

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, NOVEMBER 21, 2006

The Council of the City of San José convened in regular session at 9:30 a.m. in the Mayor's Conference Room T1841, at City Hall.

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

Absent: Council Members - Yeager. (Excused).

Upon motion unanimously adopted, Council recessed at 9:35 a.m. to a Closed Session in Room T1841, (A) Public employee performance evaluation pursuant to Government Code Section 54957, Title: Director, PRNS. (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9, anticipated litigation, Subsection (c) with respect to initiation of litigation in one (1) matter. (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6, City Negotiator: City Manager Designee, Alex Gurza, Employee Organizations, International Association of Firefighters, Local 230 (IAFF).

By unanimous consent, Council reconvened from the Closed Session and recessed at 10:50 a.m. and reconvened at 1:36 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

Castillero Middle School Choir performed, led by Choir Director David Finch. (District 10)

PLEDGE OF ALLEGIANCE

Mayor Gonzales led the Pledge of Allegiance.

Access the video, the agenda and related reports for this meeting by visiting the City's website at [http:// www.sanjoseca.gov/clerk/MeetingArchive.asp](http://www.sanjoseca.gov/clerk/MeetingArchive.asp)

ORDERS OF THE DAY

Upon motion by Council Member Williams, seconded by Council Member Campos and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (11-0.)

CEREMONIAL ITEMS

- 1.1 Presentation of a proclamation declaring December 1, 2006 as World AIDS Day in the City of San José. (LeZotte)**
(Rules Committee referral 11/08/06)

Action: Mayor Gonzales and Council Member LeZotte recognized December 1, 2006 as World AIDS Day in the City of San José.

- 1.2 Proclamation recognizing the work of Sergeant Paul Panighetti and Lieutenant Rich Saito upon their retirement, for their many years of service particularly in relation to their work with the Weed & Seed Program. (Campos)**
(Rules Committee referral 11/01/06)

Action: Mayor Gonzales and Council Member Campos recognized and commended Sergeant Paul Panighetti and Lieutenant Rich Saito upon their retirement and for their many years of public service.

- 1.3 Presentation of commendations to Janet Castaneda, Joyce Cogburn, Rosemary Gellman, and Mark Okuda in honor of their outstanding work in education and their receipt of the 2006 Teachers of the Year awards from the Santa Clara County Office of Education. (Cortese)**
(Rules Committee referral 11/08/06)

Action: Mayor Gonzales and Council Member Cortese recognized and commended Janet Castaneda, Joyce Cogburn, Rosemary Gellman, and Mark Okuda in honor of their outstanding work in education and for receiving the “2006 Teachers of the Year” awards from the Santa Clara County Office of Education.

- 1.4 Recognition of District 9 Stars: Vickie Johnson, Farnizaz Tavakoli, Breenu Sra, and the San José Elks Highway Crew. (Chirco)**
(Rules Committee referral 11/08/06)

Action: Mayor Gonzales and Council Member Chirco recognized and commended the “District 9 Stars”.

- 1.5 Presentation of a commendation recognizing various City departments for best practices in employee recognition efforts. (Human Resources)**
(Deferred from 11/14/06 – Item 1.3)

Action: Dropped.

1.6 Presentation of commendations to the Friends of West Valley Library and the Friends of Calabazas Library for their contributions to West San José readers and for their work as District 1 Heroes. (LeZotte)

Action: Mayor Gonzales and Council Member LeZotte recognized and commended the Friends of West Valley Library and the Friends of Calabazas Library for their contributions to West San José readers and for their work in District 1.

1.7 Presentation of commendations to Carl Shoemaker and Ivy and Armin Quiring, for their contributions to West San José residents as District 1 Heroes. (LeZotte) (Rules Committee referral 11/15/06)

Action: Mayor Gonzales and Council Member LeZotte recognized and commended District 1 Heroes Carl Shoemaker, and Ivy and Armin Quiring.

1.8 Presentation of a proclamation declaring November 19 – 25, 2006 Family Week in the City of San José. (Williams) (Rules Committee referral 11/15/06)

Documents Filed: Letter from Pastor Gary Jensen of Campbell Seventh-Day Adventist Church addressing the importance of family.

Action: Mayor Gonzales and Council Member Williams recognized the week of November 19 through 25, 2006, as “Family Week” in the City of San José.

CONSENT CALENDAR

Upon motion by Council Member Pyle, seconded by Council Member Cortese, and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (11-0.)

2.1 Approval of minutes:

(a) Regular minutes of February 7, 2006

(d) Joint San José Financing Authority minutes of February 7, 2006.

Documents Filed: (1) Regular minutes dated February 7, 2006. (2) Joint San José Financing Authority minutes dated February 7, 2006.

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

(b) Regular minutes of February 14, 2006

(c) Regular minutes of February 28, 2006

Action: Deferred to December 5, 2006.

- 2.2 (a) **ORD. NO. 27885 – Rezoning certain real property situated on the southwesterly corner of Eberly Drive and Neilson Court to A(PD) Planned Development Zoning District. PDC04-091**
[Deferred from 10/17/06 – Item 2.2(d), et al and 11/14/06 – Item 2.2(a)]

Action: Deferred to December 5, 2006.

- (b) **ORD. NO. 27904 – Granting a cable franchise to Comcast of California, II LLC to construct and operate a cable system to provide cable service within a franchise area with the City of San José; establishing the terms and conditions of the franchise grant; and establishing certain remedies for the violation of the franchise.**

Documents Filed: Proof of Publication of the title of Ordinance No. 27904 executed on November 17, 2006, submitted by the City Clerk.

Action: Dropped.

- (c) **ORD. NO. 27905 – Amending Chapter 15.28 of Title 15 of the San José Municipal Code to regulate the occupancy and use of public rights-of-way by cable systems and open video systems, to provide for establishment of customer service standards; establishing franchise and licensing requirements for operators of such systems and to prescribe minimum charges, terms, and conditions for and upon the construction, maintenance, and repair of such systems.**

Documents Filed: Proof of Publication of the title of Ordinance No. 27905 executed on November 17, 2006, submitted by the City Clerk.

Action: Dropped.

- (d) **ORD. NO. 27906 – Approving an amendment of the terms of Ordinance No. 22128, granting a nonexclusive cable television franchise to Comcast of California, successor to Gill Industries, Inc., DBA Gillcable, renewing, amending and extending the franchise.**

Documents Filed: (1) Memorandum from City Manager Les White and City Attorney Richard Doyle, dated November 17, 2006, recommending adoption of the ordinance. (2) Proof of Publication of the title of Ordinance No. 27906 executed on November 17, 2006, submitted by the City Clerk.

Public Comment: Scott McDonough spoke in opposition to the Staff recommendation.

2.2 (d) (Cont'd.)

Action: Upon motion by Council Member Cortese, seconded by Council Member LeZotte, and carried unanimously, Ordinance No. 27906, entitled: "An Ordinance of the City of San Jose Approving an Amendment of the Terms of Ordinance No. 22128, Granting a Nonexclusive Cable Television Franchise to Comcast of California, Successor to Gill Industries, Inc., DBA Gillcable, Renewing, Amending and Extending the Franchise", was adopted. (11-0.)

