CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA **TUESDAY, DECEMBER 18, 2007**

The Council of the City of San José convened in session at 9:00 a.m. in the Council Chambers at City Hall.

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

Absent: Council Members - Chirco. (Excused)

Upon motion unanimously adopted, Council recessed at 9:00 a.m. to a Closed Session in Room W133, (A) to confer with Legal Counsel pursuant to Government Code Section 54956.9 subsection (a) with respect to existing litigation to consider the case of ProVen Management, Inc. v. City of San José, et al.; Parties: ProVen Management Inc.; City of San José, San José Redevelopment Agency; Court: Superior Court of California, County of Santa Clara; Case No: 1-06-CV066175; Amount of Money or Other Relief Sought: In excess of $158,000, according to proof. (B) to confer with Legal Counsel pursuant to: Government Code Section 54956, subsection (b), with respect to anticipated litigation of significant exposure to consider the case of: Claimants: Gary J. Bernal, Lucia Ann Bernal, Mike A. Bernal, Mike C. Bernal, Nanette Bernal, Susan B. Bernal, Lillian Bernal-Auvinen, Dianna Bernal-Tuyor; City Department: City Manager; Amount of Money or Other Relief Sought: In excess of $1,000,000 each. (C) to confer with Legal Counsel pursuant to: Government Code Section 54956, subsection (b), with respect to anticipated litigation of significant exposure in two (2) matters. (D) to confer with Legal Counsel pursuant to: Government Code Section 54956, subsection (c), with respect to anticipated litigation in one (1) matter. (E) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: Association of Building, Mechanical and Electrical Inspectors; Nature of Negotiations: Wages/Salaries, Working Conditions and Benefits; Name of Contract or MOA: Memorandum of Agreement, City of San José and Association of Building, Mechanical and Election Inspectors; Obtain a Copy at http://www.sanjoseca.gov/employeerelations/moa.asp.

(Cont'd.)

By unanimous consent, Council recessed from the Closed Session at 9:47 a.m. and reconvened at 10:01 a.m. in the Council Chambers.

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

Absent: Council Members - Chirco. (Excused)

INVOCATION

Jeff Wenke, The Journey Church, presented a prayer for the Invocation. (Mayor)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Vice Mayor Cortese, seconded by Council Member Constant and carried unanimously, the Orders of the Day and the Amended Agenda were approved, Item 1.2 was deferred to January 29, 2008 and Item 11.3 was dropped. (10-0-1. Absent: Chirco.)

CEREMONIAL ITEMS

1.2 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)

Action: Deferred to January 29, 2007 per Orders of the Day.

CONSENT CALENDAR

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

2.1 Approval of minutes.

(a) Regular Minutes of November 6, 2007

(b) Special Meeting Minutes of November 13, 2007

(c) Minutes of Joint City Council/Redevelopment Agency Board/Santa Clara Valley Water District Study Session on Flood Management Issues of November 19, 2007

(d) Regular Minutes of November 20, 2007

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Pyle and carried unanimously, the Minutes were deferred to January 8, 2008. (10-0-1. Absent: Chirco.)

2.2 Final adoption of ordinances.

(a) ORD. NO. 28181 – Adopting a limited amnesty program under which the City will forgive up to thirty percent of certain types of delinquent accounts, including up to thirty percent of any interest and penalties associated with such accounts, upon the debtor's fully payment of seventy percent of the total amount of the delinquent account.

Documents Filed: Proof of Publication of the title of Ordinance No. 28181 executed on December 11, 2007, submitted by the City Clerk.

Action: Ordinance No. 28181 was adopted. (10-0-1. Absent: Chirco.)

(b) ORD. NO. 28185 – Amending Sections 4.04.010, and 4.04.020 of Chapter 4.04 of Title 4 of the San José Municipal Code to delegate to the City Manager the authority to execute certain agreements for the purchase or donation of real property, permanent easements and temporary construction easements with terms of two years or less, where the consideration for the real property, permanent easement or temporary construction easement does not exceed $100,000.

Documents Filed: Proof of Publication of the title of Ordinance No. 28185 executed on December 11, 2007, submitted by the City Clerk.

Action: Ordinance No. 28185 was adopted. (10-0-1. Absent: Chirco.)

(c) ORD. NO. 28188 – Rezoning certain real property situated at the south side of Hillsdale Avenue, approximately 460 feet easterly of Foxworthy Avenue and 600 feet east of Pearl Avenue (866 Hillsdale Avenue) to A(PD) Planned Development Zoning District. PDC07-022

Documents Filed: Proof of Publication of the title of Ordinance No. 28188 executed on December 11, 2007, submitted by the City Clerk.

Action: Ordinance No. 28188 was adopted. (10-0-1. Absent: Chirco.)

2.2 (d) **ORD. NO. 28189 – Rezoning certain real property situated on the northeast corner of Berryessa Road and Lundy Avenue (1715 Berryessa Road) to CN Commercial Neighborhood Zoning District. C06-134**

Documents Filed: Proof of Publication of the title of Ordinance No. 28189 executed on December 11, 2007, submitted by the City Clerk.

Action: Ordinance No. 28189 was adopted. (10-0-1. Absent: Chirco.)

(e) **ORD. NO. 28190 – Prezoning certain real property situated at the east side of North White Road, approximately 100 feet southerly of Kentridge Drive (380 North White Road) to A(PD) Planned Development Zoning District. PDC07-041**

Documents Filed: Proof of Publication of the title of Ordinance No. 28190 executed on December 11, 2007, submitted by the City Clerk.

Action: Ordinance No. 28190 was adopted. (10-0-1. Absent: Chirco.)

(f) **ORD. NO. 28191 – Rezoning certain real property situated east side of South Winchester Boulevard, approximately 65 feet northerly of Williams Road (960 South Winchester Boulevard) from R-1-5 Single-Family Residence Zoning District to the CP-Commercial Pedestrian Zoning District. C07-050**

Documents Filed: Proof of Publication of the title of Ordinance No. 28191 executed on December 11, 2007, submitted by the City Clerk.

Action: Ordinance No. 28191 was adopted. (10-0-1. Absent: Chirco.)

(g) **ORD. NO. 28192 – Rezoning certain real property situated at the southeast corner of Ewer Drive and Ross Avenue (4232 Ross Avenue) from the R-M Multiple Residence Zoning District to the A(PD) Planned Development Zoning District. PDC07-040**

Documents Filed: Proof of Publication of the title of Ordinance No. 28192 executed on December 11, 2007, submitted by the City Clerk.

Action: Ordinance No. 28192 was adopted. (10-0-1. Absent: Chirco.)

(h) **ORD. NO. 28193 – Prezoning certain real property situated on both side of Rosemar Avenue, between Juliet Park Drive and Fleming Avenue, and the north side of Fleming Avenue between Rosemar Avenue and Marchant Court to R-1-5 Single Family Residence Zoning District. C06-106**

Documents Filed: Proof of Publication of the title of Ordinance No. 28193 executed on December 11, 2007, submitted by the City Clerk.

Action: Ordinance No. 28193 was adopted. (10-0-1. Absent: Chirco.)

2.2 (i) ORD. NO. 28194 – Prezoning certain real property situated at the southwest side of South White Road, 400 feet southeast of East Hills Drive, from County of Santa Clara to R-1-8 Single Family Residence Zoning District. C06-107

Documents Filed: Proof of Publication of the title of Ordinance No. 28194 executed on December 11, 2007, submitted by the City Clerk.

Action: Ordinance No. 28194 was adopted. (10-0-1. Absent: Chirco.)

(j) ORD. NO. 28195 – Prezoning certain real property situated at the southwest side of South White Road, 600 feet southeast of East Hills Drive from County of Santa Clara to R-1-8 Single Family Residence Zoning District. C06-108

Documents Filed: Proof of Publication of the title of Ordinance No. 28195 executed on December 11, 2007, submitted by the City Clerk.

Action: Ordinance No. 28195 was adopted. (10-0-1. Absent: Chirco.)

(k) ORD. NO. 28196 –Prezoning certain real property situated between Pleasant Acres Drive and Ruby Avenue, west of Murillo Avenue, from County of Santa Clara to R-1-2 Single Family Residence Zoning District as to a certain portion of the real property and to R-1-RR Single Family Residence Zoning District as to a certain portion of the real property, all as described herein. C06-127

Documents Filed: Proof of Publication of the title of Ordinance No. 28196 executed on December 11, 2007, submitted by the City Clerk.

Action: Ordinance No. 28196 was adopted. (10-0-1. Absent: Chirco.)

(l) ORD. NO. 28197 – Prezoning certain real property situated at the northeast corner of Ruby Avenue and Holderman Drive to R-1-2 Single Family Residence Zoning District. C06-128

Documents Filed: Proof of Publication of the title of Ordinance No. 28197 executed on December 11, 2007, submitted by the City Clerk.

Action: Ordinance No. 28197 was adopted. (10-0-1. Absent: Chirco.)

(m) ORD. NO. 28204 – Amending Title 12 of the San José Municipal Code by adding a new Chapter 12.20 to establish rules prohibiting nepotism and to establish rules regarding consensual personal relationships in the workplace for the Mayor and members of the City Council.

Documents Filed: Proof of Publication of the title of Ordinance No. 28204 executed on December 14, 2007, submitted by the City Clerk.

2.2 (m) (Cont'd.)

Action: Ordinance No. 28204 was adopted. (10-0-1. Absent: Chirco.)

(n) ORD. NO. 28205 – Amending Section 1.08.020 of Chapter 1.08 of Title 1 of the San José Municipal Code which lists all infractions, to update the list of infractions.

Documents Filed: Proof of Publication of the title of Ordinance No. 28205 executed on December 14, 2007, submitted by the City Clerk.

Action: Ordinance No. 28205 was adopted. (10-0-1. Absent: Chirco.)

(o) ORD. NO. 28206 –Amending Title 1 of the San José Municipal Code to add a new Chapter 1.20 to establish uniform requirements and procedures applicable to the presentation and processing of claims for money or damages with the City of San José, where the claim is excepted from the filing requirements of the California Government Claims Act and there are no other applicable requirements or procedures for the filing of such claim, to require the filing of a claim as a prerequisite to filing suit against the City, and to establish a transition period for the presentation of claims that would be untimely under the new procedures and requirements.

Documents Filed: Proof of Publication of the title of Ordinance No. 28206 executed on December 14, 2007, submitted by the City Clerk.

Action: Ordinance No. 28206 was adopted. (10-0-1. Absent: Chirco.)

(p) ORD. NO. 28207 – Rezoning certain real property situated at the northwest corner of Orchard Parkway and Atmel Way to the IP(PD) Planned Development Zoning District. PDC07-091

Documents Filed: Proof of Publication of the title of Ordinance No. 28207 executed on December 14, 2007, submitted by the City Clerk.

Action: Ordinance No. 28207 was adopted. (10-0-1. Absent: Chirco.)

2.3 Approval of the fifth amendment to the agreement with the Center for Airport Management, LLC for consultant services for the development of concession plans for the Norman Y. Mineta San José International Airport, extending the term of the Agreement from January 1, 2008 to December 31, 2008 with no increase in compensation. CEQA: Resolution Nos. 67380 and 71451, File No. PP07-258. (Airport)

Documents Filed: Memorandum from Director of Aviation William Sherry, dated November 26, 2007, recommending approval of the fifth amendment to the agreement.

2.3 (Cont'd.)

Action: The fifth amendment to the agreement with the Center for Airport Management, LLC for consultant services for the development of concession plans for the Norman Y. Mineta San José International Airport, extending the term of the Agreement from January 1, 2008 to December 31, 2008 with no increase in compensation was approved. (10-0-1. Absent: Chirco.)

2.4 Adoption of a resolution:

(a) Authorizing the City Attorney to negotiate and execute an agreement with Hanson, Bridgett, Marcus, Vlahos, Rudy LLP to provide legal and investigative services as the Evaluator to the San José Elections Commission for a two-year term beginning on December 10, 2007 and extending through December 10, 2009, in an amount not to exceed $100,000, subject to appropriation of funds.

(b) Authorizing the City Clerk to negotiate and execute an agreement with Roberto A. Rivera dba Rivera & Associates to provide investigation services to the San José Elections Commission for a term beginning December 1, 2007 and extending through December 1, 2009, in an amount not to exceed $40,000, subject to appropriation of funds.

CEQA: Not a Project. (City Attorney's Office/City Clerk)

Documents Filed: Memorandum from City Attorney Richard Doyle and City Clerk Lee Price, dated December 7, 2007, recommending adoption of a resolution.

Action: Resolution No. 74168, entitled: "A Resolution of the Council of the City of San José Authorizing the City Attorney and the City Clerk to Negotiate and Execute Agreements for the Evaluator and Investigator Services for the Elections Commission", was adopted. (10-0-1. Absent: Chirco.)

