

## MINUTES OF THE CITY COUNCIL

**SAN JOSÉ, CALIFORNIA**

**TUESDAY, JANUARY 29, 2008**

The Council of the City of San José convened in regular session at 9:30 a.m. in the Council Chambers at City Hall.

Present: Council Members - Campos, Chirco, Chu, Constant, Cortese, Liccardo, Nguyen, Oliverio, Pyle, Williams; Reed.

Absent: Council Members - None.

Upon motion unanimously adopted, Council recessed at 9:31 a.m. to a Closed Session in Room W133, (A) to confer with Legal Counsel pursuant to Government Code Section 54956.9, subsection (b) with respect to anticipated litigation of significant exposure (Claim not filed), in one (1) matter; (B) to confer with to confer with Legal Counsel pursuant to Government Code Section 54956.9 subsection (c) with respect to anticipated litigation in one (1) matter; (C) Public Employment/Public Employee Appointment pursuant to Government Code Section 54947: Department or Agency: City Auditor; Title: City Auditor; (D) to confer with Legal Counsel pursuant to Government Code Section 54956.9, subsection (a) to consider the case of: (1) McGuire & Hester v. City of San José, et al. (and related cross actions); Names of Parties Involved: McGuire & Hester, City of San José, Nada Pacific, DH Charles Engineering, Viking Drillers, Hughes Construction, Geo-Grout, Inc., RMC, Kennedy/Janks, Parikh & Associates; Court: Superior Court of California, County of Alameda; Case No: RG06280788; Amount of Money or other Relief Sought: Damages according to proof; (2) Morgan v. City of San José, et al; Names of Parties Involved: Michael Morgan, City of San José, Tyler Kraul, Kirk Niemeyer; Court: United States District Court, Northern District of California, San José Division; Case No: C06 06315 HRL; Amount of Money or other Relief Sought: Damages according to proof; (3) Case Name: People v. Rust; Names of Parties Involved: People of the State of California, Lorie Ann Rust; Court: Superior Court of California, County of Santa Clara, San José Facility, Criminal Division; Case No: CC776886; Amount of Money or other Relief Sought: Production of information from the arresting officers' confidential personnel files; (4) Case Name: U.S.A. Express Cab, LLC v. City of San José, et al; Names of Parties Involved: U.S.A. Express Cab, LLC, a California Organization, Alpha Transportation, Inc. dba Alpha Cab Company, a California Organization, Dial Dialing Inc., dba California Cab, a California Organization, City Cab

(Cont'd.)

Company, a California Organization, Milpitas Cab, LLC, a California Organization, National Cab, LLC, a California Organization, Net Cab Company, a California Organization, City of San José, San José City Council; Court: United States District Court, Northern District, San José Division; Case No: C07-06171 HRL; Amount of Money or other Relief Sought: Declaratory and injunctive relief; (E) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Organization or Name and Title of Unrepresented Employees: San José Police Officers' Association; Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement, City of San José and San José Police Association; How to obtain a copy of existing contract or MOA: web: <http://www.sanjoseca.gov/employeerelations/moa.asp>; Telephone-Employee Relations: 408-535-8150; (1) Organization or Name and Title of Unrepresented Employees: International Brotherhood of Electrical Workers, Local 332; Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Brotherhood of Electrical Workers, Local 332; How to obtain a copy of existing contract or MOA: web: <http://www.sanjoseca.gov/employeerelations/moa.asp>; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 11:59 a.m. and reconvened at 1:31 p.m. in the Council Chambers.

Present: Council Members - Campos, Chirco, Chu, Constant, Cortese, Liccardo, Nguyen, Oliverio, Pyle, Williams; Reed.

Absent: Council Members - None.

## **INVOCATION**

Pastor Keith Lindstrom, West Valley Presbyterian Church presented a prayer for the Invocation. (District 1)

## **PLEDGE OF ALLEGIANCE**

The Second and Third Grade Students of Discovery Charter School and Mayor Reed led the Pledge of Allegiance.

## **ORDERS OF THE DAY**

Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, the Orders of the Day and the Amended Agenda were approved and Item 3.3 was deferred to February 5, 2008. (10-0-1. Absent: Oliverio.)

(Cont'd.)

Mayor Reed introduced the new City Auditor, Sharon Winslow-Erickson, who will assume the office on March 10, 2008.

## CLOSED SESSION REPORT

City Attorney Doyle disclosed the following Closed Session actions of January 29, 2008:

A. Authority to Pursue Appellate Review in a Litigation Case:

Case Name: People v. Rust

Adverse Party or parties: Lorie Ann Rust

Substance of Litigation: Defendant filed a *Pitchess* motion seeking confidential information from arresting San José Police Officers' confidential personnel files.

Council Vote: Ayes: Campos, Chirco, Chu, Constant, Cortese, Liccardo, Nguyen, Oliverio, Pyle, Williams; Reed.

Noes: None.  
Disqualified: None.  
Absent: None.  
Vacant: None.

## CEREMONIAL ITEMS

**1.1 Presentation of a commendation honoring the selfless men and women of the San José Fire Department that donated their time and services to aid in the California Wildfires this past October. (Cortese/Pyle)**  
**(Deferred from 12/11/07 – Item 1.2 and 12/18/07 – Item 1.2)**

Action: Mayor Reed, Vice Mayor Cortese and Council Member Pyle recognized and commended the selfless men and women of the San José Fire Department that donated their time and services to aid in the California Wildfires of October 2007.

**1.5 Presentation of a proclamation for Holocaust Remembrance Week in San José in memory of the victims of the Holocaust and their families and communities. (Williams)**

Action: Mayor Reed and Council Member Williams recognized “Holocaust Remembrance Week” in the City of San José in memory of the victims of the Holocaust and their families.

**1.2 Presentation of a commendation to the Police Athletic League in honor of their Christmas tree giveaway program, through which they distributed 500 Christmas trees to needy families. (Campos)**

Action: Mayor Reed, Vice Mayor Cortese and Council Member Campos recognized and commended the Police Athletic League for the distribution of 500 Christmas trees to needy families.

**1.4 Presentation of a commendation to Chinmay Jaju for his accomplishments and dedication in the field of Model Airplane competition. (Constant)**

Action: Mayor Reed and Council Member Constant recognized and commended Chinmay Jaju for his accomplishments and devotion in the field of Model Airplane competition.

**CONSENT CALENDAR**

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

**2.1 Approval of minutes.**

- (a) **Regular minutes of December 4, 2007**
- (b) **Regular minutes of December 11, 2007**
- (c) **Inclusionary Housing Study Session minutes of December 11, 2007**

Documents Filed: (1) The Regular Minutes dated December 4, 2007 and December 11, 2007. (2) The Inclusionary Housing Study Session Minutes dated December 11, 2007.

Action: The Minutes of the City Council were approved (11-0.)

**2.2 Final adoption of ordinances.**

- (a) **ORD. NO. 28230 – Providing for an alternative allocation of costs of providing medical insurance coverage for calendar year 2008.**

Documents Filed: Proof of Publication of the title of Ordinance No. 28230 executed on January 22, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28230](#) was adopted. (11-0.)