2.3 Approval of a third amendment and continuation agreement with the Center for Airport Management (CAM) for consultant services for the development of concession plans for the Norman Y. Mineta San José International Airport, continuing and extending the term of the agreement from October 31, 2006 to December 31, 2007 with no increase in compensation. CEQA: Resolution Nos. 67380 and 71451, PP 06-179. (Airport)

Documents Filed: Memorandum from Director of Aviation William F. Sherry, dated November 1, 2006, recommending approval of a continuation agreement.

Action: The third amendment and continuation agreement with the Center for Airport Management was approved. (11-0.)

2.4 Adoption of a resolution authorizing the Director of Finance to execute an amendment to the agreement with Schindler Elevator Corporation for elevator and escalator maintenance services, extending the term of the agreement by six months from November 1, 2006 through April 30, 2007, and increasing the total compensation by \$75,000, from \$147,370, to a not to exceed amount of \$222,370. CEQA: Not a Project. Council District 4. (Finance)

Documents Filed: Memorandum from Director of Finance Scott P. Johnson, dated November 1, 2006, recommending adoption of a resolution.

Action: Resolution No. 73508, entitled: "A resolution of the Council of the City of San José Authorizing the Director of Finance to Execute an Amendment to the Agreement with Schindler Elevator Corporation for Elevator and Escalator Maintenance Services", was adopted. (11-0.)

2.5 Approval of award of open purchase orders for supplies, materials, equipment and services for FY 2006-2007 #11 and authorization for the Director of Finance to execute the purchase orders. CEQA: See Administration's Memo to Council for specific CEQA clearance determinations on each recommended action. (Finance)

Documents Filed: Memorandum from Director of Finance Scott P. Johnson, dated November 1, 2006, recommending approval of award of open purchase orders.

2.5 (Cont'd.)

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

Action: The award of open purchase orders for FY 2006-2007 #11 and authorization for the Director of Finance to execute the purchase orders, was approved. (11-0.)

2.6 Adoption of a resolution authorizing the Director of Finance to:

- (a) Execute a service agreement for power washing of City-owned parking structures with Pro-Sweep, Inc., the lowest quote, for one year, in an amount not to exceed \$145,000;**
- (b) Exercise two additional one-year options to renew the agreement, subject to the appropriation of funds.**

CEQA: Exempt: PP-04-284. (Finance)

Documents Filed: Memorandum from Director of Finance Scott P. Johnson, dated November 1, 2006, recommending adoption of a resolution.

Action: Upon motion of Vice Mayor Chavez, seconded by Council Member Reed and carried unanimously, Resolution No. 73509, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Finance to Execute A Service Agreement with Pro-Sweep, Inc. for Power Washing of City-Owned Parking Structures", was adopted, with Staff directed to ask stakeholders, i.e. the Police Department and the Downtown Working Group, to participate in the review of contracts relating to downtown cleanliness and public safety issues when these contracts are up for renewal. (11-0.)

2.7 Approval of an agreement with RossDrulisCusenbery for architectural consultant services for the Fire Station No. 36 Project, from the date of execution to June 30, 2009, in an amount not to exceed \$643,505. CEQA: Exempt, PP06-009. Council District 8. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated November 1, 2006, recommending approval of the agreement.

Action: Upon motion Council Member Cortese, seconded by Vice Mayor Chavez and carried unanimously, the agreement with RossDrulisCusenbery was approved. (11-0)

2.8 Report on bids and take appropriate action based on the evaluation of bids for the Downer-Canoas Sanitary Sewer System Cleaning Project. CEQA: Exempt, PP06-170. Council District 10. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated November 1, 2006, recommending taking appropriate action based on the evaluation of bids.

Action: This item was dropped.

- 2.9 (a) **Adoption of a resolution authorizing the City Manager to accept a Transportation Fund for Clean Air grant in an amount not to exceed \$640,000 from the Santa Clara Valley Transportation Authority, and to negotiate and execute the grant agreement and any other documents necessary to effectuate the grant for the following two transportation projects:**
- (1) **Light Rail Transit Controller Upgrade Project in an amount not to exceed \$600,000.**
 - (2) **Installation of Sidewalk Bicycle Racks in an amount not to exceed \$40,000.**
- (b) **Adoption of an Appropriation Ordinance and Funding Sources Resolution Amendment to the Building and Structure Construction Tax Fund as follows:**
- (1) **Increase the estimate for Earned Revenue by \$300,000.**
 - (2) **Increase the appropriation for the ITS Capitol Light Rail Transit Signal Upgrade project by \$185,000.**
 - (3) **Increase the Ending Fund Balance by \$115,000.**
- (c) **Adoption of an Appropriation Ordinance and Funding Sources Resolution Amendment to the Construction Excise Tax Fund as follows**
- (1) **Increase the estimate for Earned Revenue by \$40,000.**
 - (2) **Increase the Ending Fund Balance by \$40,000.**

CEQA: Exempt, File Nos. PP06-178 and PP01-211. (Transportation/City Manager's Office)

Documents Filed: Memorandum from Director of Transportation James R. Helmer and Budget Director Larry D. Lisenbee, dated November 1, 2006, recommending adoption of a resolution, appropriation ordinances and funding sources resolutions amendments.

Public Comment: George Fokos spoke in favor of the Staff recommendation.

Action: Upon motion of Council Member Pyle, seconded by Council Member Campos and carried unanimously, Resolution No. 73510, entitled: "A Resolution of the Council of the City of San José Authorizing the city Manager to Accept a Transportation for Clean Air Grant in an Amount Not to Exceed \$640,000 from the Santa Clara Valley Transportation Authority, and to Negotiate and Execute All Related Documents"; Ordinance No. 27920, entitled: "An Ordinance of the City of San José amending Ordinance No. 27801 to Appropriate Moneys in the Building and Structure Construction Tax Fund for the ITS: Capitol Light Rail Transit Signal Upgrade Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; Resolution No. 73511, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 73265 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2006-2007 to Adjust Revenues in the Building and Structure Construction Tax Fund"; Ordinance No. 27921, entitled: "An Ordinance of the City of San José Amending Ordinance No. 27801 to Appropriate Moneys in the Construction Excise Tax Fund to Increase the Ending Fund Balance; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", and Resolution No. 73512, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 73265 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2006-2007 to Adjust Revenues in the Construction Excise Tax Fund", were adopted. (10-0-1. Absent: Yeager.)

2.10 Approval of the Operating Grant Agreement between the City of San José and Our City Forest, awarding a grant to Our City Forest for Fiscal Year 2006-2007 in an amount not to exceed \$201,200. CEQA: Not a Project. (Transportation)

Documents Filed: Memorandum from Director of Transportation James R. Helmer, dated November 2, 2006, recommending approval of the Operating Grant Agreement.