2.5 As recommended by the Parks and Recreation Commission and Library Commission, name a new library and community center at 1000 S. Bascom Avenue as "Bascom Library and Community Center". (City Clerk)

Documents Filed: Memorandum from City Clerk Lee Price, dated December 6, 2007, transmitting the recommendation of the Parks and Recreation Commission and the Library Commission.

Action: The name "Bascom Library and Community Center" for the new Library and Community Center located at 1000 S. Bascom Avenue was approved. (10-0-1. Absent: Chirco.)

2.6 As recommended by the Parks and Recreation Commission and Library Commission, name a new community center and library at Solari Park as "Seven Trees Community Center and Branch Library". (City Clerk)

2.6 (Cont'd.)

Documents Filed: Memorandum from City Clerk Lee Price, dated December 6, 2007, transmitting the recommendation of the Parks and Recreation Commission and the Library Commission.

Action: The name "Seven Trees Community Center and Branch Library" for the new community center and library located at Solari Park was approved. (10-0-1. Absent: Chirco.)

2.7 (a) Adoption of the following Appropriation Ordinance and Funding Sources Resolution Amendments in the General Fund:

(1) Increase the estimate for Revenue from the Federal Government by $200,000.

(2) Increase the Weed and Seed – East San José appropriation to the Police Department in City-Wide Public Safety in the amount of $102,674.

(3) Increase the Weed and Seed – East San José appropriation to the City Manager's Office in City-Wide Neighborhood Services in the amount of $97,326.

(b) Adoption of a resolution authorizing the City Manager to apply to the United States Department of Justice for fourth year Weed and Seed Program funding for the East San José neighborhood in an amount not to exceed $200,000 for the period of January 1, 2009 through December 31, 2009, to accept the grant awarded, and to execute all related documents.

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

Documents Filed: Memorandum from Deputy City Manager Mark Linder, Police Chief Robert Davis and Acting Budget Director Jennifer Maguire, dated November 26, 2007, recommending adoption of appropriation ordinance and funding sources resolution amendments and a resolution.

Action: Ordinance No. 28209, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28071 to Appropriate Monies in the General Fund for the Weed and Seed East San José Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption"; Resolution No. 74169, 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" and Resolution No. 74170, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Apply to the United States Department of Justice for Fourth Year Weed and Seed Program Funding for the Charles 3 Police Beat (San José Neighborhood) in an Amount Not to Exceed $200,000; To Accept the Grant if Awarded and to Execute all Related Documents", were adopted. (10-0-1. Absent: Chirco.)

2.8 Adoption of a resolution authorizing the City Manager to negotiate and execute agreements for Non Profit Recycler Reuse and Recycling Agreements as follows for 2007-2008:

(a) Goodwill of Silicon Valley in the amount of $356,176

(b) The Salvation Army in the amount of $125,870

(c) HOPE Services in the amount of $6,201

CEQA: Not a Project. (Environmental Services)

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated November 26, 2007, recommending adoption of a resolution.

Action: Resolution No. 74171, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute Reuse and Recycling Agreements with Goodwill Industries of Santa Clara County, The Salvation Army and Hope Services for FY 2007-08", was adopted. (10-0-1. Absent: Chirco.)

2.9 Report on bids and award of construction contract for Fire Main Replacement Project – Phase I to the low bidder, D&D Pipelines Inc., in the amount of $292,550, and approval of a contingency in the amount of $30,000. CEQA: Exempt, File No. PP07-144. (Environmental Services)

Action: Deferred to January 15, 2008 per Administration.

2.10 (a) Acceptance of update on the City's greenhouse gas emissions inventory from 1990 and Municipal Climate Action Plan.

(b) Adoption of the existing Sustainable Silicon Valley regional greenhouse gas emission goal for 2010 (205 below 1990 levels by 2010) as the City's community greenhouse gas emission goal.

CEQA: Not a Project. (Environmental Services)

[Transportation and Environment Committee referral 12/03/07 – Item (g)]

Documents Filed: Memorandum from Agenda Services Manager Nadine Nader, dated December 4, 2007, transmitting the report.

Action: The update on the City's greenhouse gas emissions inventory from 1990 and Municipal Climate Action Plan and the existing Sustainable Silicon Valley regional greenhouse gas emission goal for 2010 were accepted. (10-0-1. Absent: Chirco.)

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

(a) Execute an amendment to the agreement with Acme Building Maintenance for custodial services for citywide buildings for the period of January 10, 2007 to January 9, 2008 adding various City buildings, increasing services to designated buildings, and increasing compensation by $136,000 for these additional services from $1,427,102 to a total not-to-exceed amount of $1,563,102.

(b) Add or delete custodial services for city buildings as required subject to annual appropriations.

CEQA: Not a Project. (Finance)

2.11 (Cont'd.)

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated November 26, 2007, recommending adoption of a resolution.

Action: Resolution No. 74172, 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 Acme Building Maintenance for Custodial Services for Maintenance of Citywide Buildings", was adopted. (10-0-1. Absent: Chirco.)

2.12 Report on bids for three SUN SPARC Enterprise M5000 servers and peripheral equipment, to include sales tax, delivery, installation, and authorize the Director of Finance to:

(a) Execute a purchase order with Helio Solutions, the sole bidder, for a total amount not to exceed $464,275.31.

(b) Adjust amount of purchase order to purchase additional quantities to annual appropriations.

CEQA: Not a Project. (Finance)

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated November 26, 2007, recommending approval of the report on bids and authorization for the Director of Finance to proceed.

Council Member Oliverio pulled Item 2.12 to speak in favor of web based solutions.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Pyle and carried unanimously, the Director of Finance was authorized to execute the purchase order with Helio Solutions the sole bidder, for a total amount not to exceed $464,275.31 and to adjust amount of purchase order to purchase additional quantities to annual appropriations. Staff was requested to continue to look for ways to save money, i.e. web based solutions. (10-0-1. Absent: Chirco.)

2.13 Adoption of a resolution approving the Language Access Plan (LAP) to improve access to housing services for limited English proficient persons in the City of San José. CEQA: Not a Project. (Housing)

Documents Filed: Memorandum from Director of Housing Leslye Krutko, dated November 26, 2007, recommending adoption of a resolution.

Action: Resolution No. 74173, entitled: "A Resolution of the Council of the City of San José Approving the Language Access Plan to Improve Access to Housing Services for Limited English Proficient Persons in the City of San José", was adopted. (10-0-1. Absent: Chirco.)

2.14 Adoption of a resolution amending the City of San José Pay Plan effective December 23, 2007 to change the salary range and title for the classification of:

(a) Director of Intergovernmental Relations U (1664) (formerly Assistant to the City Manager for Intergovernmental Relations) from the current salary range of $93,745.60 - $145,932.80 annually to a salary range of $ 124,482.92 to 194,283.54 (Unit 99), which will not result in any automatic salary increase for employees in this classification.

CEQA: Not a Project. (Human Resources)

Documents Filed: Memorandum from City Manager Debra Figone, dated December 4, 2007, recommending adoption of a resolution.

Action: Resolution No. 74174, entitled: "A Resolution of the Council of the City of San José Amending the City of San José Pay Plan to Change the Salary Range and Title of Assistant to the City Manager for Intergovernmental Relations to Director of Intergovernmental Relations Effective December 23, 2007", was adopted. (10-0-1. Absent: Chirco.)

2.15 Request for an excused absence for Council Member Liccardo from the Regular Meeting of the Transportation and Environment Committee on December 3, 2007 and the Closed Session, Regular Session, and Evening Session Meetings of the City Council on December 4, 2007 due to Authorized City Business: Delegation trip with the Bay Area Council and Asia Society to Shanghai, China. (Liccardo)
(Rules Committee referral 12/5/07)

Documents Filed: Memorandum from Council Member Liccardo, dated November 29, 2007, requesting an excused absence due to authorized City business.

Action: The absence for Council Member Liccardo was excused. (10-0-1. Absent: Chirco.)

2.16 Request for an excused absence for Council Member Nguyen from the Closed Session, Regular Session, and Evening Session Meetings of the City Council on December 4, 2007 due to illness. (Nguyen)
(Rules Committee referral 12/5/07)

Documents Filed: Memorandum from Council Member Nguyen, dated December 3, 2007, requesting an excused absence due to illness.

Action: The absence for Council Member Nguyen was excused. (10-0-1. Absent: Chirco.)

* Items 2.17 through 2.21 were heard in the afternoon (see Pages 31-33).

2.22 Approval of the first amendment to the agreement with Allana Buick & Bers, Inc. for professional services related to the repair and modifications of the San José/Santa Clara Water Pollution Control Plant's Environmental Services Building, modifying the scope of services and increasing the compensation by $276,695 for a total maximum amount not to exceed $587,495; and extending the term of the agreement by twenty-four months from July 31, 2008 to July 31, 2010. CEQA: Not a Project. (Public Works/Environmental Services)

Action: Deferred to January 15, 2008 per Administration.

2.23 Approval of a continuation agreement with Wormhoudt, Inc. for landscape architectural services for Calabazas Park BMX Site, accepting completed additional construction assistance work, increasing the original agreement's total compensation of $98,000 by $9,500, for a total agreement amount of $107,500 and increasing the term of the original agreement retroactive to March 31, 2007, by nine months, through December 31, 2007. CEQA: Exempt, File No. PP06-152. Council District 1. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated November 26, 2007, recommending approval of a continuation agreement.

Action: The continuation agreement with Wormhoudt, Inc. for landscape architectural services for Calabazas Park BMX Site, accepting completed additional construction assistance work, increasing the original agreement's total compensation of $98,000 by $9,500, for a total agreement amount of $107,500 and increasing the term of the original agreement retroactive to March 31, 2007, by nine months, through December 31, 2007 was approved. (10-0-1. Absent: Chirco.)

2.24 Approval of the first amendment to the consultant agreement with HMH Engineers for the Edenvale Sanitary Sewer Supplement Phase V Project extending the term of the agreement from December 31, 2007 to December 31, 2009 at no additional cost to the City. CEQA: Resolution No. 67245, File No. PP01-03-055. Council District 2. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated November 26, 2007, recommending approval of the first amendment to the consultant agreement.

Action: The first amendment to the consultant agreement with HMH Engineers for the Edenvale Sanitary Sewer Supplement Phase V Project extending the term of the agreement from December 31, 2007 to December 31, 2009 at no additional cost to the City was approved. (10-0-1. Absent: Chirco.)

2.25 Adoption of a resolution of intention to vacate a 2.5-foot public service easement along a private street, Pistache Lane, between Leigh Avenue and Foxworthy Avenue and setting a public hearing on January 29, 2008 at 1:30 p.m. CEQA: Negative Declaration, File No. PDC06-055. Council District 9. (Public Works)

2.25 (Cont'd.)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated November 26, 2007, recommending adoption of a resolution.

Action: Resolution No. 74175, entitled: "A Resolution of the Council of the City of San José Setting a Public Hearing to Consider Whether to Vacate a Public Service Easement Along a Private Street, Pistache Lane", was adopted. (10-0-1. Absent: Chirco.)

2.26 (a) Approval of Contract Change Order No. 19 for the New Civic Center Parking Garage Project with the City making a final payment to Swinerton Builders in the amount of $557,546, for a total contract amount of $22,918,150, as a full settlement of all construction claims and disputes.

(b) Adoption of the following 2007-2008 Appropriation Ordinance Amendments in the Civic Center Parking Fund (Fund 433):

(1) Increase the New Civic Center Parking Garages appropriation to the Public Works Department in the amount of $484,000; and

(2) Decrease the Reserve for Civic Center Off-Site Parking Garage by $484,000.

CEQA: Resolution Nos. 72230 and 72230.1. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen and Acting Budget Director Jennifer Maguire, dated November 26, 2007, recommending approval of Contract Change Order No. 19 and adoption of appropriation ordinance amendments.

Action: The Contract Change Order No. 19 for the New Civic Center Parking Garage Project with the City making a final payment to Swinerton Builders in the amount of $557,546, for a total contract amount of $22,918,150, as a full settlement of all construction claims and disputes was approved, and Ordinance No. 28210, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28071 to Appropriate Monies in the Civic Center Parking Fund for the New Civic Center Parking Garages; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. (10-0-1. Absent: Chirco.)

2.27 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:

(a) Increase the estimate for Earned Revenue by $10,000.

(b) Establish an appropriation to the Department of Transportation for the Street Trees Installation project (PSM 509) in the amount of $10,000.

CEQA: Mitigated Negative Declaration, File No. CP04-028. Council District 3. (Transportation/City Manager's Office)

Documents Filed: Memorandum from Director of Transportation James Helmer and Acting Budget Director Jennifer Maguire, dated November 26, 2007, recommending adoption of appropriation ordinance and funding sources resolution amendments.

2.27 (Cont'd.)

Action: Ordinance No. 28211, 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 Street Trees Installation Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption", and Resolution No. 74176, 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 Services for Redevelopment Capital Projects Fund", were adopted. (10-0-1. Absent: Chirco.)