- 2.2 (b) **ORD. NO. 28231** – Establishing a combination Rule 20A/In-Lieu fee and Rule 20B Underground Utility District along Delmas Avenue from Santa Clara Street to Auzerais Avenue, Cahill Street from San Fernando to Santa Clara Street, San Fernando Street from Highway 87 to Cahill Street, Laurel Grove Lane from Cahill Light Rail Station to Bush Street, Cahill Park from Bush Street to Wilson Avenue, San Fernando Street from Wilson Avenue to 80' west of Wilson Street, Park Avenue from Highway 87 to Montgomery Street, and Auzerais Avenue from Bird Avenue to Highway 87.

Documents Filed: Proof of Publication of the title of Ordinance No. 28231 executed on January 22, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28231](#) was adopted. (11-0.)

- 2.3 **Acceptance of disclosure by Vice Mayor Cortese regarding his status as an uncompensated member of the nonprofit corporation, San José East Evergreen Rotary, and approval of a grant agreement with San José East Evergreen Rotary in the amount of \$7,500. (City Clerk)**  
**(Rules Committee referral 1/16/08)**

Documents Filed: Memorandum from City Clerk Lee Price, dated January 17, 2007, recommending acceptance of the disclosure.

Action: The disclosure by Vice Mayor Cortese was accepted. (11-0.)

- 2.4 (a) **Request for an excused absence for Councilmember Constant from the Regular Meeting of the City Council on January 8, 2008 due to illness.**  
(b) **Request for an excused absence for Councilmember Constant from the Regular Meeting of the City Council on January 15, 2008 due to illness.**  
(c) **Request for an excused absence for Councilmember Constant from the Regular Meeting of the Rules and Open Government Committee on January 16, 2008 due to illness.**  
**(Constant)**  
**(Rules Committee referral 1/16/08)**

Documents Filed: Memoranda from Council Member Constant, one dated January 15, 2008 and two dated January 16, 2008, requesting excused absences due to illness.

Action: The absences were excused. (11-0.)

- 2.5 **Request for excused absences for Vice Mayor Cortese from the Rules and Open Government Committee for the following dates in order to facilitate the Vice Mayor's membership and participation on the Metropolitan Transportation Commission:**  
(a) **January 23, 2008**  
(b) **February 13, 2008**  
(c) **February 27, 2008**

*(Continued on the next page)*

- 2.5 (d) **March 12, 2008 (Cont'd.)**  
 (e) **March 26, 2008**  
 (f) **April 9, 2008**  
 (g) **April 23, 2008**  
 (h) **May 14, 2008**  
 (i) **May 28, 2008**  
 (j) **June 11, 2008**  
 (k) **June 25, 2008**  
 (l) **September 10, 2008**  
 (m) **September 24, 2008**  
 (n) **October 8, 2008**  
 (o) **October 22, 2008**  
 (p) **November 5, 2008**  
 (q) **November 19, 2008**  
 (r) **December 3, 2008**  
 (s) **December 17, 2008**  
**(Reed)**  
**(Rules Committee referral 1/16/08)**

Documents Filed: Memorandum from City Clerk Lee Price, dated January 17, 2008, requesting excused absences for Vice Mayor Cortese from the Rules and Open Government Committee.

Action: The absences were excused. (11-0.)

- 2.6 (a) **Adoption of the following Appropriation Ordinance and Funding Sources Resolution amendments in the Services for Redevelopment Capital Projects Fund (City-side Redevelopment Fund) for 2007-2008:**
- (1) **Increase the estimate for Earned Revenue by \$342,800.**
  - (2) **Establish an appropriation to the Department of Public Works for the G-79 Sidewalk Installation in Low-Income SNI Areas project (PSM 518) in the amount of \$97,600.**
  - (3) **Establish an appropriation to the Department of Transportation for the Traffic Calming Improvements – Gateway East SNI #8 project (PSM 520) in the amount of \$245,200.**
- (b) **Adoption of resolutions making certain determinations regarding the related expenditure of Redevelopment Agency funds on certain public improvements in connection with:**
- (1) **The G-79 Sidewalk Installation in Low-Income SNI Areas project as more specifically described in the memorandum from the Redevelopment Agency, dated September 28, 2007;**
  - (2) **The Traffic Calming Improvements – Gateway East SNI #8 project as more specifically described in the memorandum from the Redevelopment Agency, dated December 10, 2007.**

**CEQA: Mitigated Negative Declaration, File No. H06-017 and PP06-071. Council Districts 3 and 5. (Public Works/Transportation/City Manager's Office)**

## 2.6 (Cont'd.)

Documents Filed: Memorandum from Director of Public Works Katy Allen, Director of Transportation James Helmer and Acting Budget Director Jennifer Maguire, dated January 7, 2008, recommending adoption of appropriation ordinance and funding sources resolution amendments and resolutions.

Action: [Ordinance No. 28232](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28071 to Appropriate Monies in the Services for Redevelopment Capital Projects Fund for the G-79 Sidewalk Installation in Low Income SNI Areas Project and for Traffic Calming Improvements – Gateway East SNI #8 Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”; [Resolution No. 74212](#), entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 73862 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2007-2008 to Adjust Revenues in the Redevelopment Capital Projects Fund” and [Resolution No. 74215](#), entitled: “A 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 Strong Neighborhoods Initiative Redevelopment Project Area” and [Resolution No. 74216](#), entitled: “A 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 Strong Neighborhoods Initiative Redevelopment Project Area”, were adopted. (11-0.)

## 2.7 **Approval of Contract Change Order # 11 with Gonsalves & Satucci, Inc. dba Conco for the Norman Y. Mineta San José International Airport North Concourse Building Foundation and Utility Tunnel Concrete, Package 02A, to convert certain allowance specifications to cover the following necessary items: (1) subdrainage system, (2) lime treatment, (3) 12,000 volt electrical conduits relocation, and (4) west side apron paving; in the total amount of \$368,707.88, at no increase in the total contract amount. CEQA: Resolution Nos. 67380 and 71451, File No. PP07-093. (Public Works/ Airport)**

Documents Filed: Memorandum from Director of Public Works Katy Allen and Director of Aviation William Sherry, dated January 7, 2008, recommending approval of the contract change order #1.

Action: The Contract Change Order # 11 with Gonsalves & Satucci, Inc. dba Conco for the Norman Y. Mineta San José International Airport North Concourse Building Foundation and Utility Tunnel Concrete, Package 02A, to convert certain allowance specifications to cover the following necessary items: (1) subdrainage system, (2) lime treatment, (3) 12,000 volt electrical conduits relocation, and (4) west side apron paving; in the total amount of \$368,707.88, at no increase in the total contract amount was approved. (11-0.)

**2.8 Approval of the following actions to obtain grant funds from the Metropolitan Transportation Commission (MTC) for the Jackson Street: LRT to Japantown Pedestrian Corridor Project from First Street to Fourth Street, in the amount of \$1,300,000:**

- (a) Adoption of a resolution authorizing the City Manager to execute and submit a grant application to the MTC for the Congestion Mitigation and Air Quality Improvement Program grant, in the amount of \$865,000, with a local match of \$112,070; and to execute all documents necessary to effectuate the grant.**
- (b) Adoption of a resolution authorizing the City Manager to execute and submit a grant application to the MTC for the 2008 Regional Transportation Improvement Program grant, in the amount of \$435,000, with no local match requirement; and to execute all documents necessary to effectuate the grant.**

**CEQA: Exempt, File No. PP07-054. Council District 3. SNI: 13th Street. Transportation)**

Documents Filed: Memorandum from Director of Transportation James Helmer, dated January 7, 2008, recommending adoption of resolutions.