Action: Upon motion of Council Member Cortese, seconded by Vice Mayor Chavez and carried unanimously, the Operating Grant Agreement and the award of the Grant to Our City Forest were approved, with Staff directed to work with Our City Forest between now and December 5, 2006 to address State grant prerequisite requirements, including office space needs and matching funds. (11-0.)

2.11 Adoption of a resolution authorizing the Director of Finance to execute an amendment to the agreement with Silicon Valley Security and Patrol, Inc. to extend the term of the agreement by twelve months from December 1, 2006 through November 30, 2007, and increase the total compensation by \$408,000 from \$355,000, to a not to exceed amount of \$763,000 for security services performed during this period. (Finance)

Documents Filed: Memorandum from Director of Finance Scott P. Johnson, dated November 17, 2006, recommending adoption of the resolution.

Action: Upon motion of Vice Mayor Chavez, seconded by Council Member Reed and carried unanimously, Resolution No. 73513, entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Finance to Execute an Amendment to the Agreement For Security Services with Silicon Valley Security And Patrol, Inc.”, was adopted. (11-0.)

**2.12 Adoption of a resolution authorizing the Director of Finance to negotiate and execute an amendment to the agreement with Action Vending Services for vending services at City facilities to relax the dietary fiber requirement of 2 grams to allow for dairy products. (Yeager)
(Rules Committee referral 11/08/06)**

Documents Filed: Memorandum from Council Member Yeager, dated November 21, 2006, recommending adoption of a resolution.

Action: Resolution 73514, entitled: “A Resolution of the Council of the City of San José authorizing the Director of Finance to Negotiate and Execute an Agreement with Action Vending Services for Vending Services at City Facilities”, was adopted. (11-0.)

**2.13 Acceptance of the Office of the City Auditor's Report of Activities and Findings for the Period September 16, 2006 through October 15, 2006. (City Auditor)
(Rules Committee referral 11/15/06)**

Documents Filed: Report of Activities for the Period September 16, Through October 15, 2006, from the Office of the City Auditor.

Action: The report was accepted. (11-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

**3.2 Report of the Rules Committee – November 8, 2006
Vice Mayor Chavez, Chair**

Documents Filed: The Rules Committee Report, dated November 8, 2006.

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting
- (b) City Council
 - (1) Review November 21, 2006 Draft City Council Agenda

The Committee approved the November 21, 2006 City Council Agenda with eight additions.

- (2) Add New Items to November 14, 2006 Agenda

The Committee approved the November 14, 2006 Agenda with five additions.

- (3) List of Reports Outstanding

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

- (c) Legislative Update
 - (1) State

Intergovernmental Director Betsy Shotwell gave a brief update on infrastructure bond measures.

- (2) Federal - No Report.

- (d) Meeting Schedules - There were none.

**3.2 Report of the Rules Committee – November 8, 2006 (Cont'd.)
Vice Mayor Chavez, Chair**

- (e) The Public Record. Attachment: Memorandum from City Clerk Lee Price, dated November 2, 2006, transmitting items for Public Record for the period of October 25- November 2, 2006.

The Committee noted and filed the Public Record.

- (f) Appointments to Boards, Commissions and Committees
 - (1) Third Term of Human Rights Commissioner Robert Sippel. Attachment: Memorandum from Council Member LeZotte, dated November 2, 2006, recommending the extension.

The Committee approved the third term of Human Rights Commissioner Robert Sippel.

- (g) Rules Committee Reviews, Recommendations and Approvals
 - (1) 2006 National League of Cities Voting Delegate at the Annual Business Meeting. Attachment: Memorandum from Intergovernmental Director Betsy Shotwell, dated November 6, 2006, recommending approval of the delegate.

The Committee approved Council Member Campos as the voting delegate at the December 9, 2006 Annual Business Meeting for the NLC. Heard by Council on November 14, 2006.

- (2) Accept staff reports on improvements to the General Code Complaint Handling Process and the Fee Based Multi-Family Dwelling Program. Attachments: (1) Memorandum from Council Member Cortese, dated November 8, 2006, recommending acceptance of report. (2) Memorandum from Acting Director of Planning, Building and Code Enforcement Joseph Horwedel, dated October 5, 2006, recommending acceptance of report. (3) Supplemental Memorandum from Acting Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 2, 2006, transmitting additional information.

The Committee approved the Reports.

- (3) Add to the Auditor's Office 2006-07 Work Plan an ongoing audit of the Procurement Card Program. Attachment: Memorandum from City Auditor Gerald A. Silva, dated October 31, 2006, recommending approval of the Work Plan.

The Committee approved the Work Plan.

**3.2 Report of the Rules Committee – November 8, 2006 (Cont'd.)
Vice Mayor Chavez, Chair**

- (g) Rules Committee Reviews, Recommendations and Approvals (Cont'd.)
 - (4) Acceptance by the Rules Committee of the scope of work developed for the San José Police Department's Internal Affairs Study. Attachment: Memorandum from Chief of Police Robert L. Davis, dated November 2, 2006, recommending acceptance of the report.

The Committee accepted the Internal Affairs Study.

- (h) Review of Significant Public Records Act Requests

City Attorney Richard Doyle noted that the South Almaden Valley Rural Alliance filed a Public Records Act request and added that his office is working with the Department of Planning, Building and Code Enforcement in response.

- (i) Review of Council Policy Updates per Sunshine Reforms (PIR #12)
 - (1) Approve rescission of the following policies as contained in the Council Policy Manual and forward to council for adoption of a resolution rescinding. Attachment: Memorandum from Deputy City Manager Deanna J. Santana, dated November 3, 2006, recommending approval of the rescissions.

See Item 3.11 for Council Action Taken

- (a) Policy 0-4, Section H: Consolidated Board and Commission Policies (Section H: Code of Ethics for Officials and Employees of the City of San José);
- (b) Policy 0-4, Section F: Child Care Reimbursement (Meetings and travel Expense);
- (c) Policy 0-7: Affirmative Action Plan;
- (d) Policy 0-16: Sexual Harassment;
- (e) Policy 0-25: Local Preference Policy;
- (f) Policy 1-5: Fees for Publications, Materials, Printing, and Duplicating;
- (g) Policy 1-7: Child Care Reimbursement (Meeting and Travel Expenses);
- (h) Policy 1-9: Open Market Purchase of Used Vehicles;
- (i) Policy 1-10: Private Activity Bonds;
- (j) Policy 1-13: Use of Recourse and Non-Recourse;
- (k) Policy 2-5: Temporary Use of City Equipment by Community Organizations;
- (l) Policy 5-1: Funeral Escort Services;
- (m) Policy 5-4: Alternate Traffic Mitigation Measures;
- (n) Policy 6-1: Annexation of City of San José;
- (o) Policy 6-3: Emergency Zoning;
- (p) Policy 6-6: Interim Residential Uses of Excluded in Industrial Areas;