2.28 (a) Approval of a third amendment to the Consultant Services Agreement between the City of San José and Kimley-Horn and Associates, Inc., for the design and development of the Silicon Valley Intelligent Transportation Systems West Corridor Project, to extend the term of the agreement, as previously amended and extended, from December 28, 2007 to December 31, 2008, and increasing the maximum compensation by $71,484 from $823,466 to $894,950.

(b) Adoption of a resolution authorizing the Director of Transportation to extend the term beyond December 31, 2008 for up to a maximum of an additional 180 days with no increase in compensation.

CEQA: Exempt, File No. PP00-02-026. (Transportation)

Documents Filed: Memorandum from Director of Transportation James Helmer, dated November 26, 2007, recommending approval of a third amendment to the agreement and adoption of a resolution.

Action: The third amendment to the Consultant Services Agreement between the City of San José and Kimley-Horn and Associates, Inc., for the design and development of the Silicon Valley Intelligent Transportation Systems West Corridor Project, to extend the term of the agreement, as previously amended and extended, from December 28, 2007 to December 31, 2008, and increasing the maximum compensation by $71,484 from $823,466 to $894,950 was approved and Resolution No. 74177, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Transportation to Extend the Term of the Contract with Kimley-Horn and Associates, Inc. for the Development of the Silicon Valley Intelligent Transportation Systems West Corridor Project Beyond December 31, 2008 for up to a Maximum of an Additional 180 Days with No Increase in Compensation", was adopted. (10-0-1. Absent: Chirco.)

2.29 Acceptance of the Office of the City Auditor's Report of Activities and Findings for the Period October 16, 2007 through November 15, 2007. (City Auditor) (Rules Committee referral 12/12/07)

Documents Filed: Report of Activities and Findings for the Period October 16 through November 15, 2007 from the Office of the City Auditor.

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

2.30 As recommended by the Parks and Recreation Commission on December 5, 2007, name a new park located at 139 Fleming Avenue as "Fleming Park". (City Clerk) (Rules Committee referral 12/12/07)

Documents Filed: Memorandum from City Clerk Lee Price, dated December 13, 2007, transmitting the recommendation of the Parks and Recreation Commission.

Action: The name "Fleming Park" for the new park located at 139 Fleming Avenue was approved. (10-0-1. Absent: Chirco.)

2.31 Request for an excused absence for Council Member Constant from the Inclusionary Housing Study Session on December 11, 2007 due to Authorized City Business: Neighborhood Meeting on Crime and Safety at Rosemary Elementary School. (Constant)
(Rules Committee referral 12/12/07)

Documents Filed: Memorandum from Council Member Constant, dated December 13, 2007, requesting an excused absence due to authorized City business.

Action: The absence for Council Member Constant was excused. (10-0-1. Absent: Chirco.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

3.1 Report of the Rules and Open Government Committee – December 5, 2007
Mayor Reed, Chair

Documents Filed: The Rules and Open Government Committee Report dated December 5, 2007.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried unanimously, the Rules and Open Government Committee Report and the actions of December 5, 2007 were accepted. (10-0-1. Absent: Chirco.)

3.3 Approval of an ordinance amending Title 12 of the San José Municipal Code to repeal Part 8 of Chapter 12.06 regulating officeholder accounts; adopt interim officeholder account regulations; prohibit the establishment of officeholder accounts after July 1, 2008; and make other technical and clarifying changes. CEQA: Not a Project. (City Attorney's Office)

Documents Filed: Memorandum from City Attorney Richard Doyle, dated December 6, 2007, recommending approval of an ordinance.

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

3.3 (Cont'd.)

City Attorney Richard Doyle, City Manager Debra Figone and City Clerk Lee Price responded to Council questions.

Action: On a call for the question, the motion carried unanimously, Ordinance No. 28212, entitled: "An Ordinance of the City of San José Amending Title 12 of the San José Municipal Code to Repeal Part 8 of Chapter 12.06 Regulating Officeholder Accounts; Adopt Interim Officeholder Account Regulations; Prohibit the Establishment of Officeholder Accounts after July 1, 2008 and Make Other Technical and Clarifying Changes", was passed for publication, as amended; (1) The City Manager was authorized to negotiate and execute an amendment to the HP Naming Agreement. (2) The Budget Director will return at mid-year with an appropriation action for the HP funds earmarked in the budget for allocation to the Mayor and Council Office Budgets. (3) The City Attorney/City Clerk will develop a procedure for the use of the new funding. (4) The City Attorney/City Clerk will provide a list of "Do's and Don'ts" for Council expenditures. (10-0-1. Absent: Chirco.)

3.4 Approval of an ordinance amending Chapter 12.04 of Title 12 of San José Municipal Code to increase the total amount of penalties which may be imposed by the San José Elections Commission and amending Chapter 12.06 of Title 12 by adding a new Part 10 to set out requirements for campaign communications and mass mailing disclosures and disclaimers, and making other minor technical corrections and clarifications to the campaign regulations. CEQA: Not a Project. (City Attorney's Office/City Clerk)

Documents Filed: Memorandum from City Attorney Richard Doyle, dated December 7, 2007, recommending approval of an ordinance.

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Nguyen and carried unanimously, Ordinance No. 28213, entitled: "An Ordinance of the City of San José Amending Sections 12.04.110 and 12.04.120 of Chapter 12.04 of Title 12 of the San José Municipal Code to Increase the Total Amount of Penalties Which May be Imposed by the San José Elections Commission; Making Technical Changes to Sections 12.06.030, 12.06.180, 12.06.290 and 12.06.610 of Chapter 12.06 and Amending Chapter 12.06 of Title 12 by Adding a New Part 10 to Set Out Requirements for Campaign Communications and Mass Mailing Disclosures and Disclaimers", was passed for publication. (10-0-1. Absent: Chirco.)

3.5 (a) Adoption of a resolution authorizing the City Manager to negotiate and execute the fifth amendment to the Operations Agreement between the City and History San José to advance the fourth quarter payment for FY 2007-08 in the amount of $143,705.75.

(b) Adoption a resolution authorizing the City Manager to negotiate and execute the sixth amendment to the Operations Agreement between the City of San José and History San José to increase the annual operating subsidy for FY 2007-08 from $574,823 to $875,000, subject to appropriation of the funding during the mid-year budget process scheduled for February 2008.

3.5 (c) Defer Council consideration of an increase of the annual subsidy for History San José from $335,085 to $875,000, for each year for FY 2008-09 and FY 2009-10 to the FY 2008-09 budget hearings.

(d) Direction to staff to continue working with History San José in order to bring forward for City Council consideration at the beginning of FY 2009-10 a funding plan and schedule for the remaining years of the agreement with the City through FY2017-18.

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

Documents Filed: (1) Memorandum from Chief Deputy City Manager Kay Winer, dated December 7, 2007, recommending adoption of resolutions, defer consideration of an increase of the annual subsidy and direction to Staff. (2) Letter from President & CEO Alida Bray, History San José, dated December 17, 2007, regarding the actions related to additional funding for History San José.

Chief Deputy City Manager Kay Winer provided the Staff Report and responded to Council questions.

Motion: Council Member Nguyen moved approval of the Staff recommendations. Council Member Williams seconded the motion.

Public Comments: Margie Matthews, Board Chair and Alida Bray, President and CEO (History San José), spoke in support of the Staff recommendations.

Action: On a call for the question, the motion carried unanimously, Resolution No. 74178, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Fifth Amendment to the Agreement with History San José to Advance the Fourth Quarter Payment for the Period of April to June 2008 in the Amount of $143,705.75" and Resolution No. 74179, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Sixth Amendment to the Operations Agreement with History San José to Increase the Annual Subsidy for the 2007-2008 Fiscal Year from $574,823 to $875,000, Subject to Appropriation of Funding During the Mid-Year Budget Process", were adopted; the increase of the annual subsidy for History San José from $335,085 to $875,000, for each year for FY 2008-09 and FY 2009-10 to the FY 2008-09 budget hearings was deferred and Staff was directed to continue working with History San José in order to bring forward for City Council consideration at the beginning of FY 2009-10 a funding plan and schedule for the remaining years of the agreement with the City through FY2017-18. (10-0-1. Absent: Chirco.)

3.6 (a) Adoption of a resolution to extend the provisions of Resolution No. 73180 through December 31, 2008 to enable the City to continue to provide supplemental pay and benefits, pursuant to Resolution No. 73180, to employees who are military reservists and who are called to active duty; and,

(b) Direction to staff to continue to meet with reservists prior to and upon return from deployment to ensure accurate payment and reconciliation of supplemental pay and benefits received by the reservist.

CEQA: Not a Project. (Human Resources/Finance)

3.6 (Cont'd.)

Documents Filed: Memorandum from Director of Human Resources Mark Danaj and Director of Finance Scott Johnson, dated November 26, 2007, recommending adoption of a resolution and direction to Staff.

Motion: Vice Mayor Cortese moved approval of the Staff recommendations. Council Member Pyle seconded the motion.

Director of Human Resources Mark Danaj responded to Council questions regarding incorporating this into a permanent City Policy.

Vice Mayor Cortese amended the motion to delete the ending date and requested that Staff bring this policy to the Rules and Open Government Committee for further consideration as a permanent policy.

Action: On a call for the question, the motion carried unanimously, Resolution No. 74180, entitled: "A Resolution of the Council of the City of San José Extending the Provisions of the Enhanced Military Leave Program for Employees Called to Active Duty Approved by Resolution No. 73180", was adopted, as amended; delete "extending through December 31, 2008". The program to continue until further action of the Council; Staff was directed to bring the existing policy for supplemental pay and benefits for reservists to the Rules and Open Government Committee for consideration as a permanent policy. (10-0-1. Absent: Chirco.)

3.7 Review of the 2006 – 2007 Annual Report regarding in-lieu fees collected by the City from developers in lieu of construction of public improvements. CEQA: Not a Project. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated November 26, 2007, recommending approval of the annual report.

Deputy Director of Public Works Timm Borden provided a Staff Report and responded to Council questions.

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Liccardo and carried unanimously, the 2006 – 2007 Annual Report regarding in-lieu fees collected by the City from developers in lieu of construction of public improvements were accepted. (8-0-3. Absent: Chirco, Chu, Constant.)

3.8 Report of the Rules and Open Government Committee – December 12, 2007
Mayor Reed, Chair

Documents Filed: The Rules and Open Government Committee Report dated December 12, 2007.

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Pyle and carried unanimously, the Rules and Open Government Committee Report and the actions of December 12, 2007 were accepted. (8-0-3. Absent: Chirco, Chu, Constant.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.2 Adoption of a resolution affirming the previously adopted Council guidelines on Sister City Affiliations and amending the guidelines to include consideration of a new Sister City affiliation only after that City has been established as an Economic Partnership City and tangible results can be demonstrated.
[Deferred from 10/23/07 – Item 4.3(a)]

Action: Item 4.2 was dropped; Will be heard by Community and Economic Development Committee in Spring 2008.

4.3 (a) (1) Acceptance of the Jackson-Taylor Community Improvement Zone Multi-Modal Transportation Improvement Inventory; and
(2) Acceptance of the Midtown South Community Improvement Zone Multi-Modal Transportation Improvement Inventory.
CEQA: Not a Project. Council Districts 3 and 6. SNI: Burbank/Del Monte and Thirteenth Street. (Planning, Building and Code Enforcement)
(b) Adoption of a resolution to approve the addition of the Hedding/Oakland-13th intersection to the protected intersection list pursuant to the provisions of the City's Transportation Impact Policy (City Policy 5-3).
CEQA: Resolution to be adopted. Council District 3. SNI: Thirteenth Street. (Planning, Building and Code Enforcement/Transportation)

Documents Filed: (1) Memoranda from Director of Planning, Building and Code Enforcement Joseph Horwedel, both dated November 26, 2007, transmitting the Staff Reports for the Jackson Taylor and the Midtown South Community Improvement Zones and the Hedding/Oakland-13th Intersection as a designated Protected Intersection. (2) Memoranda from Planning Commission Secretary Horwedel, both dated December 6, 2007, transmitting the Planning Commission recommendations for all areas.

Public Comments: Marc Boyd expressed concern about traffic safety at First and Taylor Streets.

4.3 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Oliverio and carried unanimously, the Jackson-Taylor Community Improvement Zone Multi-Modal Transportation Improvement Inventory and the Midtown South Community Improvement Zone Multi-Modal Transportation Improvement Inventory were accepted; Resolution No. 74181, entitled: "A Resolution of the Council of the City of San José Approving Modifications to the List of 24 Protected Intersections Pursuant to Council Policy 5-3 to Add an Intersection at Hedding Street and Old Oakland/13th Street" and CEQA Resolution No. 74182, entitled: "A Resolution of the Council of the City of San José Making Certain Findings Concerning Significant Effects, Mitigation Measures, Adopting a Mitigation Monitoring and Reporting Program, Making Findings Concerning Alternatives and Adopting a Statement of Overriding Considerations for the Addition of the Hedding/Oakland-13th Intersection to the List of Protected Intersections Pursuant to City Council Policy 5-3, for Which an Environmental Impact Report Has Been Prepared in Accordance with the California Environmental Quality Act of 1970, as Amended", were adopted. (8-0-3. Absent: Chirco, Chu, Constant.)