Item 2.8 was pulled by Director of Transportation James Helmer for clarification.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Oliverio and carried unanimously, [Resolution No. 74217](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Execute and Submit an Application to the Metropolitan Transportation Commission for Congestion Migration and Air Quality Improvement Program (CMAQ) Grant Funding in an Amount Not To Exceed \$865,000 for the Jackson Street Lightrail Transit to Japantown Pedestrian Corridor Project and to Execute all Documents Necessary to Effectuate the Grant” and [Resolution No. 74218](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Execute and Submit an Application to the Metropolitan Transportation Commission for the 2008 Regional Transportation Improvement Program (RTIP) Grant Funding in an Amount Not To Exceed \$435,000 for the Jackson Street Lightrail Transit to Japantown Pedestrian Corridor Project and to Execute all Documents”, were adopted. (10-0-1. Absent: Constant.)

- 2.9**
- (a) Acceptance of the annual status report on the Branch Library Bond Program for FY 2006-2007.**
  - (b) Acceptance of the annual status report on the Public Safety Bond Program for FY 2006-2007.**
  - (c) Acceptance of the annual status report on the San José Safe Neighborhood Parks and Recreation Bond Projects for FY 2006-2007.**

**CEQA: Not a Project. (Citizen Oversight Committee for the Library Bond Projects/ Citizen Oversight Committee for the Public Safety Bond Program/Citizen Oversight Committee for the Parks and Recreation Bond Projects)**

## **2.9 (Cont'.d)**

Documents Filed: (1) Memorandum from Caroline Martin, Chair, Citizen Oversight Committee, dated January 7, 2008, recommending acceptance of the status report on the Library Bond Program. (2) Memorandum from Phyllis Lazzarini, Chairperson, Citizen Oversight Committee, dated December 5, 2007, recommending acceptance of the report on the Public Safety Bond Program. (3) Memorandum from Melanie Richardson, Chair, Citizens Oversight Committee, dated December 13, 2007, recommending acceptance of the status report on the Neighborhood Parks and Recreation Bond Projects.

Action: The Annual Status Reports were accepted. (11-0.)

### **END OF CONSENT CALENDAR**

## **STRATEGIC SUPPORT SERVICES**

### **3.2 Report of the Rules and Open Government Committee – January 9, 2008 Mayor Reed, Chair**

Documents Filed: The Rules and Open Government Committee Report dated January 9, 2008.

Action: Upon motion by Council Member Pyle, seconded by Council Member Campos and carried unanimously, the Report of the Rules and Open Government Committee and the actions of January 9, 2008 were accepted. (10-0-1. Absent: Constant.)

### **3.3 Report of the Rules and Open Government Committee – January 16, 2008 Mayor Reed, Chair**

Action: Deferred to February 5, 2008 per Orders of the Day.

### **3.4 Report of the Public Safety, Finance and Strategic Support Committee – December 20, 2007 - Council Member Nguyen, Chair**

Action: Deferred to February 12, 2008 per Administration.

### **3.5 Report of the Public Safety, Finance and Strategic Support Committee – January 17, 2008 - Council Member Nguyen, Chair**

Action: Deferred to February 12, 2008 per Administration.

**3.6 Accept staff's quarterly presentation to the City Council regarding recent ethical issues in the news and conflicts of interest under Government Code Section 1090. (City Attorney's Office)**

Documents Filed: (1) Memorandum from City Attorney Richard Doyle, dated January 17, 2008, recommending acceptance of the presentation. (2) Staff presentation on the Ethics Update, dated January 29, 2008.

Deputy City Attorney Rosa Tsongtaatarii presented an Ethics Update to the Council. A short discussion followed.

City Attorney Richard Doyle responded to questions from Vice Mayor Cortese regarding potential conflicts of interest relating to decisions made by Council Members when approving contracts as a member of a regional council of governments (i.e. Valley Transportation Authority). City Attorney Doyle indicated he would provide additional information to the Council via memorandum.

Action: The Staff presentation was received. No Council action was necessary.

- 3.11 (a) Approval of an agreement between the City of San José and the San José Community Media Access Corporation to provide Public and Educational (PE) Access cable programming services for the City of San José for an initial seven (7) year term, with an option to extend for three (3) additional years, in an amount that is subject to receipt of payments from the City's cable providers, but that is projected to be approximately \$10 million over the initial seven year term.**
- (b) Adoption of the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:**
- (1) Decrease the Public, Educational and Government (PEG) Access Facilities – Capital appropriation by \$2,750,000.**
  - (2) Establish an appropriation to the City Manager's Office for Public and Educational Access – Capital Expenditures in the amount of \$2,844,000.**
  - (3) Establish an appropriation to the City Manager's Office for Government Access – Capital Expenditures in the amount of \$316,000.**
  - (4) Increase the Public, Educational and Government (PEG) Access Facilities – Operations appropriation by \$120,000.**
  - (5) Increase the Use of Money and Property revenue estimate by \$220,000.**
  - (6) Increase Other Revenue estimate by \$310,000.**

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

**[Public Safety, Finance and Strategic Support Committee referral–1/17/08–Item (I)]**

### 3.11 (b)

Documents Filed: (1) Memorandum from Agenda Services Manager Nadine Nader, dated January 18, 2008, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee. (2) Supplemental memorandum from Director of Communications Tom Manheim and Budget Director Larry Lisenbee, dated January 24, 2008, recommending approval of the contract and adoption of appropriation ordinance and funding sources resolution amendments. (3) Staff presentation on the Cable Access Transition Contract with San José Community Media Access Group, dated January 29, 2008.

Director of Communications Tom Manheim outlined the Cable Access Transition and Contract with San José Community Media Access Group and responded to Council questions.

Public Comments: Gerry de Young, Chair, San José Community Media Access Corporation, spoke in support of the Staff recommendations and recognized other members of the new Board.

Mayor Reed requested an annual and public review of progress by the Public Safety, Finance and Strategic Support Committee.

Motion: Council Member Nguyen moved approval of the Staff recommendations with Staff to report back annually to the Public Safety, Finance and Strategic Support Committee. Council Member Oliverio seconded the motion.

Video Communications Manager Ross Braver and Consultant Sue Buske responded to brief questions regarding program content, public input and an educational component geared for the public, including youth.

Action: On a call for the question, the motion carried unanimously, the agreement between the City of San José and the San José Community Media Access Corporation to provide Public and Educational (PE) Access cable programming services for the City of San José for an initial seven (7) year term, with an option to extend for three (3) additional years, in an amount that is subject to receipt of payments from the City's cable providers, but that is projected to be approximately \$10 million over the initial seven year term was approved; [Ordinance No. 28235](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 28071 to Appropriate Monies in the General Fund for the Public and Education Access – Capital Expenditures, for Government Access – Capital Expenditures and for Public, Educational and Government (PEG) Access Facilities – Operations; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" and [Resolution No. 74221](#), entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 73862 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2007-2008 to Adjust Revenues in the General Fund", were adopted, and Staff was directed to report back annually to the Public Safety, Finance and Strategic Support Committee. (11-0.)

**3.7 As recommended by the Rules and Open Government Committee on January 16, 2008, approve the recommended City positions for Propositions 91-97 on the Statewide Presidential Primary Election ballot:**

- (a) Take no position on Proposition 91 – Transportation Funds. Initiative Constitutional Amendment.**
- (b) Take no position on Proposition 92 – Community Colleges. Funding.**

Documents Filed: Memorandum from City Clerk Lee Price, dated January 17, 2008, transmitting the recommended City Positions for the various Propositions of the Rules and Open Government Committee.