**3.2 Report of the Rules Committee – November 8, 2006 (Cont'd.)
Vice Mayor Chavez, Chair**

- (i) Review of Council Policy Updates per Sunshine Reforms (PIR #12) (Cont'd.)
 - (1) Approve rescission of the following policies as contained in the Council Policy Manual and forward to council for adoption of a resolution rescinding (Cont'd.)
 - (q) Policy 6-12: Water Pollution Control Plan Growth Management Policy;
 - (r) Policy 6-13: City-Initiated Planned Development Zoning;
 - (s) Policy 6-21: Church Location Policy;
 - (t) Policy 6-24: Evaluation Criteria for High Density Housing New Rail Transit;
 - (u) Policy 7-9: Housing Property Acquisition Policy;
 - (v) Policy 8-2: Criteria for the Installation of Through Streets;
 - (w) Policy 8-9: Remedial Installation of Soundwalls (Formerly “Criteria for Installations of Sound Barriers”);
 - (x) Policy 8-10: Multi-Family Housing Mortgage;
 - (y) Policy 8-11: Use of Products Blown With Chlorofluorocarbon Compounds in City Building, Construction and Remodeling Projects;
 - (z) Policy 9-7: Swimming Program Policy.
(City Manager’s Office)

The Committee approved rescission of the policies.

- (j) Open Forum - There were none.
- (k) Adjournment - The meeting was adjourned at 2:35 p.m.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Campos and carried unanimously, the Rules Committee Report and the actions of November 8, 2006 were accepted. (11-0.)

- 3.4**
- (a) **Acceptance of the report on the implementation of approved Procurement Reforms.**
 - (b) **Adoption of a resolution approving Council Policy titled “Procurement and Contract Process Integrity and Conflicts of Interest”.**
 - (c) **Approval of an ordinance of the City of San José amending Chapters 4.04,4.12, and repealing Chapters 4.06 and 4.13 of Title 4 of the San José Municipal Code to increase administrative contract authority for purchase of supplies, materials, equipment and services to \$1,000,000, to enact a protest procedure for purchases, and to amend, reorganize and consolidate various purchasing procedures.**

CEQA: Not a Project. (Finance/City Attorney’s Office)

Action: This item deferred to December 5, 2006.

3.5 Discussion of a proposed ordinance amending Title 12 of the San José Municipal Code to add Chapter 12.18 to establish the grounds and procedure for the removal of members of the City Council from Office. CEQA: Not a Project. (City Attorney's Office)

Documents Filed: Memorandum from City Attorney Richard Doyle, dated November 15, 2006, outlining provisions of a proposed ordinance, and a draft ordinance for consideration.

City Attorney Doyle summarized key provisions of the draft ordinance and responded to Council questions.

Public Comment: George Fokos spoke off topic. William Garbett spoke in opposition to the proposal, noting citizens have the right to recall. Kim Singh issued complaints about Council Members Cortese, Nguyen and Yeager.

Council discussion followed.

Council Member Nguyen voiced strong objections to the ordinance, noting that this action will set a dangerous precedent. She added that voters have the right to take out of office an elected official via recall. Council Member Williams expressed reluctant support.

Action: Upon motion of Council Member Reed, seconded by Council Member LeZotte and carried, the following amendments to the proposed ordinance were approved: (1) Add a provision that specifies that if there is any question about a conflict of interest by any other Member of the Council, that it be referred to the investigative committee for a decision. (2) Change the standard from "beyond a reasonable doubt" to "clear and convincing evidence". (3) Add another provision that states that if the Rules Committee makes a finding that willful misconduct in office, as a matter of California law, then the matter will immediately be referred to the City Council. Further, if the Rules Committee cannot make that finding, then the matter goes no further. (4) Add that no member of the Investigation Committee may hold employment with the City, RDA or with any Council Member outside of City employment. (5) Clarify that the minimum of five (5) days notice to the member subject to the removal request shall be working days. (6) Add an additional noticing step that when the final report is issued the City Clerk should notice the public via the City of San José website 45 days before the hearing. (9-2. Noes: Nguyen; Gonzales.)

3.6 (a) Approval to consider the recommendation below pursuant to the Early Distribution Process Rules (2/3 vote required).

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Campos and carried unanimously, the recommendation to consider was approved. (11-0.)

- 3.6 (b) Adoption of a resolution approving the terms of a Memorandum of Agreement with the International Union of Operating Engineers, Local No. 3 (OE #3), and authorizing the City Manager to execute the agreement with a term of November 9, 2006 to April 17, 2009.**

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

Documents Filed: Memorandum from Director of Employee Relations Alex Gurza, dated November 13, 2006, recommending adoption of the resolution.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Campos and carried unanimously, Resolution No. 73515, entitled: "A Resolution of the Council of the City of San José Approving a Memorandum of Agreement between the City of San José and International Union of Operating Engineers, Local #3 (OE#3) for the Period of November 9, 2006 through April 17, 2009", was adopted. (11-0.)

- 3.7 Adoption of a resolution authorizing the Director of Finance to execute an amendment to the agreement with Kinko's Inc., increasing compensation by \$1,000,000, from \$2,000,000, to a not to exceed amount of \$3,000,000, and extending the term of the agreement from November 30, 2006 to May 30, 2007. CEQA: Not a Project. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott P. Johnson, dated November 1, 2006, recommending adoption of the resolution.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Yeager and carried unanimously, Resolution No. 73516, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Finance to Execute an Amendment to the Agreement for Reprographics (Copy) Services with FedEx Kinko's Office and Print Services, Inc. (Formerly Kinko's)", was adopted, with Staff directed to bring back in six months a case benefit analysis to determine if outsourcing these services is the most cost effective option. (11-0.)

- 3.8 Adoption of a resolution approving a City Council Policy regarding disclosure and declaration of conflicts of interest by the Mayor, Council Members and members of City boards and commissions on agenda items. (City Attorney)
(Rules Committee referral 11/08/06)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated November 15, 2006, providing background and recommending adoption of a resolution.

City Attorney Richard Doyle responded to Council questions.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Yeager and carried unanimously, Resolution No. 73517, entitled: "A Resolution of the Council of the City of San José Approving a City of San José Declaration of Conflict of Interest Policy", was adopted. (11-0.)

- 3.9 (a) Interview 2 applicants.**
(b) Appoint one applicant to serve the term on the Elections Commission ending March 1, 2009.

(City Clerk)

(Rules Committee referral 11/08/06)

Action: Deferred to December 5, 2006.

- 3.10 Recommend that during the upcoming period of council vacancies in District 4 and District 6, interim office staff be appointed under the appointing authority of the Mayor, and that the Mayor's Office oversee District 4 and 6 operations, including land use, constituent services, personnel, and budget issues, until their respective council members are elected and have taken office. (Mayor/Reed/Yeager)**

Documents Filed: Memorandum from Mayor Gonzales, Council Members Reed and Yeager, recommending an interim strategy for managing Council District Offices 4 & 6.

Action: Upon motion by Council Member Reed, seconded by Council Member Yeager and carried unanimously, the recommendations for an interim strategy for managing Council District Offices 4 and 6, were approved. (11-0.)