NEIGHBORHOOD SERVICES

5.2 Adoption of a resolution determining that the public interest and necessity require the acquisition of a billboard owned by Clear Channel Outdoor located at 1000 South Bascom, San José, CA (APN Numbers 282-29-002, 003, and 004) and authorizing the City Attorney to file suit in eminent domain to acquire such property interest, to apply for an order for possession before judgment, and to prosecute the action to final judgment, and authorizing the deposit of money in court for possession of the property from the funds lawfully available. CEQA: Exempt, File No. PP05-0126. Council District 6. (Public Works)
(Deferred from 12/4/07 – Item 3.6)

Documents Filed: Copies of: (1) Memorandum from Director of Public Works Katy Allen, dated November 13, 2007, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Public Works Katy Allen, dated December 11, 2007, providing an update on a new billboard removal proposal received from Clear Channel Outdoor after the submission of the original memorandum, and clarifying the impacts of alternatives to the recommended action. (3) Letter from Peggy O'Laughlin, Matteoni, O'Laughlin and Hechtman, dated November 27, 2007, regarding Clear Channel Outdoor, Inc.'s intent to appear and be heard at the City Council on December 4, 2007. (4) Letter from Peggy O'Laughlin, Matteoni, O'Laughlin and Hechtman, dated November 27, 2007, regarding the City's proposed condemnation of a Clear Channel Outdoor, Inc. leasehold and billboard. (5) Letter from Peggy O'Laughlin, Matteoni, O'Laughlin and Hechtman, dated December 17, 2007, regarding the City's proposed condemnation of a Clear Channel Outdoor, Inc. leasehold and billboard which was continued to December 18, 2007.

5.2 (Cont'd.)

Director of Public Works Katy Allen provided a brief overview related to the acquisition of the billboard located at 1000 South Bascom Avenue and responded to Council questions.

Public Comments: Peggy O. Laughlin (Matteoni, O'Laughlin and Hechtman), representing Clear Channel Outdoor Inc., summarized an offer set forth in writing to remove the billboard and urged the Council to defer the filing of eminent domain proceedings.

Council Member Oliverio spoke in favor of deferring the matter and of using eminent domain only as a last resort.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Nguyen and carried unanimously, Item 5.2 was deferred to January 8, 2008. (10-0-1. Absent: Chirco.)

5.3 (a) Approval of a two-year pilot program for the Registration and E-Commerce System.

(b) Direction to staff to return to the Neighborhood Services & Education Committee and the Parks and Recreation Commission with semi-annual project updates in June and December 2008-2010.

(c) Adoption of the following Appropriation Ordinance Amendments in the Construction Tax and Property Conveyance Tax Fund: City-Wide Parks Purposes (Fund 391):

(1) Establish an appropriation to the Parks, Recreation and Neighborhood Services Department in the amount of $68,000 for the Registration and e-Commerce System FF&E.

(2) Decrease the Ending Fund Balance by $68,000.

(d) Approval of 1.0 Program Manager in the Parks, Recreation and Neighborhood Services Department and 0.5 Senior Systems Application Programmer in the Information Technology Department to support the system.

CEQA: Not a Project. (Parks, Recreation and Neighborhood Services/Information Technology/City Manager's Office)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, Director of Information Technology Randall Murphy and Acting Budget Director Jennifer Maguire, dated November 26, 2007, recommending approval of the pilot program, direction to Staff, adoption of appropriation amendments and approval of a program manager and senior system application programmer.

Director of Parks, Recreation and Neighborhood Services Albert Balagso and Deputy Director Julie Mark provided a summary on the Recreation and E-Commerce System.

Council Member Oliverio spoke in favor of the web based solution and complimented Staff for taking more time to examine solutions.

5.3 (Cont'd.)

Action: Upon motion by Council Member Oliverio, seconded by Council Member Liccardo and carried unanimously, the two-year pilot program for the Registration and E-Commerce System was approved with Staff directed to return to the Neighborhood Services & Education Committee and the Parks and Recreation Commission with semi-annual project updates in June and December 2008-2010; Ordinance No. 28214, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28071 to Appropriate Monies in the Construction and Conveyance Tax Fund: Citywide Parks Purposes for the Registration and E-Commerce System; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption", was adopted, and a 1.0 Program Manager in the Parks, Recreation and Neighborhood Services Department and 0.5 Senior Systems Application Programmer in the Information Technology Department to support the system were approved. (9-0-2. Absent: Chirco, Constant.)

5.4 Report on bids and award of contract for the East San José Carnegie Branch Library project to the lowest responsive bidder, Farotte Construction Co., Inc., for the base bid and Add Alternate Nos. 1-5 in the amount of $6,772,488, and approval of a contingency in the amount of $813,000. CEQA: Exempt, File No. PP07-211 and Historical Preservation Permit No. HP07-005. Council District 3. SNI: Five Wounds/Brookwood Terrace. (Public Works/Library)

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen and Director of Library Department Jane Light, dated November 26, 2007, recommending award of the contract to the lowest responsive bidder. (2) Supplemental memorandum from Director of Public Works Katy Allen, dated December 18, 2007, providing a letter submitted by Lyncon Construction and clarifying the bid results.

Director of Public Works Katy Allen and Assistant Director of Public Works David Sykes provided a brief overview of the project status.

Motion: Council Member Liccardo moved approval of the Staff recommendations. Council Member Oliverio seconded the motion.

Public Comments: Mike Bergstrom, Lyncon Construction, protested the bid award and objected to his bid being rejected on a technicality.

Director of Public Works Katy Allen responded to Council questions.

Action: On a call for the question, the motion carried unanimously and the award of contract for the East San José Carnegie Branch Library project to the lowest responsive bidder, Farotte Construction Co., Inc., for the base bid and Add Alternate Nos. 1-5 in the amount of $6,772,488, with related contingency, was approved. (10-0-1. Absent: Chirco.)

5.5 (a) Report on bids and award of contract for the Ryland Pool Repairs project to the low bidder, Pool Time USA, in the amount of $898,108, and approval of a contingency in the amount of $134,716.

(b) Adoption of the following Appropriation Ordinance amendments in the Subdivision Park Trust Fund (Fund 375):

(1) Establish an appropriation to the Parks, Recreation and Neighborhood Services Department in the amount $1,123,000 for the Ryland Pool Repairs.

(2) Decrease the Reserve: Ryland Pool by $1,123,000.

CEQA: Exempt PP07-211. Council District 3. (Public Works/Parks, Recreation and Neighborhood Services/City Manager's Office)

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen and Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated November 26, 2007, recommending approval of the award of contract. (2) Supplemental memorandum from Director of Public Works Katy Allen, Director of Parks, Recreation and Neighborhood Services Albert Balagso and Acting Budget Director Jennifer Maguire, dated December 11, 2007, transmitting additional information after the bids were opened and adoption of an appropriation ordinance amendments.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Oliverio and carried unanimously, the award of contract for the Ryland Pool Repairs project to the low bidder, Pool Time USA, in the amount of $898,108, with related contingency, was approved and Ordinance No. 28215, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28071 to Appropriate Monies in the Subdivision Park Trust Fund for Ryland Pool Repairs; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. (10-0-1. Absent: Chirco.)

TRANSPORTATION & AVIATION SERVICES

6.1 Report of the Transportation and Environment Committee – December 3, 2007
Council Member Williams, Chair

Documents Filed: The Transportation and Environmental Committee Report dated December 3, 2007.

Action: Upon motion by Council Member Williams, seconded by Council Member Campos and carried unanimously, the Transportation and Environment Committee Report and the actions of December 3, 2007 were accepted. (10-0-1. Absent: Chirco.)

6.2 (a) Approval to reject all bids for the Installation of the Passenger Boarding Bridges Project.

(b) Report on readvertised bids and award of contract for the Installation of Passenger Boarding Bridges Project at the Norman Y. Mineta San José International Airport to the low bidder, Lloyd W. Aubry Co., Inc. in the amount of $2,367,714, and approval of a contingency in the amount of $355,157.

CEQA: Resolutions Nos. 67380 and 71451, File No. PP07-250. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated November 26, 2007, recommending approval to reject all bids and award of the contract tot the low bidder.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Campos and carried unanimously, all bids for the Installation of the Passenger Boarding Bridges Project were rejected and the award of contract for the Installation of Passenger Boarding Bridges Project at the Norman Y. Mineta San José International Airport to the low bidder, Lloyd W. Aubry Co., Inc. in the amount of $2,367,714, with related contingency, was approved. (10-0-1. Absent: Chirco.)

6.3 Adoption of a resolution to repeal Resolution No. 73855 and to amend the Master Parking Rate Schedule to authorize the Director of Transportation to extend the modification to the Free Parking Program to allow the City to continue charging a $5 entry fee at various City-owned garages after 10 p.m. on Thursday, Friday and Saturday evenings from December 31, 2007 to January 8, 2008. (Transportation) (Rules Committee referral 12/12/07)

Documents Filed: Memorandum from Director of Transportation James Helmer, dated December 14, 2007, recommending adoption of a resolution.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, Resolution No. 74183, entitled: "A Resolution of the Council of the City of San José Amending the Master Parking Rate Schedule to Extend the Six (6) Month Pilot Parking Rate of $5 After 10:00 p.m. on Thursday, Friday and Saturday at Designated Garages Until January 8, 2008 and Expand the Clean Air Vehicle Program to Include All Zero Emission Vehicles, as Directed by Council on October 20, 2007; and Repeal Resolution No. 73855 Effective Upon Council Approval", was adopted. (10-0-1. Absent: Chirco.)

ADJOURNMENT

The Council of the City of San José adjourned the morning Council Session at 11:54 a.m.

RECESS/RECONVENE

The City Council recessed at 11:54 a.m. from the morning Council Session and reconvened at 1:33 p.m. in the Council Chambers, City Hall.

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

Absent: Council Members - Chirco. (Excused)

PUBLIC SAFETY SERVICES

8.1 (a) Report on bids and award of contract for the South San José Police Substation project to the low bidder, S.J. Amoroso, to include the base bid and none of the Add Alternates in the amount of $59,997,000 and the approval of a contingency in the amount of $2,710,000.

(b) Adoption of the following 2007-2008 Appropriation Ordinance amendments in the Neighborhood Security Bond Fund (Fund 475):

(1) Increase the South San José Police Substation appropriation by $5,416,000;

(2) Decrease the Reserve: East San José Community Policing Center by $1,677,000;

(3) Decrease the Reserve: South San José Community Policing Center by $1,739,000;

(4) Decrease the Contingency Reserve by $500,000; and

(5) Decrease the Ending Fund Balance by $1,500,000.

(c) Adoption of a resolution authorizing the expenditure of Construction Tax and Property Conveyance Tax funds currently allocated for "Service Yards" purposes for the South San José Police Substation project pursuant to Municipal Code 4.55.300.

(d) Adoption of the following 2007-2008 Appropriation Ordinance amendments in the Construction Tax and Property Conveyance Tax Fund: Service Yards Purposes (Fund 395):

(1) Establish a Transfer to the General Fund for the South San José Police Substation project in the amount of $400,000; and

(2) Decrease the Ending Fund Balance by $400,000.

(e) Adoption of the following 2007-2008 Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund (Fund 001):

(1) Increase the estimate for Other Revenue by $2,329,250;

(2) Increase the estimate for Transfers and Reimbursements by $400,000;

(3) Establish an appropriation to the Police Department for the South San José Police Substation in the amount of $4,996,976; and

(4) Decrease the Earmarked Reserve for Future Capital Projects (FF&E) by $2,267,726.

8.1 (f) Adoption of the following 2007-2008 Appropriation Ordinance and Funding Sources Resolution amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District #10 (Fund 389):

(1) Increase the estimate for Earned Revenue by $70,750; and

(2) Increase the Ending Fund Balance by $70,750.

(g) Approval of an ordinance amending Chapter 22.08 of Title 22 of the San José Municipal Code to provide that the City Council at its discretion may adjust the Public Art allocation for capital projects outside the annual capital budget approval, and Direction to the City Manager to prepare a recommendation to the City Council in conjunction with the 2007-2008 Mid-Year Budget Review report, that the General Fund Future Capital Projects (FF&E) Reserve be partially replenished by reallocating, in the Neighborhood Security Bond Fund, Public Art–Police Bond Projects funding to the South San José Police Substation project in the amount of $1,100,000.