Public Comments: Speaking in opposition to Propositions 94 through 97 were Steve Preminger (Santa Clara County Democratic Commission), Marta Gay, Ivana Krajanovic (Unite Here), CJ Wilson (South Bay Labor Council) and Ross Signorino.

Individual Council comments followed.

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Pyle and carried unanimously, the no positions for Propositions 91 and 92 were adopted. (11-0.)

- (c) Adopt a position of support for Proposition 93 – Limits on Legislators’ Terms in Office. Initiative Constitutional Amendment.**

Action: Upon motion by Council Member Constant, seconded by Council Member Chu and carried, the Staff recommendation was not adopted and the oppose position for Proposition 93 was adopted. (7-4. Noes: Campos, Cortese, Williams; Reed.)

- 3.7 (d) Adopt a position of support for Proposition 94 – Referendum on Amendment of Indian Gaming Compact.**
- (e) Adopt a position of support for Proposition 95 – Referendum on Amendment of Indian Gaming Compact.**
- (f) Adopt a position of support for Proposition 96 – Referendum on Amendment of Indian Gaming Compact.**
- (g) Adopt a position of support for Proposition 97 – Referendum on Amendment of Indian Gaming Compact.**

**(City Manager’s Office)  
(Rules Committee Referral 1/16/08)**

Action: Upon motion by Council Member Campos, seconded by Vice Mayor Cortese and carried, Staff recommendations were not adopted and the oppose positions for Propositions 94 through 97 were adopted. (9-2. Noes: Constant; Reed.)

- 3.8 (a) **Adoption of a resolution approving revisions to Council Policy 7-11, City Hall Exhibits Policy.**
- (b) **Adoption of the following Appropriation Ordinance Amendments in the General Fund:**
- (1) **Establish a City-Wide appropriation to the Office of Economic Development for the City Hall Exhibits Program in the amount of \$60,000.**
- (2) **Decrease the Arts Venture Fund appropriation by \$60,000.**
- (c) **Adoption of the following Appropriation Ordinance Amendments in the Transient Occupancy Tax Fund:**
- (1) **Establish an appropriation to the Office of Economic Development for the City Hall Exhibits Program in the amount of \$40,000.**
- (2) **Decrease the Cultural Grants appropriation by \$40,000.**
- CEQA: Not a Project. (Economic Development/General Services/City Manager's Office)**

Documents Filed: Memorandum from Chief Development Officer Paul Krutko, Director of General Services Peter Jensen and Acting Budget Director Jennifer Maguire, dated January 7, 2008.

Action: Upon motion by Council Member Williams, seconded by Council Member Pyle and carried unanimously, [Resolution No. 74219](#), entitled: "A Resolution of the Council of the City of San José Approving Revisions to Council Policy 7-11, City Hall Exhibits Policy"; [Ordinance No. 28233](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 28071 to Appropriate Monies in the General Fund for the City Hall Exhibits Program; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" and [Ordinance No. 28234](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 28071 to Appropriate Monies in the Transient Occupancy Tax Fund for the City Hall Exhibits Program; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" were adopted. (10-0-1. Absent: Constant.)

- 3.9 **Conduct a public hearing and adopt a resolution vacating a 2.5-foot public service easement along a private street, Pistache Lane, between Leigh Avenue and Foxworthy Avenue. CEQA: Negative Declaration, File No. PDC06-055. Council District 9. (Public Works)**

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen, dated January 7, 2008, recommending conducting a public hearing and adoption of a resolution. (2) Proof of Publication of Notice of Public Hearing, executed on January 9, 2008 and January 16, 2008, submitted by the City Clerk.

Public Comments: Mayor Reed opened the public hearing. There was no testimony from the floor. Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Chirco, seconded by Council Member Williams and carried unanimously, [Resolution No. 74220](#), entitled: "A Resolution of the Council of the City of San José Vacating a Public Service Easement Along a Private

Street, Pistache Lane, between Leigh Avenue and Foxworthy Avenue”, was adopted. (10-0-1. Absent: Constant.)

**3.10 Adoption of a resolution approving a City Council Policy on Labor Negotiations Guidelines. CEQA: Not a Project. (City Manager’s Office)  
(Deferred from 1/15/08 – Item 3.4)**

Action: Referred to Rules and Open Government Committee of January 30, 2008.

**COMMUNITY & ECONOMIC DEVELOPMENT**

**4.6 Conduct Public Hearing and consider the adoption of a resolution on the reorganization/annexation to the City of San José of territory designated as Evergreen No. 200 on an approximately 34.1 gross acre County island consisting of 36 parcels located between Pleasant Acres Drive and Ruby Avenue, west of Murillo Avenue, and detachment of the same from the appropriate special districts including Central Fire Protection and Area No. 01 (Library Services) County Service (Multiple Owners). CEQA: Resolution No. 65459 (Related Rezoning C06-127). Council District 8. (Planning, Building and Code Enforcement)**

Action: Deferred to February 26, 2008 per Director of Planning, Building and Code Enforcement.

**NEIGHBORHOOD SERVICES**

**5.1 Report of the Neighborhood Services and Education Committee – December 13, 2007  
Council Member Chirco, Chair**

Documents Filed: The Neighborhood Services and Education Committee dated December 13, 2007.

Action: Upon motion by Council Member Chirco, seconded by Council Member Pyle and carried unanimously, the Neighborhood Services and Education Committee Report and the actions of December 13, 2007 were accepted. (9-0-2. Absent: Constant, Cortese.)

**5.2 Report of the Neighborhood Services and Education Committee – January 10, 2008  
Council Member Chirco, Chair**

Documents Filed: The Neighborhood Services and Education Committee dated January 10, 2008.

Action: Upon motion by Council Member Chirco, seconded by Council Member Pyle and carried unanimously, the Neighborhood Services and Education Committee Report and the actions of January 10, 2008 were accepted. (9-0-2. Absent: Constant, Cortese.)

## TRANSPORTATION & AVIATION SERVICES

### 6.1 Report of the Transportation and Environment Committee – January 14, 2008 Council Member Williams, Chair

Action: The meeting was canceled.

## PUBLIC SAFETY SERVICES

- 8.1 (a) **Approval of the 2007-09 Spending Plan for the Supplemental Law Enforcement Services (SLES) Fund for \$1,872,281.**
- (b) **Approval of the revised 2006-08 Spending Plan for the SLES Grant, reallocating funding from the previously established project #1, Furniture, Fixtures, and Equipment; and project #11, Freezer for Biological Evidence Storage, and allocate \$50,000 interest earned into the established projects within the same grant.**
- (c) **Adoption of the following 2007-2009 Appropriation Ordinance and Funding Sources Resolution amendments in the Supplemental Law Enforcement Services Fund (Fund 414):**
- (1) **Establish a SLES Grant 2007-09 appropriation for the Police Department in the amount of \$1,872,281.**
  - (2) **Increase the Earned Revenue by \$1,872,281.**
- CEQA: Not a Project. (Police/City Manager's Office)**

Documents Filed: Memorandum from Police Chief Robert Davis and Budget Director Larry Lisenbee, dated January 7, 2008, recommending approval of the 2007-09 Spending Plan, the revised 2006-08 Spending Plan for the SLES Grant and adoption of appropriation ordinance and funding sources resolution amendments.