- 3.11 Adoption of a resolution rescinding the following policies as contained in the City Council Policy Manual:**

- (a) Policy 0-4, Section H: Consolidated Board and Commission Policies (Section H: Code of Ethics for Officials and Employees of the City of San José);**
- (b) Policy 0-4, Section F: Child Care Reimbursement (Meetings and travel Expense);**
- (c) Policy 0-7: Affirmative Action Plan;**
- (d) Policy 0-16: Sexual Harassment;**
- (e) Policy 0-25: Local Preference Policy;**
- (f) Policy 1-5: Fees for Publications, Materials, Printing, and Duplicating;**
- (g) Policy 1-7: Child Care Reimbursement (Meeting and Travel Expenses);**
- (h) Policy 1-9: Open Market Purchase of Used Vehicles;**
- (i) Policy 1-10: Private Activity Bonds;**
- (j) Policy 1-13: Use of Recourse and Non-Recourse;**
- (k) Policy 2-5: Temporary Use of City Equipment by Community Organizations;**
- (l) Policy 5-1: Funeral Escort Services;**
- (m) Policy 5-4: Alternate Traffic Mitigation Measures;**
- (n) Policy 6-1: Annexation of City of San José;**
- (o) Policy 6-3: Emergency Zoning;**
- (p) Policy 6-6: Interim Residential Uses of Excluded in Industrial Areas;**
- (q) Policy 6-12: Water Pollution Control Plan Growth Management Policy;**
- (r) Policy 6-13: City-Initiated Planned Development Zoning;**
- (s) Policy 6-21: Church Location Policy;**

(Item continued on the next page)

- 3.11 (t) **Policy 6-24: Evaluation Criteria for High Density Housing New Rail Transit;**
(u) **Policy 7-9: Housing Property Acquisition Policy;**
(v) **Policy 8-2: Criteria for the Installation of Through Streets;**
(w) **Policy 8-9: Remedial Installation of Soundwalls (Formerly “Criteria for Installations of Sound Barriers”);**
(x) **Policy 8-10: Multi-Family Housing Mortgage;**
(y) **Policy 8-11: Use of Products Blown With Chlorofluorocarbon Compounds in City Building, Construction and Remodeling Projects; and**
(z) **Policy 9-7: Swimming Program Policy.**
(City Manager’s Office)
[Rules Committee referral 11/8/06 – Item (I)(1)]

Documents Filed: Memorandum from Assistant to the City Manager Nadine Nader, dated November 16, 2006, transmitting the Council Policy Rescissions Report.

Action: Upon motion by Council Member Williams, seconded by Council Member Chirco and carried unanimously, Resolution No. 73518, entitled: “A Resolution of the Council of the City of San José Rescinding Policies Contained in the City Council Policy Manual”, was adopted. (11-0.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.3 **Public hearing and adoption of a resolution to vacate a portion of Paula Street, between Race Street and Meridian Way. CEQA: Mitigated Negative Declaration, PDC05-106. Council District 6. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated November 1, 2006, recommending adoption of a resolution.

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 Yeager, seconded by Council Member LeZotte and carried unanimously, Resolution No. 73519, entitled: “A Resolution of the Council of the City of San José Vacating a Portion of Paula Street Between Race Street and Meridian Way and Reserving a Public Service Easement”, was adopted. (10-0-1. Absent: Pyle.)

NEIGHBORHOOD SERVICES

5.1 Report of the All Children Achieve Committee – November 9, 2006 Council Member Yeager, Chair

Documents Filed: Report of the All Children Achieve Committee, dated November 9, 2006.

- (a) Annual Report on Library Usage. Attachment: Memorandum from Director of Library Department Jane Light, dated October 26, 2006, recommending acceptance of the Fiscal Year 2005-2006 Report.

The Committee report was accepted.

- (b) Update on Youth Priorities

Deferred to February 2007.

- (c) San José After School Program Annual Update. Attachment: Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated November 30, 2006, recommending approval of the update memo.

The Committee report was accepted.

- (d) San José's High School Initiative Update. Attachment: Memorandum from Mayor Gonzales, dated October 30, 2006, recommending acceptance of the report.

The Committee report was accepted.

- (e) Report for the San José Education Foundation

Deferred to December 2006.

- (f) Review of Relevant Legislative Priorities. Attachment: Memorandum from Deputy City Manager Deanna J. Santana and Intergovernmental Director Betsy Shotwell, dated November 2, 2006, recommending review and discussion of the draft 2007 Legislative Guiding Principles.

The Committee report was accepted, with Staff directed to do the following: (1) Return to the committee in December with more narrowed language and; (2) Review this document with other Boards and Commissions, such as the Library Commission, once the document is finalized.

- (g) Report from the Youth Commission

The Committee report was accepted, with Staff directed to check whether the City Municipal Code needs to be revised to reflect these changes specific to the Youth Commission. See Item 5.3 for Council action taken.

**5.1 Report of the All Children Achieve Committee – November 9, 2006 (Cont'd.)
Council Member Yeager, Chair**

(h) Oral Petitions

Chair Yeager stated that this was his last Committee meeting after serving as Chair for four years. He will miss the December meeting as he will be sworn in as a County Supervisor on December 12, 2006. Vice Chair Chirco and Council Member Pyle both thanked Chair Yeager.

(i) Adjournment - The meeting was adjourned at 3:08 p.m.

Action: Upon motion by Council Member Yeager, seconded by Vice Mayor Chavez and carried unanimously, the All Children Achieve Committee Report and actions of November 9, 2006, were accepted. (11-0.)

5.2 Approval to reject all bids for the Lake Cunningham Regional Park Perimeter Landscaping Phase 3 Project and authorization for the Director of Public Works to re-advertise and re-bid the project. CEQA: Mitigated Negative Declaration, PP05-115. Council District 8. (Public Works/Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated November 1, 2006, recommending approval to reject all bids, re-advertise and re-bid the project.

Action: Upon motion by Council Member Cortese, seconded by Council Member Campos and carried unanimously, the rejection of all bids was approved and the Director of Public Works was authorized to re-advertise and re-bid the project. (11-0.)

**5.3 Direction to staff to initiate amendments to the City's Youth Commission by-laws as follows: changing the term of office from 3 years to 2 years and changing the start and end dates of each term of office, to better coincide with school year and to allow for a more balanced experience level on the commission, and directing the City Attorney's Office to prepare an ordinance implementing the changes to the Youth Commission. (Chirco)
[All Children Achieve Committee Referral 11/9/06 – Item 5.1(g)]**

Documents Filed: Memorandum from Council Member Chirco, dated November 20, 2006, recommending changes to the Youth Commission Bylaws.

Action: Upon motion by Council Member Chirco, seconded by Council Member Yeager and carried unanimously, with Staff directed to initiate amendments to the City's Youth Commission by-laws as follows, changing the term of office from 3 years to 2 years and changing the start and end dates of each term of office, and the City Attorney's Office directed to prepare an ordinance implementing the changes to the Youth Commission, were approved. (11-0.)