CEQA: Mitigated Negative Declaration, File No. PP04-304. (Public Works/Police/ City Manager's Office)

(Deferred from 11/20/07 – Item 8.1 and 12/11/07 – Item 8.1)

Documents Filed: (1) Memorandum from Mayor Reed, Vice Mayor Cortese and Council Member Pyle, dated December 14, 2007, recommending acceptance of Staff's supplemental memorandum recommendations (a) through (f) with amendments and additions. (2) Memorandum from Council Member Williams, dated December 14, 2007, recommending acceptance of Staff's supplemental memorandum recommendations (a) through (f) with additions. (3) Information memorandum from Council Member Williams, dated December 14, 2007, outlining potential actions for the South San José Police Substation Project. (4) Information memorandum from Council Member Campos and Council Member Chu, dated December 18, 2007, outlining potential actions for the South San José Police Substation Project. (5) Memorandum from Director of Public Works Katy Allen, dated October 29, 2007, recommending the award of the contract to the low bidder with related contingency. (6) Supplemental memorandum from Director of Public Works Katy Allen, Police Chief Robert Davis and Acting Budget Director Jennifer Maguire, dated December 4, 2007, providing additional information obtained after the bid opening and recommending award of the contract to the low bidder, adoption of ordinances, resolution, appropriation ordinances and funding sources resolution amendments and approval of an ordinance. (7) Letter from Sharon Gustafson, Arts Commission, dated December 10, 2007, expressing support to the Staff recommendations. (8) Letter from Phyllis Lazzarini, Citizen Oversight Committee, dated December 13, 2007, expressing support to the Staff recommendations.

Police Chief Robert Davis provided an overview of the Police Southside Substation Project. Assistant Director of Public Works David Sykes presented a summary of the bid process. Deputy City Manager Ed Shikada outlined the funding plan.

Motion: Council Member Pyle moved approval of the memorandum she cosigned with Mayor Reed and Vice Mayor Cortese. Vice Mayor Cortese seconded the motion.

8.1 (Cont'd.)

Council Member Williams advocated against reallocating $1.1 Million from public art funds and cutting the public art from the project. He argued in favor of finding the necessary funding for the art from some other source.

Substitute Motion: Council Member Williams moved approval of his memorandum dated December 14, 2007. Council Member Campos seconded the motion.

Extensive Council discussion followed.

Public Comments: Bobby Lopez and Joe O'Kane (San José Police Department) urged the Council not to delay construction of the Police Substation. William Garbett requested a formal reading of the proposed ordinance. Sharon Gustafson and Michael Bernier (Arts Commission) objected to changing the ordinance and in favor of completing the art. Philip Bump (South Bay Labor Council) expressed support for the efforts to include art. Ross Signorino stated that the Substation project should not be jeopardized. Patricia McDonald expressed support for Council Member Williams' motion.

Deputy City Manager Ed Shikada and Police Chief Robert Davis responded to Council questions and comments.

On a call for the question, the substitute motion failed. (2-8-1. Noes: Chu, Constant, Cortese, Liccardo, Oliverio, Nguyen, Pyle; Reed. Absent: Chirco.)

Original Motion

Council Member Williams requested that Staff find another way to keep the art in the project and proceed with the Police Substation.

Vice Mayor Cortese amended his motion to add that Staff be further directed to continue to work with the District 2 Council Office to identify funding sources for the public art. This included direction to Staff to update the Council after the ordinance goes into effect (Council Meeting of February 12, 2008). Council Member Pyle accepted the amendment.

Action: On a call for the question, the original motion carried unanimously, the award of contract for the South San José Police Substation project to the low bidder, S.J. Amoroso, to include the base bid and none of the Add Alternates in the amount of $59,997,000, with related contingency, was approved; Ordinance No. 28216, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28071 to Appropriate Monies in the Neighborhood Security Bond Fund for the South San José Police Substation; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption"; Resolution No. 74184, entitled: "A Resolution of the Council of the City of San José Authorizing Expenditure of Construction Tax and Real Property Conveyance Tax Funds for the South San José Police Substation Project"; Ordinance No. 28217, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28071 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund: Service Yards

8.1 (Cont'd.)

Purpose for the South San José Police Substation Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption"; Ordinance No. 28218, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28071 to Appropriate Monies in the General Fund for the South San José Police Substation Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption"; Resolution No. 74185, 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"; Ordinance No. 28219, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28071 to Appropriate Monies in the in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District No. 10 for Earned Revenue; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption"; and Resolution No. 74186, 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 Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District No. 10", were adopted and Ordinance No. 28220, entitled: "An Ordinance of the City of San José Amending Sections 22.08.010 and 22.08.020 of Chapter 22.08 of Title 22 of the San José Municipal Code to Provide that the City Council May Adjust the Public Art Allocation for the Police Southside Substation Project Outside of the Annual Capital Budget Approval Process", was passed for publication, as amended; The memorandum from Mayor Reed, Vice Mayor Cortese and Council Member Pyle, dated December 14, 2007 was approved, as follows: (1) Accepted Staff's supplemental memorandum recommendations (a) through (f) with the following amendments: (g) Approval of an ordinance amending Chapter 22.08 of Title 22 of the San José Municipal Code to provide that that the City Council may determine, in its sole discretion, to allocate an amount which is less than two percent (2%) of the total amount budgeted from the San José 9-1-1, Fire, Police, Paramedic and Neighborhood Security Act, up to $1.1 million, in order to complete the South San José Substation Project. Any reduction in allocation for the acquisition of a work of art shall be by an appropriation ordinance. (2) Staff directed to pursue private donors, grant opportunities and identify possible funding sources that would allow for inclusion of an art component in the Police Substation, but would not delay the project. Staff directed to bring an update on their progress to Council at mid-year (February 12, 2008) and to add this project to the Unfunded Needs List. (3) Staff directed to conduct an inventory of remaining former Public Safety facilities that can be sold. Revenues from these properties should be used to complete the remaining projects to be funded through the Neighborhood Security Bond Act. (4) In future reports, when appropriations and reserves are being changed, Staff directed to also include information regarding the remaining balance after the change and on future demands of the fund. (5) Staff further directed to continue to work with the District 2 Council Office to identify funding sources for the public art and return with an update on February 12, 2008. (10-0-1. Absent: Chirco.)

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Joint Council/Redevelopment Agency Board convened at 3:40 p.m. to Consider Items 9.1, 9.2 and 9.3 in a Joint Session.

9.1 (a) Adoption of a resolution by the City Council making certain determinations required by Redevelopment Law, Health and Safety Code Section 33445 for Redevelopment Agency funding of publicly-owned improvements for the Evergreen Elementary School District in the form of design and construction of recreation facilities in the Strong Neighborhoods Initiative project area

(b) Approval by the City Council of an agreement with the Evergreen Elementary School District in an amount not to exceed $200,000 for the City's portion of contribution, for public improvements at the O.B. Whaley Elementary School.

(c) Approval by the Redevelopment Agency Board of an agreement with the Evergreen Elementary School District in an amount not to exceed $500,000 for the Agency's contribution for public improvements at the O.B. Whaley Elementary School in the West Evergreen neighborhood of the Strong Neighborhoods Initiative Redevelopment Project Area.

CEQA: Exempt, File No. PP07-174. (City Manager's Office/Redevelopment Agency)

Documents Filed: Memorandum from City Manager Debra Figone and Redevelopment Agency Executive Director Harry S. Mavrogenes, dated November 15, 2007, recommending adoption of a resolution and approval of the agreements.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried unanimously, Resolution No. 74187, entitled: "A Resolution of the Council of the City of San José Making Certain Determinations Required by Redevelopment Law, Health and Safety Code Section 33445, for Agency Funding of Public Improvements at the O.B. Whaley Elementary School District", was adopted; the agreement with the Evergreen Elementary School District in an amount not to exceed $200,000 for the City's portion of contribution, for public improvements at the O.B. Whaley Elementary School was approved by the City Council, and the agreement with the Evergreen Elementary School District in an amount not to exceed $500,000 for the Agency's contribution for public improvements at the O.B. Whaley Elementary School in the West Evergreen neighborhood of the Strong Neighborhoods Initiative Redevelopment Project Area was approved by the Redevelopment Agency Board. (10-0-1. Absent: Chirco.)

9.2 (a) (1) Direct the City Manager and Redevelopment Agency Director to jointly develop new Entertainment Zone Planning Guidelines for the Downtown.

(2) Return to City Council with specific recommendations no later than June 24, 2008.

(3) Reaffirm support for Council Policy 6-23.

9.2 (a) (4) Direct the City Manager to fully implement the intent of Council Policy 6-23 for both new applications and existing Conditional Use Permits (CUPs) in the Downtown.

(5) Direct the City Manager to limit the length of time for CUPs in the Downtown to a term of two years.

(Liccardo/Williams)

(b) (1) Reaffirm support for the existing Council Policy 6-23 for the review of new applications for Conditional Use Permits for entertainment uses in Downtown.

(2) Direct the City Manager, in coordination with the Redevelopment Agency, to undertake the work plan itemized below and in the attachment and report back to the City Council with recommendations by June, 2008, which include the following primary tasks of this work plan:

(a) A study of the implications of developing zoning regulations, including a potential zoning overlay and/or zoning guidelines which identify preferred areas for entertainment uses and drinking establishments, as well as appropriate development and operational standards for such uses.

(b) Review and consider restructuring the permitting process, including Conditional Use Permits and Special Use Permits for entertainment uses and drinking establishments, including night clubs, bars, and restaurants with entertainment to strengthen the City's ability to regulate for compliance.

(c) Review and recommend revisions to Council Policy 6-23 to ensure compatibility with Downtown's housing development and enhanced quality of life for Downtown residents.

CEQA: Not a Project. Council District 3. (City Manager's Office/Redevelopment Agency)

Documents Filed: (1) Information memorandum from City Attorney Richard Doyle, dated December 4, 2007, providing background regarding the term conditions within Conditional Use Permits. (2) Memorandum from City Manager Debra Figone and Redevelopment Agency Executive Director Harry S. Mavrogenes, dated December 7, 2007, recommending approval of 9.2(b) above. (3) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated December 6, 2007, recommending approval of 9.2(a) above. (4) Memorandum from Agenda Services Manager Nadine Nader, dated December 17, 207, transmitting the attachments for the Downtown Overlay.

Planning Official John Poindexter, Redevelopment Agency Deputy Director Norberto Duenas and Assistant City Attorney William Hughes responded to Council questions.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, the Staff recommendations for Item 9.2(a)(b) as previously stated on Pages 29 and 30 , were approved. (10-0-1. Absent: Chirco.)

9.3 As recommended by the Rules and Open Government Committee on December 12, 2007, approve the City Council and Redevelopment Agency Committee Appointments. (Mayor)
[Rules Committee referral 12/12/07 – Item (g)(1)]

Documents Filed: Memorandum from City Clerk Lee Price, dated December 14, 2007, transmitting the recommendation of the Rules and Open Government Committee approving the appointments.

Action: Upon motion by Council Member Pyle, seconded by Vice Mayor Cortese and carried unanimously, the City Council and Redevelopment Agency Committee Appointments were approved, with the following amendments: (1) Community and Economic Development Committee Work Plan. (a) Defer Item 5(a) Sign Code Ordinance. (2) Neighborhood Services and Education Committee Work Plan. (a) Add an Inclusionary Housing Update as Item (7) to the May 8, 2008 meeting per Council direction. (b) Add a Neighborhood Clean Up Services Update as Item (9) to the June 12, 2008 Meeting per Council direction. (3) Public Safety, Finance and Strategic Support Committee Work Plan. (a) Add Nonprofit Contract for Public and Education Access Cable Programming to the January 17, 2008 meeting. (10-0-1. Absent: Chirco.)

The Joint Council/Redevelopment Agency Board was adjourned at 4:01 p.m.

CONSENT CALENDAR

2.17 Adoption of a resolution initiating proceedings and setting a public hearing on January 29, 2008 at 7:00 p.m. for the reorganization/annexation of the territory designated as Story No. 58 which involves the annexation to the City of San José of approximately 6.93 gross acres County island consisting of 25 parcels located on both sides of Rosemar Avenue, between Juliet Park Drive and Fleming Avenue and on the northeasterly 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. Council District 5. (Planning, Building and Code Enforcement)

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 26, 2007, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated December 4, 2007, providing an update on the status of the County Island Annexation Program.

Action: Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, Resolution No. 74188, entitled: "A Resolution of the Council of the City of San José Initiating the Reorganization Proceedings for the Annexation and Detachment of Certain Uninhabited Territory Designated as Story No. 58, Described More Particularly Herein and Setting the Date, Time and Place for Consideration of Such Reorganization", was adopted. (10-0-1. Absent: Chirco.)

2.18 Adoption of a resolution initiating proceedings and setting a public hearing on January 29, 2008 at 7:00 p.m. for the reorganization/annexation of the territory designated as Capitol No. 55 which involves the annexation to the City of San José of approximately 0.74 gross acre County pocket 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, Owner). CEQA: Resolution No. 65459. Council District 5. (Planning, Building and Code Enforcement)

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 26, 2007, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated December 4, 2007, providing an update on the status of the County Island Annexation Program.