Action: Upon motion by Council Member Williams, seconded by Council Member Nguyen and carried unanimously, the 2007-09 Spending Plan for the Supplemental Law Enforcement Services Fund for \$1,872,281 and the revised 2006-08 Spending Plan for the Supplemental Law Enforcement Services Grant, were approved; [Ordinance No. 28236](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 28071 to Appropriate Monies in the Supplemental Law Enforcement Services Fund for the Supplemental Law Enforcement Services Grant 2007-2009; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" and [Resolution No. 74222](#), entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 73862 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2007-2008 to Adjust Revenues in the Supplemental Law Enforcement Services Grant Fund", were adopted. (9-0-2. Absent: Constant, Cortese.)

- 8.2 (a) **Receive presentation on the Police Department's revised definitions and objective criteria for the Citizen Complaint Process, as directed by the City Council at the June 21, 2007 Council Meeting.**
- (b) **Receive presentation on the Police Department In-Custody Death Training Review Panel, as directed by the City Council at the September 18, 2007 Council Meeting.**
- (c) **Direction to the Administration to return in one year with a progress report on the performance of the In-Custody Death Training Review Panel and Citizen Complaint Process, and present any changes if necessary.**

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

Documents Filed: (1) Bound City Manager Report on Police Department Council Referrals, from City Manager Debra Figone, dated January 18, 2009, with recommendations noted above. (2) Memorandum from City Attorney Richard Doyle, dated January 28, 2008, clarifying advice from his office regarding the ability of the IPA to dispute the classification of complaints and the applicability of meet and confer requirements. (3) Memorandum from Independent Police Auditor Barbara Attard, dated January 25, 2008, regarding proposed revisions to the San José Police Department citizen complain process. (4) Replacement memorandum from Independent Police Auditor Barbara Attard, dated January 30, 2008, revising a statement made in the IPA memorandum dated January 25, 2008. (5) PowerPoint presentation regarding the Citizen Complaint Process, dated January 29, 2008, as presented by Police Chief Robert Davis. (6) Letter from Len Bates, dated January 24, 2008, regarding the San José Police Department and the IPA Office.

City Manager Debra Figone provided the introduction and recommended that the Council receive the presentation. She explained that if the Council agrees that the actions proposed by the Administration satisfies the Council Referrals from the June 21, 2007 meeting, Staff will proceed and return in one year with a progress report.

Police Chief Robert Davis outlined the citizen complaint process. Independent Police Auditor Barbara Attard summarized her recommendations regarding the proposed revisions to the San José Police Department citizen complaint process.

Motion: Vice Mayor Cortese moved approval of the Staff recommendations as modified by the PowerPoint presentation made by Police Chief Robert Davis, with clarification that the intent was that wherever the PowerPoint slides conflict with the written memorandum that the written memorandum is superseded by today's presentation and that City Attorney Richard Doyle's memorandum dated January 28, 2008 is incorporated in the informal process of challenging classifications by the IPA. Council Member Constant seconded the motion.

City Manager Debra Figone, Police Chief Robert Davis and Independent Police Auditor Barbara Attard responded to Council questions. Extensive Council discussion followed.

## 8.2 (Cont'd.)

Council Members Liccardo, Nguyen and Campos expressed concern about limiting the Independent Police Auditor's authority to investigate complaints. Council Member Liccardo offered that the Police Officers' Association should have been brought into the discussion sooner. In response to inquiry by Mayor Reed, Bobbie Lopez (President, Police Officers' Association) urged the Council to approve a fair, equitable process that will provide a mechanism for recalled allegations to be removed from the record.

Public Comments: Expressing concern about the citizen complaint process and support for the Independent Police Auditor's recommendations were Eugenio Castillo, Reverend Jeff Moore (NAACP) William Garbett, Art Calderon, Alofa Talivara, Aaron Resendez, Frank Chavez, Dolores Marquez and John Zamora. Robert Sippel spoke in support of the Police Chief's recommendations, as outlined in the slides. Ross Signorino urged the Police Chief and the IPA to cooperate with each other. Mark Trout spoke off topic.

Action: On a call for the question, the motion carried, the presentations were received; Staff's recommendation to begin in March of 2008 the implementation of the protocols/procedures (as outlined in the January 18, 2008 City Manager's Report), as modified by the Police Chief's PowerPoint presentation dated January 29, 2008, and the incorporation of the memorandum from the City Attorney dated January 25, 2008, was approved and the Administration was directed to return in one year with a progress report on implementation. (8-3. Noes: Campos, Liccardo, Nguyen.)

## ADJOURNMENT

The Council of the City of San José adjourned the afternoon Council session at 5:58 p.m.

## **RECESS/RECONVENE**

The City Council recessed at 5:58 p.m. from the afternoon Council Session and reconvened at 7:00 p.m. in the Council Chambers, City Hall.

Present: Council Members - Chirco, Chu, Constant, Cortese, Liccardo, Oliverio, Nguyen, Pyle, Williams; Reed.

Absent: Council Members - Campos. (Excused)

Assistant City Clerk Barbara Conly read the requests for continuance of the applications. Upon motion by Vice Mayor Cortese, seconded by Council Member Williams, and carried unanimously, the below noted continuances and actions were taken as indicated. (10-0-1. Absent: Campos.)

## **CEREMONIAL ITEM**

### **1.3 Presentation of a commendation honoring the Independence 76th Cavalry Marching Band and Color Guard for taking first place in the 2007 Western Band Association, Class A. (Campos)**

Action: Mayor Reed and Council Member Chu recognized and commended the Independence 76<sup>th</sup> Cavalry Marching Band and Color Guard for taking first place in the 2007 Western Band Association, Class A. Council Member Campos was not present.

## **COMMUNITY & ECONOMIC DEVELOPMENT**

### **4.2 Conduct Public Hearing and consider the adoption of a resolution on the reorganization/annexation to the City of San José of territory designated as Penitencia No. 76 on an approximately 1.14 gross acre County pocket consisting of 1 parcel located on the south side of Sierra Road, 200 feet east of Varner Court, and detachment of the same from the appropriate special districts including Central Fire Protection and Area No. 01 (Library Services) County Service ( Jack Kim and Hester Lau-Kim, Owner). CEQA: Resolution No. 65459. Council District 4. (Planning, Building and Code Enforcement) (Deferred from 12/18/07 – Item 4.4)**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 26, 2007, recommending adoption of a resolution. (2) Proof of Publication of Notice of Public Hearing, executed on October 26, 2007, submitted by the City Clerk.

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

#### 4.2 (Cont'd.)

Action: Upon motion by Council Member Williams, seconded by Council Member Chirco and carried unanimously, [Resolution No. 74223](#), entitled: “A Resolution of the Council of the City of San José Making Determinations and Ordering the Reorganization of Certain Uninhabited, Unincorporated Island Territory Designated as Penitencia No. 76, Subject to Liability for General Indebtedness of the City”, was adopted. (10-0-1. Absent: Campos.)

#### 4.3 **Conduct Public Hearing and consider the adoption of a resolution on the reorganization/annexation to the City of San José of territory designated as Story No. 58 on an approximately 6.93 gross acre County island consisting of 25 parcels located on both sides of Rosemar Avenue, between Juliet Park Drive and Fleming Avenue and the north side of Fleming Avenue between Rosemar Avenue and Marchant Court, and detachment of the same from the appropriate special districts including Central Fire Protection, County Sanitation District 2-3, and Area No. 01 (Library Services) County Service (Multiple Owners). CEQA: Resolution No. 65459 (Related Prezoning C06-106). Council District 5. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated January 7, 2008, recommending adoption of a resolution.