TRANSPORTATION & AVIATION SERVICES

6.1 Report of the Building Better Transportation Committee – November 6, 2006 Council Member Campos, Chair

Documents Filed: Report of the Building Better Transportation Committee, dated November 6, 2006.

- (a) Caltrans Director's Report. Attachment: Memorandum from Director of Transportation James R. Helmer, dated October 25, 2006, recommending acceptance of the reports.

The Committee accepted the reports.

- (b) Freeway Litter Removal Initiatives. Attachment: Memorandum from Director of Transportation James R. Helmer, dated October 25, 2006, recommending acceptance of the status report.

The Committee accepted the report.

- (c) Report on Transportation Impact Policy Implementation. Attachment: Memorandum from Director of Building and Code Enforcement Joseph Horwedel, dated October 25, 2006, recommending acceptance of the report.

The Committee accepted the report.

- (d) Progress Report on BART to Silicon Valley Project

Deferred to December 4, 2006.

- (e) Oral Petitions

Bill Chew urged all residents to go out and vote on Election Day and stated that his guest this week on his television show will be candidate for Mayor, Chuck Reed.

- (f) Adjournment

The meeting was adjourned at 3:35 p.m.

Action: Upon motion by Council Member Campos, seconded by Council Member Williams and carried unanimously, the Building Better Transportation Committee Report and the actions of November 6, 2006, were accepted. (11-0.)

- 6.2 Adoption of a resolution authorizing the Director of Finance to:**
- (a) Execute an agreement with Lochar Corporation for the purchase of an Aircraft Noise and Flight Track Monitoring System, including hardware, software, installation and related professional services, a three year warranty, and shipping and taxes, for a total amount not to exceed \$1,347,705; and**
 - (b) Execute change orders not to exceed a 5% contingency amount of \$67,385 to cover unanticipated changes or requirements; and**
 - (c) Execute four additional one-year options to renew software maintenance, subject to annual appropriations.**

CEQA: Resolution Nos. 673 and 71451, PP06-180. (Finance)

Action: Deferred to December 5, 2006.

- 6.3**
- (a) Adoption of a resolution establishing a policy for the use of administrative citation fines collected by the City for enforcement of the Airport Curfew.**
 - (b) Adoption of an Appropriation Ordinance and Funding Sources Resolution Amendments to the Airport Revenue Fund and the Airport Maintenance and Operation Fund to support the Airport Curfew Fund Policy as follows:**
 - (1) Airport Revenue Fund (Fund 521):**
 - (a) Increase the Transfer to the Airport Maintenance and Operations Fund (Fund 523) by \$302,835.**
 - (b) Decrease the Curfew Reserve Ending Fund Balance in the Airport Revenue Fund (Fund 521) by \$302,835.**
 - (2) Airport Maintenance and Operation Fund (Fund 523):**
 - (a) Increase the Transfer from the Airport Revenue Fund (Fund 521) by \$302,835.**
 - (b) Increase the Airport Non-Personal/Equipment appropriation by \$302,835.**

CEQA: Resolution Nos. 67380 and 71451, PP 06-187. (Airport/City Manager's Office)

Documents Filed: (1) Memorandum from Director of Aviation William F. Sherry, dated November 1, 2006, recommending adoption of the policy, appropriation ordinances and other funding actions. (2) Supplemental memorandum from Director of Aviation William F. Sherry, dated November 15, 2006, transmitting additional information. (3) Two documents from Kenneth Hayes regarding Citizens against Airport Pollution, portions of the EPA Final Summary.

Public Comments: Catherine Tompkins spoke in support of the Staff recommendations. Kenneth Hayes submitted a position paper from CAAP and an attachment supporting their recommendations for additional air monitoring to identify the impact of airline flight operations on air quality. Sandra Clifford spoke in support of a proposal for a paid intern at the San José International Airport.

Brief Council questions followed.

6.3 (Cont'd.)

Action: Upon motion by Council Member Yeager, seconded by Vice Mayor Chavez and carried unanimously, Resolution No. 73520; Ordinance No. 27922, entitled: "An ordinance of the City of San José amending Ordinance No. 27801 to Appropriate Moneys in the Airport Revenue Fund and the Airport Maintenance and Operation Fund for the Airport Non-personal/Equipment, and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", and Resolution No. 73521, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 73265 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2006-2007 to Adjust Revenues in the Airport Maintenance and Operation Fund", were adopted, with Staff directed to begin looking at ways to establish and fund air quality monitors and report back to Council. (11-0.)

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 (a) **Adoption of a resolution authorizing the City Manager to execute an agreement with California Waste Solutions, Inc. for Single-Family Recycling Collection and Processing services in Service Districts A and C for a six-year term from July 1, 2007, through June 30, 2013.**
- (b) **Adoption of a resolution authorizing the City Manager to execute an agreement with Garden City Sanitation, Inc. for Single-Family Garbage Collection services in Service Districts A and C for a six-year term from July 1, 2007, through June 30, 2013.**
- (c) **Adoption of a resolution authorizing the City Manager to negotiate and execute a Letter of Understanding with Norcal Waste Systems of San José for the temporary provision of solid waste services for up to three months in the event Garden City Sanitation and/or California Waste Solutions are not ready to start service on July 1, 2007.**

CEQA: Negative Declaration, File No. PP06-119. (Finance/Environmental Services)

Documents Filed: (1) Memorandum from Director of Finance Scott P. Johnson and Director of Environmental Services John Stufflebean, dated November 1, 2006, recommending adoption of resolutions. (2) Supplemental memorandum from Director of Finance Scott P. Johnson and Director of Environmental Services John Stufflebean, dated November 17, 2006, transmitting additional information.

Mayor Gonzales noted he would be abstaining from deliberations on this item due to a political conflict of interest.

Director of Environmental Services John Stufflebean provided a Staff presentation.

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

Vice Mayor Chavez reiterated concern about the number of neighborhood cleanups and suggested the City may be losing opportunities to gain more services.

7.1 (Cont'd.)

Action: Upon motion by Council Member Yeager, seconded by Council Member Nguyen and carried unanimously, Resolution No. 73522, entitled: “A Resolution of the City of San José Authorizing the City Manager to Execute the Agreement Between the City of San José and California Waste Solutions, Inc. for Recycle Plus Recycling Services”; Resolution No. 73523, entitled: “A Resolution of the City of San José Authorizing the City Manager to Execute the Agreement Between the City of San José and Garden City Sanitation, Inc. for Recycle Plus Solid Waste Services”, and Resolution No. 73524, entitled: “A Resolution of the City of San José Authorizing the City Manager to Negotiate and Execute a Letter of Understanding with Norcal Waste Systems of San José to Provide Temporary Recycle Plus Services for the 2007 Transition”, were adopted. (10-0-1. Disqualified: Mayor Gonzales.)

PUBLIC SAFETY SERVICES

8.1 Acceptance of a report on the Mayor’s Gang Prevention Task Force. (Mayor) (Rules Committee referral 11/08/06)

Documents Filed: Memorandum from Mayor Gonzales and Council Member Yeager, dated November 20, 2006, recommending acceptance of the report.