Action: Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, Resolution No. 74189: entitled: "A Resolution of the Council of the City of San José Initiating the Reorganization Proceedings for the Annexation and Detachment of Certain Uninhabited Territory Designated as Capital No. 55, Described More Particularly Herein and Setting the Date, Time and Place for Consideration of Such Reorganization", was adopted. (10-0-1. Absent: Chirco.)

2.19 Adoption of a resolution initiating proceedings and setting a public hearing on January 29, 2008 at 7:00 p.m. for the reorganization/annexation of the territory designated as Capitol No. 56 which involves the annexation to the City of San José of approximately 0.27 gross acre County pocket 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, Owner). CEQA: Resolution No. 65459. Council District 5. (Planning, Building and Code Enforcement)

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 26, 2007, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated December 4, 2007, providing an update on the status of the County Island Annexation Program.

Action: Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, Resolution No. 74190, entitled: "A Resolution of the Council of the City of San José Initiating the Reorganization Proceedings for the Annexation and Detachment of Certain Uninhabited Territory Designated as Capital No. 56, Described More Particularly Herein and Setting the Date, Time and Place for Consideration of Such Reorganization", was adopted. (10-0-1. Absent: Chirco.)

2.20 Adoption of a resolution initiating proceedings and setting a public hearing on January 29, 2008 at 7:00 p.m. for the reorganization/annexation of the territory designated as Evergreen No. 200 which involves the annexation to the City of San José of approximately 34.1 gross acres of land 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. Council District 8. (Planning, Building and Code Enforcement)

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 26, 2007, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated December 4, 2007, providing an update on the status of the County Island Annexation Program.

Action: Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, Resolution No. 74191, entitled: "A Resolution of the Council of the City of San José Initiating the Reorganization Proceedings for the Annexation and Detachment of Certain Uninhabited Territory Designated as Evergreen No. 200, Described More Particularly Herein and Setting the Date, Time and Place for Consideration of Such Reorganization", was adopted. (10-0-1. Absent: Chirco.)

2.21 Adoption of a resolution initiating proceedings and setting a public hearing on January 29, 2008 at 7:00 p.m. for the reorganization/annexation of the territory designated as Evergreen No. 201 which involves the annexation to the City of San José of approximately 2.5 gross acres of land located on the southeast 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. Council District 8. (Planning, Building and Code Enforcement)

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 26, 2007, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated December 4, 2007, providing an update on the status of the County Island Annexation Program.

Action: Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, Resolution No. 74192, entitled: "A Resolution of the Council of the City of San José Initiating the Reorganization Proceedings for the Annexation and Detachment of Certain Uninhabited Territory Designated as Evergreen No. 201, Described More Particularly Herein and Setting the Date, Time and Place for Consideration of Such Reorganization", was adopted. (10-0-1. Absent: Chirco.)

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:

Tract	Location	Council District	Developer	Lots/ Units	Type	Proposed Decision
9939	West side of Dent Avenue, 500 feet North of Kooser Road	9	Rockwell Homes, Inc.	12 Lots/ 12 Units	SFD	Approve
9943	Bounded by Kentwood Avenue, Highway 85 and South DeAnza Boulevard	1	Braddock & Logan	77 Lots/ 57 Units	MFA/SFD	Approve

OPEN FORUM

(1) Erica Stanojevic urged the Council to ban the use of plastic grocery bags.
(2) Ross Signorino wished the Mayor, Council Members and Staff a "Merry Christmas".
(3) David Wall recommended City funds be sorted by residual balance at mid-year and offered suggestions for finding funding for public art.
(4) Timothy Fitzgerald voiced concerns of excessive police presence at the Martin Luther King Library.
(5) Mark Trout expressed religious viewpoints.

ADJOURNMENT

The Council of the City of San José adjourned the afternoon Council session at 4:08 p.m.

RECESS/RECONVENE

The City Council recessed at 4:08 p.m. from the afternoon Council Session and reconvened at 7:01 p.m. in the Council Chambers, City Hall.

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

Absent: Council Members - Chirco. (Excused)

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

ORDERS OF THE EVENING

Upon motion by Council Member Pyle, seconded by Council Member Campos and carried unanimously, the Orders of the Evening were approved, and General Plan Items 10.1(c) and 10.7 were continued to January 8, 2008. (10-0-1. Absent: Chirco.)

CEREMONIAL ITEMS

1.1 Presentation of a commendation to the Vietnamese American Heritage Project for helping to share the achievements of Vietnamese Americans and for bringing awareness about Vietnamese culture to citizens in the community. (Nguyen)

Action: Mayor Reed and Council Member Nguyen recognized and commended the Vietnamese American Heritage Project for sharing the achievements of Vietnamese Americans and for bringing awareness about Vietnamese culture to the citizens of San José.

COMMUNITY AND ECONOMIC DEVELOPMENT

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 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)

4.4 (Cont'd.)

Action: Upon motion by Council Member Chu, seconded by Council Member Constant and carried unanimously, Item 4.4 was deferred to January 29, 2008 per the request of the Director of Planning, Building and Code Enforcement. (10-0-1. Absent: Chirco.)

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 Parker No. 25 on an approximately 3.49 gross acre County pocket consisting of 13 parcels located on both sides of Woodard Road between Nova Scotia Avenue and Twilight Drive, and detachment of the same from the appropriate special districts including Central Fire Protection, West Valley Sanitation, County Lighting County Service and Area No. 01 (Library Services) County Service (Multiple Owners). CEQA: Resolution No. 65459. Council District 9. (Planning, Building and Code Enforcement)

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 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 Pyle, seconded by Council Member Constant and carried unanimously, Resolution No. 74193, entitled: "A Resolution of the Council of the City of San José Making Determinations and Ordering the Reorganization of Certain Uninhabited Territory Designated as Parker No. 25 Subject to Liability for General Indebtedness of the City", was adopted (10-0-1. Absent: Chirco.)

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 Parker No. 26 on an approximately 0.53 gross acre County pocket consisting of 2 parcels located on the south side of Woodard Road, 300 feet west of Twilight Drive, and detachment of the same from the appropriate special districts including Central Fire Protection, West Valley Sanitation and Area No. 01 (Library Services) County Service (Multiple Owners). CEQA: Resolution No. 65459. Council District 9. (Planning, Building and Code Enforcement)

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

4.6 (Cont'd.)

Action: Upon motion by Council Member Pyle, seconded by Council Member Constant and carried unanimously, Resolution No. 74194, entitled: "A Resolution of the Council of the City of San José Making Determinations and Ordering the Reorganization of Certain Uninhabited Territory Designated as Parker No. 26 Subject to Liability for General Indebtedness of the City", was adopted. (10-0-1. Absent: Chirco.)

GENERAL PLAN HEARINGS ON CONSENT CALENDAR

10.1 (a) Tentative approval of a General Plan text amendment request to change the *San José 2020 General Plan* text to allow a change in the maximum building height from 50 feet to 120 feet above ground level on an approximately 12.8-acre site located at the northwesterly terminus of Great Oaks Boulevard on the northwest corner of Monterey Highway and State Route 85. (Rose Ventures II, Inc. Owner, Equinix, Inc. Applicant). Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0). CEQA: Resolution No. 67245, and Addenda hereto. SNI: None.
GP07-T-03 - District 2

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP07-T-03, dated November 6, 2007, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 26, 2007, transmitting the Planning Commission recommendation of approval.

Council Member Williams pulled Item 10.1(a) for clarification and Director of Planning, Building and Code Enforcement Joseph Horwedel responded regarding the request to change the maximum building height.

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 Pyle and carried unanimously, the Staff/Planning recommendation was tentatively approved. (10-0-1. Absent: Chirco.)

10.1 (b) Tentative approval of a General Plan text amendment request to change the *San José 2020 General Plan* text of the Discretionary Alternate Use Policies to allow implementation with a Planned Development Zoning, Use Permit, or Development Permit in conformance with the Zoning Ordinance. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1, Platten absent). CEQA: Resolution No. 65459. SNI: All.
GP07-T-05 - Citywide

10.1 (b) (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP07-T-05, dated November 15, 2007, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 30, 2007, transmitting the Planning Commission recommendation of approval.

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 Constant, seconded by Council Member Pyle and carried unanimously, the Staff/Planning recommendation was tentatively approved. (10-0-1. Absent: Chirco.)

(c) Tentative approval of a General Plan text amendment request to change the *San José 2020 General Plan* text to allow solar panels and other structures, where height is an intrinsic part of the structure's function, to have a maximum allowable height not to exceed 100 feet or the maximum allowable building height in the General Plan, whichever is greater. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1, Platten absent). CEQA: Resolution No. 65459. GP07-T-07 - Citywide

Action: Continued to January 8, 2008 per Orders of the Evening.

END OF GENERAL PLAN HEARINGS ON CONSENT CALENDAR

GENERAL PLAN PUBLIC HEARINGS

10.2 Tentative approval of a General Plan text amendment request to change the San José 2020 General Plan text to revise the definition of the Coyote Greenbelt overlay designation to align with the San José 2020 General Plan Land Use/Transportation Diagram to include the following additional existing base land use designations: Public Park and Open Space, Public/Quasi-Public, and Private Recreation. New land uses should only include Agriculture, Public Park and Open Space, and Private Recreation. Ancillary uses to Public Park and Open Space are also appropriate. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1, Platten absent). CEQA: Resolution No. 65459. SNI: None.
GP07-T-04 - District 2

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP07-T-04, dated November 14, 2007, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 30, 2007, transmitting the Planning Commission recommendation of approval.

Public Comment: Mayor Reed opened the public hearing. Consuelo Crosby and Jo Crosby, Greenbelt property owners, expressed interest in the final decision for the Coyote Greenbelt. Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Pyle, seconded by Council Member Williams and carried unanimously, the Staff/Planning recommendation was tentatively approved. (10-0-1. Absent: Chirco.)

10.3 Tentative approval of staff alternative General Plan amendment request to change the Land Use/Transportation Diagram designation from High Density Residential (25-50 DU/AC) to Mixed Use #1, and to change the text of the Jackson Taylor Residential Strategy (JTRS) to allow a maximum residential density of 60 DU/AC for the subject parcel only with no commercial use required on the 3.24-acre site on the west side of North 10th Street, between Vestal Street and East Mission Street (825 North 10th Street) (Hudson Industrial Equities, Applicant / 825 North 10th St. LLC, Owner). Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1, Platten absent) of the staff alternative General Plan land use amendment and text amendment to change the JTRS land use designation from High Density Residential (25-50 DU/AC) to Mixed Use #1, and to change the text of the JTRS to allow a maximum residential density of 60 DU/AC for the subject parcel only with no commercial use required on the 3.24-acre site. CEQA: Mitigated Negative Declaration. SNI: 13th Street.
GP07-03-02/GPT07-03-02 - District 3

10.3 (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP07-03-02/GPT07-03-02, dated November 15, 2007, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 29, 2007, transmitting the Planning Commission recommendation of approval.

Public Comment: Mayor Reed opened the public hearing. Erik Schoennauer (representing Hudson Industrial Equities) spoke in support of the project. Marc Boyd expressed concern about the traffic. Mayor Reed closed the public hearing.

Council Member Liccardo responded to Council Member Williams' and Mr. Boyd's concerns about traffic mitigation.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, the Staff/Planning recommendation was tentatively approved. (10-0-1. Absent: Chirco.)

10.4 Tentative denial of a General Plan amendment request to change the Land Use/Transportation Diagram designation from General Commercial to Transit Corridor Residential (20+ DU/AC) on an approximately 2.6-acre site on the northeast side of South First Street, approximately 165 feet northwesterly of East Alma Avenue (1290, 1302, and 1334 South 1st Street). (ROEM Development, Applicant/1302 South First Street, LLC, Owner). Director of Planning, Building and Code Enforcement and Planning Commission recommend denial (7-0-0). CEQA: Incomplete.
GP06-03-02 - District 3

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP06-03-02, dated November 5, 2007, recommending no change to the existing General Plan land use designation. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 29, 2007, transmitting the Planning Commission recommendation of denial.

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 Constant and carried unanimously, the Staff/Planning recommendation of denial was tentatively upheld. (10-0-1. Absent: Chirco.)

10.5 Public Hearing on tentative approval of the following items related to the Evergreen East Hills Vision Strategy Project: (1) Funding Agreement; (2) Update to the Evergreen Development Policy; (3) General Plan Text Amendments; General Plan Land Use / Transportation Diagram Amendments on approximately 542 acres to allow up to 5,700 dwelling units, up to 500,000 square feet of retail, 75,000 square feet of office, and up to 4.66 million square feet of campus industrial. [The EEHVS area coincides with the Evergreen Development Policy area, which is generally bounded by Story Road, Highway 101, Hellyer Avenue and within the Urban Service Area.]
(Deferred from 12/12/06 - Item 6.4 and 5/15/07 – Item 10.2)

Action: Dropped to be renoticed.