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

Action: Upon motion by Council Member Williams, seconded by Council Member Chirco and carried unanimously, [Resolution No. 74224](#), entitled: “A Resolution of the Council of the City of San José Making Determinations and Ordering the Reorganization of Certain Uninhabited, Unincorporated Island Territory Designated as Story No. 58, Subject to Liability for General Indebtedness of the City”, was adopted. (10-0-1. Absent: Campos.)

#### 4.4 **Conduct Public Hearing and consider the adoption of a resolution on the reorganization/annexation to the City of San José of territory designated as Capitol No. 55 on an approximately 0.74 gross acre County island consisting of 4 parcels located on the southwest side of South White Road, 400 feet southeast of East Hills Drive, and detachment of the same from the appropriate special districts including Central Fire Protection, County Lighting, County Sanitation District 2-3, and Area No. 01 (Library Services) County Service (Jesse and Olga Villarreal, Emilia Gonzales, and Alex and Gloria Banuelos, Owners). CEQA: Resolution No. 65459 (Related Prezoning C06-107). Council District 5. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated January 7, 2008, recommending adoption of a resolution.

#### 4.4 (Cont'd.)

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

Action: Upon motion by Council Member Williams, seconded by Council Member Chirco and carried unanimously, [Resolution No. 74225](#), entitled: “A Resolution of the Council of the City of San José Making Determinations and Ordering the Reorganization of Certain Uninhabited, Unincorporated Island Territory Designated as Capitol No. 55, Subject to Liability for General Indebtedness of the City”, was adopted (10-0-1. Absent: Campos.)

#### 4.5 **Conduct Public Hearing and consider the adoption of a resolution on the reorganization/annexation to the City of San José of territory designated as Capitol No. 56 on an approximately 0.27 gross acre County island consisting of 2 parcels located on the southwest side of South White Road, 600 feet southeast of East Hills Drive, and detachment of the same from the appropriate special districts including Central Fire Protection, County Lighting, County Sanitation District 2-3, and Area No. 01 (Library Services) County Service (Michael Sanders Jr. and Sr., and Isabel M. Hernandez; Owners). CEQA: Resolution No. 65459 (Related Rezoning C06-108). Council District 5. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated January 7, 2008, recommending adoption of a resolution.

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

Action: Upon motion by Council Member Williams, seconded by Council Member Chirco and carried unanimously, [Resolution No. 74226](#), entitled: “A Resolution of the Council of the City of San José Making Determinations and Ordering the Reorganization of Certain Uninhabited, Unincorporated Island Territory Designated as Capitol No. 56, Subject to Liability for General Indebtedness of the City”, was adopted (10-0-1. Absent: Campos.)

#### 4.7 **Conduct Public Hearing and consider the adoption of a resolution on the reorganization/annexation to the City of San José of territory designated as Evergreen No. 201 on an approximately 2.50 gross acre County island consisting of 6 parcels located on the northeast corner of Ruby Avenue and Holderman Drive, and detachment of the same from the appropriate special districts including Central Fire Protection and Area No. 01 (Library Services) County Service (Multiple Owners). CEQA: Resolution No. 65459 (Related Rezoning C06-128). Council District 8. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated January 7, 2008, recommending adoption of a resolution.

#### 4.7 (Cont'd.)

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

Action: Upon motion by Council Member Williams, seconded by Council Member Chirco and carried unanimously, [Resolution No. 74227](#), entitled: "A Resolution of the Council of the City of San José Making Determinations and Ordering the Reorganization of Certain Uninhabited, Unincorporated Island Territory Designated as Evergreen No. 201, Subject to Liability for General Indebtedness of the City", was adopted (10-0-1. Absent: Campos.)

### PUBLIC HEARINGS ON CONSENT CALENDAR

Upon motion by Council Member Pyle, seconded by Council Member Constant, and carried unanimously, the Public Hearings on Consent Calendar were approved and the below listed actions were taken as indicated. (10-0-1. Absent: Campos.)

- 11.1 (a) **Consideration of an ordinance rezoning the real property located at/on the northwest corner of Palm Street and W. Alma Avenue from the LI Light Industrial Zoning District to A(PD) Planned Development Zoning District to allow three single-family detached residences on a 0.20 gross acre site (Enterprise Estate, Inc & Endeavor Investment, Inc., Owners). SNI: Washington. CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1). PDC06-057 - District 3**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC06-057, dated November 13, 2007, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated December 6, 2007, transmitting the Planning Commission recommendation of approval. (3) Proof of Publication of Notice of Public Hearing, executed on November 23, 2007, submitted by the City Clerk.

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

Action: The recommendation of the Planning Commission and the Planning Director was approved, and [Ordinance No. 28237](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Northwest Corner of Palm Street and West Alma Avenue to A(PD) Planned Development Zoning District", was passed for publication. (10-0-1. Absent: Campos.)

- 11.1 (b) **Consideration of an ordinance zoning the real property located on the south side of East Taylor Street approximately 90 feet westerly of North 20th Street (944 E Taylor St.) to remove one existing single-family residence and construct two single-family detached residences on a 0.23 gross acre site (Anh-Mai Phuong Le, Owner). CEQA: Exempt. PDC07-003 - District 3**

Action: Continued to February 26, 2008 per Administration.

- (c) **Consideration of an ordinance rezoning the real property located at/on the north side of E Santa Clara Street approximately 360 feet east of 21st Street (1051 East Santa Clara Street) from CG Commercial General and R-2 Two-Family Residence Zoning District to A(PD) Planned Development Zoning District to allow a full-service car wash on a 0.36 gross acre site (Helen Tang, Owner). SNI: Five Wounds/Brookwood Terrace. CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1). PDC06-009 - District 3**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC06-009, dated November 26, 2007, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated December 6, 2007, transmitting the Planning Commission recommendation of approval. (3) Proof of Publication of Notice of Public Hearing, executed on November 23, 2007, submitted by the City Clerk.

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

Action: The recommendation of the Planning Commission and the Planning Director was approved, and [Ordinance No. 28238](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated at the North Side of Santa Clara Street, Approximately 360 Feet East of 21<sup>st</sup> Street (1051 East Santa Clara Street) to A(PD) Planned Development Zoning District”, was passed for publication. (10-0-1. Absent: Campos.)

- (d) **Consideration of an ordinance rezoning the real property located on the north side of Ridder Park Drive at the southeast corner of Interstate 880 and Brokaw Road from the IP Industrial Park Zoning District to the CG Commercial General Zoning District to allow commercial uses on a 17.38 gross acres site (Northwest Publications Inc, Owner; Sand Hill Property Company, Developer). CEQA: Resolution No. 72768 and Addendum thereto. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required. C07-048 - District 4**

11.1 (d) (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C07-048, dated January 29, 2008, recommending approval. (2) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated January 18, 2008, noting that the Director of Planning has concluded that the environmental impacts of this project were addressed by the Final EIR. (3) Proof of Publication of Notice of Public Hearing, executed on January 18, 2008, submitted by the City Clerk.

Public Comment: Mayor Reed opened the public hearing. Oreste Grelli (Val Monte Partners I, LLC) spoke in opposition to the development in this area. Mayor Reed closed the public hearing.

Director of Planning, Building and Code Enforcement Joseph Horwedel responded to Council Member Chu regarding responding to the speaker's concerns and issues.