Chief of Police Rob Davis Deputy, Director of Parks, Recreation and Neighborhood Services Angel Rio, and Consultant Dr. Peter Ellis presented the 2005-2007 Strategic Work Plan for the Mayor’s Gang Prevention Task Force.

Council questions followed.

Public Comment: Corazon Tomalines spoke in support of the work plan and suggested that the Task Force align with other community based organizations to examine safety issues and also proposed that the City Council dedicate more financial resources to the Task Force.

Council discussion followed.

Action: Upon motion by Council Member Williams, seconded by Council Member Chirco and carried unanimously, the Report on the Mayor’s Gang Prevention Task Force was accepted. (10-0-1. Absent: Yeager.)

8.2 Acceptance of the Independent Police Auditor’s 2006-Mid-Year Report. (IPA)

Documents Filed: (1) Memorandum from Independent Police Auditor Barbara Attard, dated November 9, 2006, transmitting the 2006 IPA Mid-Year Report. (2) Human Rights Commission flyer listing November and January community forums by the San José Police Department.

8.2 (Cont'd.)

Independent Police Auditor Barbara Attard presented the 2006 Independent Police Auditor's 2006 Mid-Year Report and responded to Council questions.

Public Comment: William Garbett complained that the IPA has not responded to his attempts to file complaints. Richard Konda raised concern over the increase in inquiries. Aram James commented that the IPA is not being given adequate resources and suggested citizens may be discouraged from filing complaints.

Action: Upon motion by Council Member Campos, seconded by Council Member Reed, carried unanimously, the 2006 Independent Police Auditor's 2006 Mid-Year Report was accepted, with the IPA directed to add to the next report: (1) How San José compares to other cities and how many complaints are filed per capita. (2) Include a chart of trends of completed years in future mid-year reports when available. (3) Track number of complaints in any given district. (4) Report follow-up taken when working with the IPA. (11-0.)

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Joint Council/Redevelopment Agency convened at 6:02 p.m. to consider Items 9.1 and 9.2 in a joint session.

- 9.1 (a) **Direction to staff to draft and return to the City Council for adoption by February 2007, a recommended City Council policy on Green Building that requires U.S. Green Building Council (USGBC) LEED™ (Leadership in Energy and Environmental Design) Certified level certification be used as the standard for all City and Redevelopment Agency new construction or major retrofit projects greater than 10,000 square feet ("LEED eligible projects").**
- (b) **Require that effective with the Proposed 2007-08 Capital Improvement Program (CIP) budget:**
- (1) **All new LEED eligible projects incorporate sufficient funding to achieve the LEED Certified level of certification.**
 - (2) **All new and carryover LEED eligible projects identify the level of LEED certification being pursued, and that staff pursue additional capital funding where feasible to allow carryover projects to achieve LEED Certified ratings.**
 - (3) **Staff identifies new and carryover projects that could exceed the required rating, such Silver and Gold ratings, and any recommended supplemental funding to meet those rating levels.**

(Item continued on the next page)

- 9.1 (c) **Direction to staff to prepare a report to the Council in conjunction with the proposed 2007-08 budget, with recommendations on how the City could use the LEED for Existing Buildings' (LEED-EB) rating system to assess existing City facilities, including a proposal for pilot projects that would apply the LEED-EB rating system.**
- (d) **Direction to staff to establish a work plan for outreach to the private sector including exploring incentives and providing education on the use of additional LEED or other high-performance building guidelines such as those for Retail Stores, Schools, Homes, and Commercial Interiors, and specifically include all developments supported by Redevelopment Agency and Housing funds.**
- (e) **Prepare associated budget requests as part of the City's FY 2007-08 budget process that would provide resources for the recommendations proposed above.**
- (f) **Direction to staff to report to the City Council on an annual basis the status of the City's Green Building Program.**

CEQA: Not a Project. (OES/Public Works/General Services)

Documents Filed: (1) Memorandum from Council Members LeZotte and Chirco, dated November 21, 2006, direction to Staff to draft report and recommendations on amendments. (2) Memorandum from Director of Environmental Services John Stufflebean, Director of Public Works Katy Allen and Director of General Serviced Peter Jensen, dated November 1, 2006, recommending implementation of the City's Green Building Policies and Guidelines. (3) City of San José Green Building Program Presentation, dated November 21, 2006.

Deputy City Manager Ed Shikata presented a brief outline of the Green Building Program. Acting Director of Environmental Services John Stufflebean presented an overview of the Leadership in Energy and Environmental Design Program. Deputy Director Public Works Dave Sykes summarized program successes in the City of San José.

Public Comment: Bob Jacobvitz spoke in favor of the report and Staff recommendations.

Action: Upon motion by Council Member LeZotte, seconded by Council Member Chirco and carried unanimously, the report was approved, with Staff directed to complete the following, as outlined in the joint Council memorandum dated November 21, 2006: (1) Draft and return to the City Council for adoption by February 2007, a recommended amendment to the City Council Policy on Green Building that requires U.S. Green Building Council LEED SILVER level certification be required for all City and Redevelopment Agency new construction or major retrofit projects, greater than 10,000 square feet ("LEED ELIGIBLE PROJECTS"). (2) Require that effective with the Proposed 2007-2008 Capital Improvement program BUDGET: (a) All new LEED eligible projects incorporate sufficient funding to achieve the LEED SILVER, or higher, level of certification. (b) All new and carryover LEED eligible projects identify the level of LEED certification (SILVER or higher) being pursued, and that staff pursue additional

9.1 (Cont'd.)

capital funding to allow carryover projects to achieve the LEED SILVER rating. (c) Staff to identify new and carry over projects that could exceed the required rating, such as Gold or Platinum ratings and any recommended supplemental funding to meet those rating levels. (3) Return to Council in February 2007, along with the amended policy language, the mechanism for reporting to the City Council on an annual basis, the status of the City's Green Building Program. (4) Return in February with a pipeline benchmark (i.e. 50% drawings) to insure this policy pushes the envelope without delays or excessive costs to current projects. (5) Quantify operation and maintenance cost savings. (11-0.)

- 9.2 (a) Adoption of resolutions by the City Council and Redevelopment Agency authorizing the City Manager and Executive Director to negotiate and execute a Cooperation Agreement for the development of the City Hall Retail Space.**
- (b) Adoption of the following 2006-2007 Appropriation Ordinance Amendments in the General Fund:**
- (1) Increase the City Hall Retail Space appropriation in the amount of \$500,000 for tenant improvements.**
 - (2) Decrease the Unallocated 05-06 Fund Balance Reserve by \$500,000.**
- (c) The Redevelopment Agency Board adopt a resolution amending the FY 2006-2007 Revenue Resolution to add \$800,000 to the Other/Miscellaneous revenue from the City's General Fund for City Hall Retail Space; amending the FY 2006-2007 Capital Budget to add \$800,000 to the Retail Strategy - New City Hall Retail project line in the Merged Redevelopment Area; and amending the FY 2006-2007 Agency appropriations resolution.**
- CEQA: Not a Project. (City Manager's Office/Redevelopment Agency)**
(Referred from 11/14/06 – Item 9.1)

Documents Filed: Memorandum from City Manager Les White and Executive Director Harry S. Mavrogenes, dated November 17, 2006, recommending adoption of the resolutions and appropriation ordinance.

