Glenford V Jr., Trustee, Owner; John Mackay, Developer) from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow up to 4,681 square feet for retail commercial uses and a public eating establishment with drive-thru uses on a 0.64 gross acre site. CEQA: Exempt.  
PDC05-077 - District 1**

Action: This item was continued to March 7, 2006.

- 11.5 Consideration of an ordinance rezoning the real property bounded by the Southern Pacific Rail Corridor to the north, east, and west, and by Dearborne and Clark Streets of the historic “New Chicago” subdivision and Grand Boulevard to the south (Multiple Property Owners) from CN Commercial Neighborhood Zoning District and LI Light Industrial Zoning District to OS Open Space Zoning District to allow open space uses on a 177.5 gross acre site. Director of Planning, Building and Code Enforcement recommend approval. No Planning Commission action required. CEQA: Resolution No. 68577.  
CC05-041 - District 4**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CC05-041, dated January 17, 2006, recommending approval of the subject property. (2) Proof of Publication of Notice of Public Hearing, executed on January 20, 2006, submitted by the City Clerk.

Public Comments: Mayor Gonzales opened the public hearing. Winnie Chan (U.S. Fish & Wildlife Service) spoke in support of the rezoning and the recovery of endangered species.

Robert Gross asked for clarification. Interim Director, Planning, Building and Code Enforcement Joe Horwedel responded.

Mayor Gonzales closed the public hearing.

Action: Upon motion by Council Member Reed, seconded by Council Member LeZotte, and unanimously carried, the recommendation of the Planning Director was approved, and [Ordinance No. 27660](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property, Bounded by the Southern Pacific Rail Corridor to the North, East and West and by Dearborne and Clark Streets of the Historic “New Chicago” Subdivision and Grand Boulevard to the South, from LI Light Industrial Zoning District and CN Commercial Neighborhood to OS Open Space Zoning District”, was passed for publication. (11-0).

- 11.6 Consideration of an ordinance rezoning the real property bounded by Steamboat Slough and Elizabeth Street to the north, the Guadalupe River to the south, Liberty Street and North First Street to the east, and El Dorado Street/Southern Pacific Rail Corridor to the west (Multiple Property Owners), from CN Commercial Neighborhood, HI Heavy Industrial, R-MH Mobile Home Park Zoning Districts to CP(PD) Planned Development and OS Open Space Zoning Districts to allow commercial, residential, civic and open space uses on a 36.74 gross acre site. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1). CEQA: Resolution No. 68577. PDC05-039 - District 4**

Documents Filed: (1) Memorandum from Planning Commission Secretary Horwedel, dated January 26, 2006, recommending approval of the proposed rezoning. (2) Memorandum from Acting Director of Planning, Building and Code Enforcement Horwedel, dated January 18, 2006, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC05-039, dated January 17, 2006, recommending approval of the subject property. (3) Proofs of Publication of Notice of Public Hearings, executed on January 11, 2006 and January 24, 2006, submitted by the City Clerk.

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 Council Member Reed, seconded by Council Member LeZotte, and unanimously carried, the recommendation of the Planning Commission and the Planning Director was approved, and [Ordinance No. 27661](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property, Bounded by the Steamboat Slough and Elizabeth Street to the North, the Guadalupe River Corridor to the South, Liberty and North First Street to the East, and El Dorado Street/Southern Pacific Railroad Right-Of-Way to the West, to CP(PD) Planned Development Zoning District with Regard to Certain Portions of Said Area and to OS Open Space Zoning District with Regard to Certain Other Portions of Said Area, All As More Particularly Described Herein below", was passed for publication. (11-0).

- 11.7 Consideration of an ordinance rezoning the real property located on the southwest corner of Capitol Avenue and Mabury Road (781 N. Capitol Ave) (Messina Richard V. Messina Richard V Trustee & et al., Owner) from Unincorporated County to A(PD) Planned Development Zoning District to allow up to 199 single-family attached residential units and two existing single-family detached residence on a 10.5 gross acre site. CEQA: Mitigated Negative Declaration. PDC05-060 - District 4**

Action: This item was continued to March 7, 2006.

**11.8 Consideration of an ordinance rezoning the real property located on the west side of South Willard Avenue, approximately 180 feet southerly of Douglas Street (435 Willard Avenue) (McVay Steven and Nancy, Sale Parts LLTD, Owner/ Developer), from County to A(PD) Planned Development Zoning District to allow up to seven single-family detached or attached residences on a 0.42 gross acre site. SNI: Burbank/Del Monte. Director of Planning, Building and Code Enforcement recommend approval. Planning Commission recommend approval with a maximum of six attached and detached units (6-0-1). CEQA: Mitigated Negative Declaration. PDC04-095 - District 6**

Documents Filed: (1) Memorandum from Planning Commission Secretary Horwedel, dated January 26, 2006, recommending approval of the proposed rezoning with a maximum of 6 single-family attached and detached residences, one fewer than proposed by the applicant. (2) Memorandum from Acting Director of Planning, Building and Code Enforcement Horwedel, dated January 19, 2006, transmitting the report from the Planning, Building and Code Enforcement Staff, dated January 18, 2006, recommending approval of the subject request. (3) Proofs of Publication of Notice of Public Hearings, executed on January 13, 2006 and January 24, 2006, submitted by the City Clerk. (4) Letter from Joe Carpenter, President of the Buena Vista Neighborhood Association, dated February 7, 2006, stating his Association supports the proposed development at 435 Willard Avenue, with the restriction that CC&Rs require that the garages be kept clear of storage materials and that two cars can be parked within the garage at all times.

Public Comment: Mayor Gonzales opened the public hearing. Steven McVeigh, Applicant, spoke in favor of the rezoning and Louis Ramirez, Designer, delivered information regarding the parking situation of the rezoning site.

Joe Carpenter (President of the Monte Vista Neighborhood Association), spoke in support of the Staff recommendation for the rezoning.

Mayor Gonzales closed the public hearing.

Action: Upon motion by Council Member Yeager, seconded by Council Member Reed, and unanimously carried, [Ordinance No. 27662](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the West Side of South Willard Avenue Approximately 180 Feet Southerly of Douglas Street (435 Willard Avenue) from Unincorporated County to A(PD) Planned Development Zoning District on 0.42 Acres", was passed for publication, and Staff directed to add conditions to the CC&Rs that would require that the garages be kept clear of storage materials and that two cars can be parked at all times. (11-0).

- 11.9 Consideration of an ordinance rezoning the real property located on the north side of Villa Avenue, 150 feet easterly of Myrtle Street (969 Villa Avenue) (Helweh Sahel, et al., Owner; LG Developers, LP, Developer) from R-M Multiple Family Residence District to A(PD) Planned Development Zoning District to allow the demolition of an existing single-family detached residence and construction of up to four single-family detached residences on a 0.37 gross acre site. CEQA: Mitigated Negative Declaration.  
PDC05-026 - District 6**

Action: This item was continued to March 7, 2006.

## **OPEN FORUM**

Robert Apgar expressed personal views.

## **ADJOURNMENT**

This meeting was adjourned at 8:20 p.m. in memory of Coretta Scott King, wife of Dr. Martin Luther King, Jr. Her work to achieve civil rights and social justice was important to carry on the legacy of Dr. King; and in memory of Carolyn Norris, who served for many years on the Cambrian Community Council, authored a publication on the history of the Cambrian area and who will be remembered for her tireless volunteer work.

**RON GONZALES, MAYOR**

**ATTEST:**

**LEE PRICE, M.M.C, CITY CLERK**

EW/2-7-05 Min.

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