10.6 Tentative approval of a General Plan text amendment request to change the San José 2020 General Plan text to include additions to Commercial Land Use and Economic Development goals and policies to encourage high quality retail in Evergreen, preserve existing commercial centers and limit grocery stores to a maximum floor area of 20,000 square feet in Southeast Evergreen, and support job generation in order to balance the land use and commute patterns in Evergreen. (City of San José Staff, Applicant). Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0). CEQA: Resolution No. 65459. SNI: K.O.N.A, East Valley/680, and West Evergreen.
GP07-T-06 - District 8

Documents Filed: (1) Memorandum from Vice Mayor Cortese, dated December 18, 2007, recommending approval of the Staff recommendation with modifications. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP07-T-06, dated November 6, 2007, recommending approval. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 26, 2007, transmitting the Planning Commission. (4) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated December 13, 2007, clarifying the public purpose of the section of the proposed text amendment that is intended to limit grocery stores in southeast Evergreen to no more than 20,000 square feet in size. Letter from Joan Gallo, Hopkins & Carley, dated December 18, 2007, regarding the text amendment.

Motion: Vice Mayor Cortese moved approval of the text amendment and his memorandum dated December 18, 2007, with additional modifications. Council Member Campos seconded the motion.

Council disclosures were made by Mayor Reed, Vice Mayor Cortese and Council Members Pyle, Oliverio, Nguyen, Liccardo, Chu, Campos and Williams.

Public Comment: Mayor Reed opened the public hearing. Ed Abelite (Canyon Creek Plaza), Kelly Erardi (Shapell Industries) and Rose Herrera (Involved Evergreen) spoke in support to the Staff recommendations. Mayor Reed closed the public hearing.

10.6 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, the memorandum from Vice Mayor Cortese, dated December 18, 2007, was tentatively approved, with the following amendments: (1) Staff/Planning recommendation was tentatively approved as revised: Grocery stores are limited to a maximum floor area of 20,000 square feet in Southeast Evergreen (in the area bounded by Aborn Road to the north, San Felipe to the west and the City's Urban Service Boundary to the south). Excepted from this policy are grocery stores permitted prior to January 1, 2007. Expansion or relocation of permitted grocery stores may be allowed upon the same site or within the center in accordance with zoning regulations and PD permitting processes as well as any other applicable City laws. (2) Staff directed to provide an update to either the Annual General Plan: Economic Development and Employment Lands Study Session or in an equivalent form on their efforts to locate and/or encourage employment serving uses at the industrial campus property on Yerba Buena Road including, but not limited to: (a) Opportunities to implement goals 1 and 4 contained in Mayor Reed's Green Vision. (2) (b) Federal and State Grant opportunities to help implement reverse commute projects such as the Job Assistance and Reverse Commute program administered by the Federal Transit Administration via the Metropolitan Transportation Commission. (3) Staff directed to continue to work closely with Shapell Industries to fill vacant storefronts at the Evergreen Village Square with quality retail services. (10-0-1. Absent: Chirco.)

10.7 Adoption of a resolution approving all General Plan amendment actions taken on December 18, 2007 and adoption of CEQA resolutions. (Planning, Building and Code Enforcement)

Documents Filed: Proof of Publication of Notice of General Plan Public Hearings, executed on November 2, 2007, submitted by the City Clerk.

Action: Continued to January 8, 2008 per Orders of the Evening.

PUBLIC HEARINGS ON CONSENT CALENDAR

11.1 (a) Consideration of an ordinance rezoning the real property located at/on the southeast corner of Bollinger Road and Miller Avenue (6148 Bollinger Road) from A(PD) Planned Development Zoning District to CN Commercial Neighborhood Zoning District to allow commercial uses on a 13.1 gross acre site (Marchese Christopher Trustee & Et Al, Owner). CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.
C07-085 – District 1

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C07-085, dated October 23, 2007, recommending approval. (2) Proof of Publication of Notice of Public Hearing, executed on December 7, 2007, submitted by the City Clerk.

Public Comment: Mayor Reed opened the public hearing. Ann Woo and Steve Polcyn spoke in support to the Staff recommendations. Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, the recommendation of the Planning Director was approved, and Ordinance No. 28221, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Southeast Corner of Bollinger Road and Miller Avenue (6148 Bollinger Road) to CN Commercial Neighborhood Zoning District", was passed for publication. (10-0-1. Absent: Chirco.)

(b) Consideration of an ordinance rezoning the real property located on (1) the northwest corner of Clinton Place and Stockton Avenue (299 Stockton Avenue), and (2) the south side of Clinton Place approximately 200 feet west of Stockton Avenue from the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District to allow (1) commercial uses on a 0.32 gross acre site, and (2) an off-site parking lot across Clinton Place. CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1).
PDC07-074 – District 6

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC07-074, dated November 5, 2007, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 26, 2007, transmitting the Planning Commission recommendation of approval. (3) Proof of Publication of Notice of Public Hearing, executed on November 2, 2007, submitted by the City Clerk.

11.1 (b) (Cont'd.)

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

Council Member Oliverio asked Stockton Avenue Investors (Owner) if the neighborhood concerns had been addressed (the reply from the developer was yes).

Action: Upon motion by Council Member Oliverio, seconded by Council Member Pyle and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 28222, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Northwest Corner of Clinton Place and Stockton Avenue and the South Side of Clinton Place approximately 200 Feet West of Stockton Avenue from the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District", was passed for publication. (10-0-1. Absent: Chirco.)

(c) Consideration of a Street Renaming for three existing public streets that are under construction but not completed: Rue Royale St, St. Tropez Drive, and Esterel Court. Proposed names are: John Sorci Drive, Jennifer Daisy Drive, and Jonathan Rachelle Court, respectively, for a 51-single family detached residential development (PD03-026, Tract 9531, Orchard Heights III), located at/on the north side of Aborn Road approximately 1000 feet east of Altamera Avenue (9531 TRACT) (Blossom Valley Investors Inc, Owner). CEQA: Exempt. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.
ST07-002 – District 8

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 27, 2007, recommending approval to rename the three existing streets. (2) Proof of Publication of Notice of Public Hearing, executed on December 7, 2007, submitted by the City Clerk.

Public Comment: Mayor Reed opened the public hearing. Joanna Bateman requested that this item be deferred, adding there should be more outreach to the neighborhood. Mayor Reed closed the public hearing.

Director of Planning, Building and Code Enforcement Joseph Horwedel responded to Council questions.

11.1 (c) (Cont'd.)

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Pyle and carried unanimously, the recommendation of the Planning Director was approved, Resolution No. 74197, entitled: "A Resolution of the Council of the City of San José Renaming Three Public Streets, Currently Named Rue Royale, Saint Tropez Drive and Esterel Court, Located on the North Side of Aborn Road Approximately 1,000 Feet East of Altamera Avenue (Tract 9531, Orchard Heights III) to John Sorci Drive, Jennifer Daisy Drive and Jonathan Rachelle Court, Respectively", was adopted; Planning Staff was directed to work with District 8 Council office about the 500 foot notice outreach process that just took place and typical recourse; Planning Staff was requested to perform a second outreach to the neighborhood. (10-0-1. Absent: Chirco.)

END OF PUBLIC HEARINGS ON CONSENT CALENDAR

PUBLIC HEARINGS

11.2 Consideration of an ordinance rezoning the real property located on the east side of Bird Avenue, approximately 490 feet northeasterly of Snyder Avenue (1023 Bird Avenue), from R-1-8 Residence Zoning District to A(PD) Planned Development Zoning District to allow approximately 530 square feet of living space in an existing two-story accessory structure on an existing single-family lot of a 0.15 gross acre site (Keith Shukait Et. Al, Owner). CEQA: Exempt. The Planning Director recommends that the City Council not adopt the subject rezoning, consistent with Planning Commission's recommendations, for reasons stated in the report.
PDC03-060 - District 6
(Deferred from 12/05/06 – Item 11.6)

Action: Dropped per request of the Property Owner.

11.3 Administrative Hearing on and consideration of an appeal of the Planning Director's decision to approve a Planned Development Tentative Map Permit to subdivide 1 parcel into 19 lots for single-family attached and detached residential uses and one additional common lot on 1.82 gross acres site, in the A(PD) Planned Development Zoning District, located at/on the terminus of Duckett Way, approximately 420 feet east of South DeAnza Boulevard (1566 Duckett Way) (Barry Swenson Builder Green Valley Corp Libby Glass, Owner/Developer). CEQA: Mitigated Negative Declaration and addendum thereto. Director of Planning, Building and Code Enforcement recommends to uphold the Director's decision and approve a Tentative Map permit to allow 19 lots for single family attached and detached residential units and one additional common lot and allow an increase in the size of Lot #19 to accommodate the water tower preservation and access to it, but not allow an increase in the size of Lot #9 as requested by the applicant.
PT07-034 – District 1

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 26, 2007, recommending approval. (2) Proof of Publication of Notice of Public Hearing, executed on December 7, 2007, submitted by the City Clerk.

Action: Dropped per Orders of the Day.

11.4 (a) Adoption of a resolution approving the US-101/Oakland/Mabury Transportation Development Policy. The Policy is proposed to identify required transportation improvements at the US-101/Oakland Road corridor and to manage near term traffic congestions associated with smart growth development in the vicinity. This Policy would create a fair share traffic impact fee to finance the construction of the required improvements, and allow the Level of Services at intersections along the corridor to degrade temporarily below the City's Level of Service goals. CEQA: Resolution to be adopted. (Transportation)

11.4 (a) (Cont'd.)

Documents Filed: (1) Memorandum from Planning Commission Secretary Joseph Horwedel, dated December 6, 2007, transmitting the Planning Commission recommendation of approval. (2) Proofs of Publications of Notices of Public Hearings, executed on November 14, 2007 and December 7, 2007, submitted by the City Clerk.

Deputy Director of Transportation Hans Larsen provided a summary of the proposed Transportation Development Policy and responded to Council questions.

Mayor Reed opened the public hearing.

Council disclosures were made by Mayor Reed, Vice Mayor Cortese and Council Members Pyle, Oliverio, Nguyen, Liccardo, Chu, Campos, Constant and Williams.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and carried, Resolution No. 74195, entitled: "A Resolution of the Council of the City of San José Adopting the US-101/Oakland/Mabury Transportation Development Policy to Address Development Traffic capacity to US-101 and Establishing a Traffic Impact Fee Program to Finance Modification of the US-101/Oakland Road Interchange and Construction of the US-101/Mabury Road Interchange" and CEQA Resolution No. 74195.1, 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 to Liability for General Indebtedness to the City", were adopted. (9-1-1. Noes: Oliverio. Absent: Chirco.)

(b) Consideration of an ordinance rezoning the real property located on the northeasterly side of North king Road, approximately 640 feet south of Mabury Road (Northeast corner of King Road & Dobbin Drive) from the LI Light Industrial Zoning District to the A(PD) Planned Development Zoning District to allow between 800 to 1300 single-family attached residential units, up to 25,000 sq.ft. of commercial uses, and public parkland on a 24.77 gross acre site (San José Transit Village Partners, LLC, Owner). CEQA: Resolution to be adopted. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-1-1). (Planning, Building and Code Enforcement)
PDC07-015 – District 3

11.4 (b) (Cont'd.)

Documents Filed: (1) Memorandum from Council Members Liccardo, Campos and Chu, dated December 14, 2007, recommending approval of the Staff recommendations with conditions. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC07-015, dated November 16, 2007, recommending approval. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated December 5, 2007, transmitting the Planning Commission recommendation of approval. (4) Proof of Publication of Notice of Public Hearing, executed on November 16, 2007, submitted by the City Clerk. (5) Petition signed by fifty residents, dated December 18, 2007, endorsing the relocation of the San José Family Shelter.

Motion: Council Member Liccardo moved approval of the Staff recommendations, including the conditions in the memorandum he cosigned with Council Members Campos and Chu; and also including additional clarifications he omitted from the memorandum. Council Member Chu seconded the motion.

Public Comment: Speaking in support to the Staff recommendations and the motion of the floor were Chris Neale (San José Transit Village, the Applicant), Steve Becerra, Patricia Crowder (Family Supportive Housing), Kathy Robinson (Charities Housing), Norma Martinez, Frank Chavez, Rebecca Wright (Alum Rock Union School District), Leila Forouhi (San José State University Urban Planning Department), Marian Duran, Elizabeth Alvarez and Shiloh Ballard.

Chris Neale (San José Transit Village) rebutted in support of the park and the relocation of the family shelter. Mayor Reed closed the public hearing.

Council Member Liccardo noted that he is working with the Alum Rock School District in order to continue to negotiate and to find a school site.

Council Member Oliverio suggested that more land should be allowed for the park.