Motion: Council Member Chu moved approval of the Staff recommendations. Council Member Constant seconded the motion.

Vice Mayor Cortese suggested that the speaker bring up issues during the development process and requested that the Planning Director layout the next steps of the public process to the speaker.

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Director was approved, and [Ordinance No. 28239](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated at the North Side of Ridder Park Drive at the Southeast Corner of Interstate 880 and Brokaw Road to the CG Commercial General Zoning District", was passed for publication, with Staff directed to address the concerns of a public speaker and layout the next steps of the public process regarding the site development. (10-0-1. Absent: Campos.)

- (e) **Consideration of an ordinance rezoning the real property located at the northeast corner of Monterey Road and Umbarger Road (2680 Monterey Rd) from County to the CN Commercial Neighborhood Zoning District to allow commercial uses on a 2.7 gross acre site (Caputo, Daniel J. Jr. Trustee & Et Al, Owner; Phil Rolla, Developer). CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.**  
**C07-092 - District 7**

Action: Deferred to February 26, 2008.

- 11.1 (f) **Consideration of an ordinance rezoning the real property located at the northwest corner of Los Gatos-Almaden Road and Warwick Road (14861 Los Gatos-Almaden Road) from R-1-2 Residence Zoning District to R-1-8 Residence Zoning District to allow residential uses on a 0.99 gross acre site (Abdy Mirzadegan, Owner). CEQA: Resolution No. 65459.  
C07-087 - District 9**

Action: Continued to February 5, 2008 per Administration.

**END OF PUBLIC HEARINGS ON CONSENT CALENDAR**

## PUBLIC HEARINGS

- 11.2 Conduct public hearing and consider approval of an ordinance adding a new Chapter 14.30 to Title 14 of the San José Municipal Code establishing the Transportation Impact Fee required to implement the traffic improvements set forth in the US-101/Oakland/Mabury Transportation Development Policy approved by Council on December 18, 2007. CEQA: Resolution No. 74195.1. Council District 3 and 4. SNI: Thirteenth Street. (Transportation)**

Documents Filed: (1) Memorandum from Director of Transportation James Helmer, dated January 7, 2008, recommending approval of an ordinance. (2) Proof of Publication of Notice of Public Hearing, executed on January 18, 2008, submitted by the City Clerk.

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

Action: Upon motion by Council Member Liccardo, seconded by Council Member Chu and carried unanimously, [Ordinance No. 28240](#), entitled: “An Ordinance of the City of San José Adding Chapter 14.30 to Title 14 of the San José Municipal Code in Order to Adopt a Traffic Impact Fee on New Industrial, Commercial and Residential Development in the Proximity of the US-101 Oakland and US-101/Mabury Interchanges”, was passed for publication. (10-0-1. Absent: Campos.)

- 11.3 Administrative Hearing and consideration of an appeal of the Planning Commission’s decision to deny a Conditional Use Permit and Determination of Public Convenience or Necessity to allow demolition of 78,409 square feet of existing commercial building and allow construction of 80,800 square feet resulting in a total of 122,584 square feet for commercial uses including the off-sale of alcohol for a new grocery store (Whole Foods) on a 10.2 gross acres (Mandatory denial by the Planning Commission 12/10/07), in the CG General Commercial Zoning District, located in the area generally bound by Blossom Hill Road on the north, Gallup Drive to the west, Mesa drive to the south, and Almaden Expressway to the east (1110 Blossom Hill Road) (Pueblo Plaza Partnership, Owner). SNI: Hoffman/Via Monte. CEQA: Exempt. Director of Planning, Building and Code Enforcement recommends to uphold the appeal and approve the subject Conditional Use Permit and make a Determination of Public Convenience or Necessity by finding that the required findings for a Determination of Public Convenience or Necessity can be made and that there is a significant overriding public benefit served by the proposed off-sale of alcohol.**

**CP07-072/ABC07-006 – District 10**

Public Comment: Mayor Reed opened the public hearing. There was no testimony from the floor. This item will continue to a later date in order to resolve traffic mitigation issues with the Applicant.

Mayor Reed closed the public hearing.

### **11.3 (Cont'd.)**

Action: Upon motion by Council Member Pyle, seconded by Council Member Oliverio and carried unanimously, Item 11.3 was deferred to February 26, 2008 per Director of Planning, Building and Code Enforcement in order to resolve traffic mitigation issues. (10-0-1. Absent: Campos.)

### **OPEN FORUM**

- (1) Mark Trout expressed religious viewpoints.

### **ADJOURNMENT**

The Council of the City of San José adjourned the meeting at 7:17 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC  
City Clerk

smd/1-29-08 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>. For information on any ordinance that is not hyperlinked to this document, please contact the Office of the City Clerk at (408) 535-1266.

**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 receipt of the following Final Maps for review:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>
9975	Montague Expressway, 550 feet west of North 1 <sup>st</sup> Street	4	Legacy Partners	7 Lots / 530 Units	Multi-Family Attached and Commercial Units

**NOTICE OF CONTRACTS EXECUTED BY COUNCIL APPOINTEES**

In accordance with Municipal Code Section 4.04.080, titled “Quarterly Reports”, the following is a list of contracts executed by Council Appointees or designees during the first quarter of Fiscal Year 2007-2008 (July 1, 2007 – September 30, 2007). The list includes contracts or amendments to contract for services with a value between \$100,000 and \$250,000 and contracts or amendments to contracts for equipment, supplies, and material with a value between \$100,000 and \$1 million.

City Attorney’s Contract Activity

<u>Contractor</u>	<u>Description of Contract</u>	<u>Amount</u>
Hanson Bridgett Marcus Vlahos Rudy, LLP	Elections Commission Evaluator; First Amendment to add \$30,000 and extended term	\$230,000

City Manager’s Contract Activity

<u>Contractor</u>	<u>Description of Contract</u>	<u>Amount</u>
Acire, Inc.	Consultant to develop an interactive system at the City Hall Lobby Traveler Information Center.	\$220,000
Burchard & Rinehart	Consultant to provide appraisal services for the Public Works Real Estate Division.	\$250,000
Carneghi-Blum & Partners	Consultant to provide appraisal services for the Public Works Real Estate Division.	\$250,000
CTG Energetics, Inc.	Consultant to perform green building analysis including data collection and energy modeling.	\$245,000
DR Associates International	Consultant to provide screening of potential employees.	\$162,000
Hargis & Associates	Consultant to develop and administer assessments of sworn personnel.	\$122,000
J Kaeuper & Company	Consultant to provide appraisal services for the Public Works Real Estate Division.	\$250,000
Management Education Group	Consultant to conduct leadership training.	\$203,000
Management Partners, Incorporated	Consultant to support the City Manager’s Structural Budget Deficit Task Force.	\$200,000
Neale & Sons, Inc.	Consultant to provide appraisal services for the Public Works Real Estate Division.	\$250,000

(Cont'd.)