Action: Upon motion by Council Member Williams, seconded by Council Member Campos and carried, Resolution No. 73525, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Cooperation Agreement with the Redevelopment Agency of the City of San José for the Development of the City Hall Retail Space"; Ordinance No. 27923, entitled: "An Ordinance of the City of San José Amending Ordinance No. 27801 to Appropriate Moneys in the General Fund for City Hall Retail Space; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; and Redevelopment Agency Resolution Nos. 5715 and 5716, were adopted. (8-3-0. Noes: LeZotte, Reed, Yeager.)

The Redevelopment Agency Board portion of the meeting was adjourned at 6:23 p.m.

NOTICE OF CITY ENGINEER’S PENDING DECISION ON FINAL MAPS

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

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>	<u>Proposed Decision</u>
9828	North side of Villa Ave, 150’ East of Myrtle Street	6	LG Developers LP	5 Lots / 4 Units	SFDR	Approve
9855	West side of Curtiss Ave, 350’ South of Willow Street	6	Willowshire LLC	5 Lots / 4 Units	SFDR	Approve

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

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Clara</u>	<u>Lots/Units</u>	<u>Type</u>
9878	West side of Bird Avenue, 800’ south of Willow Street	6	Santa Redevelopment	Clara	1 Lot / 12 Units	Multi-Family Attached
9881	Southeast Terminus of Tierra Encantada Way	5	Tierra Encantada LP		13 Lots / 12 Units	Single Family Attached

OPEN FORUM

Documents Filed: Letter from Paul J. Manley, dated November 20, 2006, regarding a formal grievance against the Planning, Building and Public Works Departments.

- (1) George Fokos said he was pleased with the City’s progress.
- (2) Paul J. Manley, Pase Tanquillo Homes, complained about the City’s response to his project and submitted a letter in support of his complaint.
- (3) Robert K. Apgar voiced personal observations.

ADJOURNMENT

The Council of the City of San José was adjourned at 6:29 p.m.

Minutes Recorded, Prepared and Respectfully Submitted By,

Lee Price, MMC
 City Clerk
 uh/11-21-06 MIN

Access the video, the agenda and related reports for this meeting by visiting the City's website at <http://www.sanjoseca.gov/clerk/agenda.asp> or <http://www.sanjoseca.gov/clerk/MeetingArchive.asp>

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Joint Redevelopment Agency Board convened at 6:30 p.m. to consider Items 8.1 and 8.2 in a Joint Session.

- 8.1 (a) Adoption of a resolution by the City Council making certain determinations required by state law for Redevelopment Agency funding of the proposed improvements to South First Street; and,**
- (b) Adoption of a resolution by the Redevelopment Agency Board awarding a contract to Joseph J. Albanese, Inc., the low bidder in the amount of \$621,980 , for the First & Reed Streetscape Project, and establishing a 10% project contingency in the amount of \$62,198, for a total construction budget not to exceed \$684,178.**

CEQA: Exempt. File No. PP06-105. [MARKET GATEWAY]

Documents Filed: Memorandum from Redevelopment Agency Deputy Director John Weis, dated November 21, 2006, recommending adoption of the resolutions.

Action: Upon motion by Vice Mayor Chavez, seconded by Council Member Yeager and carried unanimously, Resolution No. 73526, entitled: “A Resolution of the City of San José Making Certain Determinations Required by State Law for the Expenditure of Redevelopment Agency Funds on Certain Public Improvements to South First and Reed Streets”, and Redevelopment Agency Resolution No. 5717, were adopted. (11-0.)

- 8.2 (a) Adoption of a resolution by the Redevelopment Agency Board:**
- (1) Authorizing the issuance of Merged Area Redevelopment Project Tax Allocation Refunding Bonds in one or more series in an aggregate principal amount not to exceed \$950,000,000 (the “2006 Refunding Bonds”); and approving in substantially final form the Tenth Supplemental Indenture of Trust with Union Bank, as Trustee; and,**
 - (2) Approving the negotiated sale of 2006 Refunding Bonds to J.P. Morgan Securities, Citigroup Global Markets Inc., Merrill Lynch, UBS Securities, E.J. De La Rosa & Co., Inc., and First Albany Capital; and,**
 - (3) Approving in substantially final form the Preliminary Official Statement (POS) and authorizing the Underwriters to distribute the POS; and,**
 - (4) Authorizing the Executive Director to negotiate and execute the Bond Purchase Agreement provided that the 2006 Refunding Bonds generate a present value savings of at least 3% of the par amount of the bonds being refunded; and,**
 - (5) Authorizing all officers, agents and employees to take such actions and execute such documents necessary and desirable to accomplish issuance of the 2006 Refunding Bonds; and,**
 - (6) Authorizing the Executive Director to purchase municipal bond insurance and surety bonds for the 2006 Refunding Bonds; and,**

(Item continued on the next page)

- 8.2 (a) (7) **Authorizing the Executive Director to issue additional Refunding Bonds during the remainder of FY 2006-07, so long as the refunding would generate interest savings of at least 3% and so long as the aggregate principal amount does not exceed \$950,000,000; and,**
- (8) **Authorizing the General Counsel to negotiate and execute an agreement with Jones Hall, A Professional Law Corporation, in an amount not to exceed \$227,500, for Bond Counsel services; and,**
- (9) **Authorizing the Executive Director to negotiate and execute an agreement with Ross Financial for financial advisory services in an amount not to exceed \$150,000.**
- (b) **Adoption of a resolution by the City Council approving the issuance of Merged Area Redevelopment Project Tax Allocation Refunding Bonds in one or more series in an aggregate principal amount not to exceed \$950,000,000.**
- CEQA: Not a Project. [MERGED]**

Documents Filed: (1) Memorandum from Executive Director Harry S. Mavrogenes, dated November 21, 2006, recommending adoption of the resolutions. (2) Supplemental memorandum from Executive Director Harry S. Mavrogenes, dated November 21, 2006, transmitting additional information.

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

Action: Upon motion by Council Member Reed, seconded by Vice Mayor Chavez and carried unanimously, Resolution No. 73527, entitled: “Resolution of the City of San José Approving the Issuance and Sale of Not to Exceed \$950,000,000 Aggregate Principal Amount of Redevelopment Agency of the City of San José Merged Area Redevelopment Project Tax Allocation Refunding Bonds, and Authorizing the Refunding of Certain Outstanding Bonds of the Agency”, and Redevelopment Agency Resolution No. 5718, were adopted. (11-0.)

The Joint Council/Redevelopment Agency Board portion of the meeting was adjourned at 6:38 p.m.