Action: On a call for the question, the motion carried, the recommendation of the Planning Commission and the Planning Director was approved, Ordinance No. 28224, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Northeasterly Side of North King Road, Approximately 640 Feet South of Mabury Road to A(PD) Planned Development Zoning District", was passed for publication; The memorandum from Council Members Liccardo, Campos and Chu, dated December 14, 2007, was approved, including: the rezoning of real property from Light Industrial to PD Zoning to allow between 800 - 1,300 residential units, up to 25,000 square feet of commercial uses and a dedication of one acre of land to be developed as a turnkey park, with the remainder of the requirement to be fulfilled with a fee in conformance with the City's Park Dedication Ordinance with the following: (1) Individual Planned Development Permits for structures within the Planned Development Zoning

11.4 (b) (Cont'd.)

District shall conform with Citywide Green Building Standards imposed by the City of San José as of the date of approval of the Site Development Permit. (2) If no green building standards have been adopted, San José Transit Village Partners, LLC, would encourage that each project meet the equivalent of a minimum of 50 points on the Green Point Rated Checklist. All building projects shall be credited for work done on this site as part of the Master Plan PD Permit. The City's Planning, Building and Code Enforcement shall be responsible for confirming the Applicant's green efforts. (b) (3) At a minimum the developer will: (a) divert a minimum of 80% of the Site Demolition waste from sanitary landfills. (b) Use a minimum of 25% Recycled Content for all fill and base rock. (c) Use low flow and/or drip irrigation for all common landscaping. (d) Reduce site wide impervious surfaces to lower the total amount of stormwater runoff. (4) Additional conditions omitted from the memorandum: 10,000 sq foot of commercial minimum to be part of the development. Developer has indicated that 200 units can and will meet the 50 points as minimum. The reduction in the park dedication from 2 acres to 1 acre would be made in conformance with the Park Dedication Ordinance and the remainder of the obligation will be paid in fees. Those fees could be used to upgrade nearby open space such as the Penitencia Creek Park or the Alum Rock School District; Staff was requested to continue working with the Alum Rock School District and negotiate to find a school site; CEQA Resolution No. 74196, entitled: "A Resolution of the Council of the City of San José Making Certain Findings Concerning Mitigation Measures, Adopting a Mitigation Monitoring and Reporting Program, Making Findings Concerning Alternatives and Adopting a Statement of Overriding Considerations for the King and Dobbin Transit Village Planned Development Zoning Project, for Which an Environmental Impact Report Has Been Prepared in Accordance with the California Environmental Quality Act (CEQA)" was adopted; The Statement of Overriding Considerations was read into the record by Council Member Liccardo: "The Final Environment Impact Report for this proposed project identified significant and unavoidable environmental impacts. However, as described in more detail in the proposed resolution of the EIR findings for this item there is no feasible way to lessen or avoid these significant effects for this project and approval of this proposed project is anticipated to result in several benefits to the City. All of these benefits outweigh the significant, unavoidable environmental impacts identified in the Final EIR for this project". (9-1-1. Noes: Oliverio. Absent: Chirco.)

11.5 Consideration of an ordinance rezoning the real property located at/on the southwest corner of E. Hedding Street and N. 10th Street (899 N. 10th Street) to allow construction of 54 single-family attached residences on a 2.09 gross acres site (Greater Bay Trust Company Trustee Et Al, Owner). SNI: 13th Street. CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-1-0).
PDC07-025 – District 3

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC07-025, dated November 6, 2007, recommending approval with modifications. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 16, 2007, transmitting the Planning Commission recommendation of approval. (3) Proof of Publication of Notice of Public Hearing, executed on November 2, 2007, submitted by the City Clerk.

Planning Official John Poindexter presented the Staff Report and responded to Council questions.

Council disclosures were made by Council Member Liccardo.

Public Comment: Mayor Reed opened the public hearing. Chris Neale (Applicant) described the project. Erik Schoennauer (Hudson Properties) stated that a 40 foot separation between the two projects is needed. Chris Neale acknowledged that he is willing to work with Hudson Properties regarding the cul-de-sac.

Mayor Reed closed the public hearing.

Discussion followed with direction as noted in "Action".

Action: Upon motion by Council Member Liccardo, seconded by Vice Mayor Cortese and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, Ordinance No. 28225, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Southeast Corner of East Hedding and North Tenth Streets (899 North 10th Street) to A(PD) Planned Development Zoning District", was passed for publication, including the special conditions to be added to the Draft Development Standards as outlined on Page 5 of the Staff Report: (1) The minimum private open space should be 100 square feet, with a combined total of provide and common open space of 270 square feet. The open space should be provided in a manner which is integrated in the usable living space of the units to the maximum extent feasible. (2) The porches should extend a maximum of 7 feet into the front setback. Staff was directed to: (1) Work with the applicant at the Planned Development Stage for on-site parking; and at the time the Hudson Property site comes forward for rezoning, that both parties come forward with a clear plan as to the alternative which is jointly approved by both the (development) parties. (2) Bring forward a statement from the Department of Transportation as to the analysis of the preferred option presented by the two parties. (10-0-1. Absent: Chirco.)

11.6 Consideration of an ordinance rezoning the real property located in the area bounded by East Virginia Street, Martha Street, South 5th Street, and South 6th Street (9750 TRACT) from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow approximately 18 residential units in ~35 foot tall townhouse structures along S. 6th Street and approximately 240 residential units in a ~55 foot tall podium building with architectural projections up to 70 feet tall on the remainder of a 3.9 gross acre site (Virginia Terrace 170 LP David Small, Owner/ Developer). SNI: Spartan/Keyes. CEQA: Addendum to Mitigated Negative Declaration (PDC05-029). Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1).
PDC07-035 – District 3

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 29, 2007, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC07-035, dated November 16, 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 16, 2007, submitted by the City Clerk.

Senior Planner Lee Butler presented the Staff Report and expressed concern for the parking.

Public Comment: Mayor Reed opened the public hearing. Aurelia Sanchez spoke in support of the Staff recommendations. Craig Scoffone expressed concern regarding the parking. Dave Small (Applicant) explained the proposed project.

Discussion followed.

Senior Planner Lee Butler responded to the concerns of Mr. Scoffone.

Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Liccardo, seconded by Vice Mayor Cortese and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 28226, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Generally Bounded by East Virginia Street to the North, South 6th Street to the East, Martha Street to the South, and South 5th Street to the West to A(PD) Planned Development Zoning District", was passed for publication, including the Staff recommendation of lowering the podium height to the greatest extent possible without reducing the number of parking spaces within the garage and to provide stoops and stairs from the units to site perimeter or to lower the height of the podium to 3 feet above grade, consistent with the Martha Gardens Specific Plan. (10-0-1. Absent: Chirco.)

11.7 Administrative Hearing on and consideration of an appeal of the Planning Commission's decision to conditionally approve a Conditional Use Permit to allow expansion of the previously approved permit to authorize an off-site parking arrangement where patrons would utilize the Santa Clara Valley Transportation Agency parking lot at 3390 Monterey Highway in order to allow additional patrons within the establishment. The Planning Commission's decision denied the applicant's proposal to expand hours of entertainment and to construct an interior wall partition to separate the restaurant from the nightclub to allow patrons under the age of 21 years at the existing Fiesta Restaurant Nightclub on a 2.16 gross acres site, in the CN Neighborhood Commercial Zoning District, located at/on the northeast corner of Monterey Road and Rancho Drive (3844 Monterey Rd) (Noghrey Jamshid and Martha E, Owner). CEQA: Exempt. Director of Planning, Building and Code Enforcement recommends to uphold the Planning Commission's decision to conditionally approve a Conditional Use permit to allow changes to the hours of entertainment, construction of an interior wall, permit an off-site parking arrangement, and to allow patrons under the age of 21 years.
CP06-060 – District 7

Documents Filed: (1) Memorandum from Mayor Reed and Council Members Nguyen, Campos and Oliverio, dated December 14, 2007, recommending approval of the Staff recommendations with conditions. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP06-060, dated, October 1, 2007, recommending approval. (3) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 26, 2007, recommending approval of a Conditional Use Permit as recommended by Staff. (4) Proof of Publication of Notice of Public Hearing, executed on December 7, 2007, submitted by the City Clerk.

Public Comment: Mayor Reed opened the public hearing. Vince Rivero (Fiesta Restaurant) expressed his support to the Staff recommendations.

Mayor Reed closed the public hearing.

Motion: Council Member Nguyen moved approval of the Staff recommendations and the memorandum she cosigned with Mayor Reed and Council Members Campos and Oliverio with further conditions. Council Member Campos seconded the motion.

As part of the Administrative Hearing, Council disclosures were made by Mayor Reed, Vice Mayor Cortese and Council Members Pyle, Nguyen, Chu, Campos, Constant and Williams.

11.7 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, Resolution No. 74198, entitled: "A Resolution of the Council of the City of San José Granting, Subject to Conditions, a Conditional Use Permit to Use Certain Real Property Described Herein for the Purpose of Allowing a Use to Operate After Midnight, To Construct an Interior Wall Partition to Separate the Restaurant Use from the Nightclub Use to Allow Patrons Under the Age of 21 years in Certain Areas, and to Permit an Off Site Parking Arrangement Where Patrons Would Utilize the VTA Parking Lot at 3390 Monterey Highway", was adopted; and the memorandum from Mayor Reed, and Council Members Nguyen, Campos and Oliverio, dated December 14 2007, was approved, including the following conditions: (1) A one year evaluation of the Conditional Use Permit to be conducted by Planning, Building and Code Enforcement to be submitted to the City Council for its review. (2) After 9:00 p.m. the Applicant must utilize a separate entrance for nightclub patrons on the southern side of the building. (10-0-1. Absent: Chirco.)

11.8 Administrative Hearing on and consideration of an appeal of the Planning Commission's decision to deny a Conditional Use Permit to allow off-sale of alcoholic beverages at an approved mini-mart located at a gasoline service station on a 0.63 gross acre site, in the CN Neighborhood Commercial Zoning District, located at the northwest corner of South White Road and Aborn Road (3295 S. White Road) (Vikram Singh and Baljinder Kaur, Owners). CEQA: Exempt. Director of Planning, Building and Code Enforcement recommends to overturn the Planning Commission decision to deny and approve a Conditional Use Permit to allow off-sale of alcoholic beverages in a remodeled gasoline station.
CP07-019 – District 8

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP07-019, dated August 31, 2007, recommending approval with conditions. (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 26, 2007, recommending overturning the Planning Commission decision to deny and approval of a Conditional Use Permit. (3) Proof of Publication of Notice of Public Hearing, executed on December 7, 2007, submitted by the City Clerk.

As part of the Administrative Hearing, Council disclosures were made by Vice Mayor Cortese.

Motion: Vice Mayor Cortese moved approval of the Staff recommendation to overturn the Planning Commission's decision and to approve the Conditional Use Permit. Council Member Pyle seconded the motion.

Director of Planning, Building and Code Enforcement Joseph Horwedel responded to Council questions.

11.8 (Cont'd.)

Public Comment: Mayor Reed opened the public hearing. James Barrett spoke in favor to the motion. Mayor Reed closed the public hearing.

Council Members Liccardo, Oliverio, Chu and Nguyen objected to the selling of alcohol at Services Stations.

Action: On a call for the question, the motion carried, the recommendation of the Planning Director was approved, the Planning Commission decision was overturned and Resolution No. 74199, entitled: "A Resolution of the Council of the City of San José to Approve a Conditional Use Permit to Allow the Off Sale of Alcoholic Beverages at a Remodeled Gasoline Service Station with Car Wash and 1,650 Square Feet of Retail (Approved by Previous CP05-057) Located at 3295 South White Road", was adopted. (6-4-1. Noes: Chu, Liccardo, Nguyen, Oliverio. Absent: Chirco.)

ADJOURNMENT

The Council of the City of San José was adjourned at 9:34 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk
smd/12-18-07MIN

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JOINT REDEVELOPMENT AGENCY ITEM

The Joint Redevelopment Agency Board convened at 10:05 p.m. to consider Item 8.1 in a Joint Session.

8.1 Adoption of resolutions by the City Council and Agency Board:

(a) Approving the Annual Report of Financial Transactions of community redevelopment agencies for FY 2006-07 for the purpose of forwarding the annual report to the State Controller, in accordance with Community Redevelopment Law, Section 33080.1.

(b) Approving the Independent Auditor's Report on internal control over financial reporting and on compliance and other matters based on an audit of financial statement performed in accordance with government auditing standards (Compliance Report), as required by Health and Safety Code 33080.1.

Documents Filed: Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated December 6, 2007, recommending adoption of resolutions.

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Pyle and carried unanimously, Resolution No. 74167, entitled: "A Resolution of the Council of the City of San José (A) Approving the Annual Report of Financial Transactions of Community Redevelopment Agencies for Fiscal Year 2006-2007 and Directing Staff to Forward the Report to the State of California Controller in Accordance with Community Redevelopment Law Section 33080.1 and (B) Approving the Independent Auditor's Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statement Performed in Accordance with Government Auditing Standards, as Required by Health and Safety Code 33080.1" and Redevelopment Agency Resolution No. 5803, were adopted. (10-0-1. Absent: Chirco.)

The Council of the City of San José and Redevelopment Agency Board adjourned at 10:06 p.m.