Director of Finance Contract Activity – Services

<u>Contractor</u>	<u>Description of Contract</u>	<u>Amount</u>
Patrick Idiart & Associates Smith & Associates	Consultant to provide appraisal services for the Public Works Real Estate Division.	\$250,000
The Reitman Group	Consultant to provide appraisal services for the Public Works Real Estate Division.	\$250,000
Wilfred Jarvis Institute	Consultant services to provide leadership training and consulting for multiple departments; Second Amendment to add \$50,000 and extend term.	\$250,000
Alameda Co Sheriff's Office	Emergency Vehicle Operation Training Course	\$159,478
Alpha Analytical Labs, Inc.	Water Sample Analysis	\$150,000
B & A Friction Materials BRG Supply, LLC	Automotive - Brakes & Related Parts and Services Traffic Signal Controllers, Related Equipment & Services	\$149,100 \$215,000
Cameron	Diesel Engine: Parts, Inspections & Technical Assistance	\$120,000
Central Medical Lab, Inc.	Testing of Blood, Urine and Breath	\$210,000
Coast Oil Co.	Fuel, Oil, Grease, Solvent and Lube Analysis	\$120,000
Compass Group USA, Inc.	Meals for the Senior Nutrition Program	\$175,000
Contract Sweeping Services, Inc.	Power Street Sweeping	\$160,000
Cummins West, Inc.	Installation of Diesel Particulate Filters	\$116,000
Cupertino Electric, Inc.	Misc. Electrical Maintenance & Repair Services	\$150,000
Duran Hogan Construction, Inc.	Sidewalk Removal & Replacement	\$100,000
Duran Hogan Construction, Inc.	Sidewalk Repair	\$140,000
ECCO Equipment Corp.	Rental - Earth Moving & Construction Equipment	\$150,000
Fricke Parks Press	Printing of Citywide Activity Guide	\$124,445
Graebel Companies, Inc.	Drayage Moving & Storage Services	\$125,000
Hertz Corporation,	Rental - Large & Small Construction Equipment	\$120,000
Hi Tech Emergency Vehicle	Maintenance Repair & Equipment for Fire Apparatus and Related Equipment	\$230,250
Industrial Safety Supply	Breathing Apparatus Flow Testing & Repair	\$120,000
Jack Doheny Supplies, Inc.	Rental - Large Cleaning Machines/Equipment	\$150,000
M F Filice and Sons	Replenishment of Fibar	\$200,000
Monterey Mechanical	Misc. Emergency/Non Emergency Repairs	\$160,000
Motorola CE, Inc.	Motorola Electronic Replacement Parts & Repair	\$130,000
Nunez Painting, Inc.	Sandblasting and Painting	\$200,000
On Assignment Lab Support	Temporary Personnel Services	\$136,364

(Cont'd)

Director of Finance Contract Activity – Services (Cont'd.)

Oracle USA, Inc.	Software Update License & Support Service	\$117,786
Oracle USA, Inc.	Peoplesoft Support Service	\$251,972
Reed & Graham	Street Surface Repair	\$100,000
Rosendin Electric, Inc.	Misc. Electrical Maintenance & Repair Services	\$150,000
Safety Kleen Systems	Pickup & Disposal of Hazardous Waste	\$165,000
San Jose Mercury News	Publication of Legal Notices and Advertising	\$155,000
Santa Clara Valley Medical Center	Medical Testing	\$150,000
Scheidts, Ray Electric Inc.	Electrical Maintenance & Repair Services	\$150,000
Trugreen Landcare	Tree Maintenance	\$125,000
Trugreen Landcare	Tree Maintenance	\$210,000
Western States Oil Co.	Fuel, Oil, Grease, Solvent and Lube Analysis	\$100,000
Willson Construction	Sidewalk Removal & Replacement	\$100,000
Wingfoot Commercial	Automotive Tires/Services & Repairs	\$245,000

Director of Finance Contract Activity – Equipment, Materials, and Supplies

<u>Contractor</u>	<u>Description of Contract</u>	<u>Amount</u>
ABB Automation, Inc.	Repair & Replacement Hardware, Distributed Control System and Variable Frequency Drives	\$400,000
Allstar Fire Equipment, Inc.	Firefighter Protective Clothing	\$150,000
AZCO	Traffic Signals/Street Light Poles, Parts & Supplies	\$230,000
Badger Meter, Inc.	Badger Meters & Replacement Parts	\$400,000
Baker & Taylor Entertainment	Compact Discs	\$100,000
Baker & Taylor, Inc.	Library Materials; First Amendment to add \$50,000	\$100,000
Baker & Taylor, Inc.	Paperback Books	\$135,000
Beck Shoes, Inc.	Safety Shoes	\$119,750
Brite Food Service	Raw Food, Freezer & Cooking Supplies	\$175,000
Buckles Smith Electric	Electrical Parts and Supplies	\$150,000
Buckles Smith Electric	Electrical Parts and Supplies	\$130,000
Butler Animal Health	Animal Medicine & Misc. Animal Supplies; First Amendment to add \$45,477	\$135,477
Calabrian Corporation	Industrial Chemical Sulfur Dioxide	\$220,000
Clean Source	Paper Products	\$310,000
Clean Source	Janitorial Supplies	\$100,000
Coast Oil Co.	Fuel & Petroleum Products	\$100,000
Cooks Automotive Service	Automotive Parts - Belts, Brakes, Filters, Fuel Systems	\$162,500
Curtis, L N & Sons	Small Tools, Misc. Parts & Supplies to Repair Nozzles/Hoses	\$195,000

(Cont'd)

Director of Finance Contract Activity – Equipment, Materials, and Supplies (Cont'd.)

Dapper Tire Company	Replacement Supplies Automotive Tires/Parts	\$113,000
Double D Transportation	Gravel Rich Bed Bottom Material	\$350,000
EBSCO Publishing	Periodical Subscriptions	\$120,000
Electrical Distributors	Street Lights & Traffic Signal Equipment	\$330,000
Graybar Electrical Co, Inc.	Electrical Parts & Supplies	\$130,000
Industrial Safety Supply	Safety Supplies	\$195,000
Ingram Library Services, Inc.	Library Materials	\$125,000
Jam Services, Inc.	Vehicle Signal Head & Pedestrian Signal Head	\$250,000
Kemira Water Solutions, Inc.	Aqueous Ferrous Chloride	\$750,000
LC Action Police Supply	Automotive Emergency Accessories & Parts	\$100,000
Lucid Star, Inc.	Chinese Language Books & Media	\$100,000
Maita Chevrolet GEO & GMAC	Automobile-Unmarked Police Pursuit Sedan	\$199,819
Midwest Tape	Video Cassettes, Compact Discs & DVDs	\$200,000
Motorola CE Inc.	Motorola Radios/Batteries/Multi Units Charger	\$105,377
Mueller, Inc.	Fire Hydrants	\$200,000
Multi-Cultural Books & Videos	Indian Language Books and Media	\$100,000
Pioneer Americas, Inc.	Liquid Sodium Hypochlorite	\$150,000
S & S Supplies & Solutions	Hardware and Hand Tools	\$200,000
Safeway Sign Co.	Street Regulatory Signs; First Amendment to add \$60,000	\$120,000
San Diego Police Equip Co., Inc.	Ammunition	\$173,000
Silicon Valley Library System	Electronic Library Databases	\$205,000
Synchronex	Traffic Signal "P" Cabinets	\$130,000
Sysco Food Svcs., Central CA	Groceries, Product & Kitchen Supplies	\$200,000
Sysco Food Svcs.	Food, Freezer and Cooking Supplies	\$250,000
Target Specialty Products	Fertilizer, Herbicides, Insecticides	\$230,000
United States Postal Service	Postage	\$600,000
Valley Oil Co.	Fuel & Petroleum Products	\$200,000
Waxie Sanitary Supply	Janitorial Paper Supplies	\$130,000
XPEDX	Recycled Paper Bond	\$134,410