

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, FEBRUARY 26, 2008

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

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

Absent: Council Members - Reed. (Excused)

Upon motion unanimously adopted, Council recessed at 9:31 a.m. to a Closed Session in Room W133, (A) to confer with Legal Counsel pursuant to Government Code Section 54956.9, subsection (b) with respect to anticipated litigation of significant exposure in re Claim of McClanahan, City Department: Fire. (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9 subsection (a) with respect to existing litigation to consider the cases of: (1) City of San José v. Piedmont and Sierra Plaza, LLC; Names of Parties Involved: City of San José, Piedmont and Sierra Road Plaza, LLC, United Commercial Bank; and Does 1-15; Court: Superior Court of California, County of Santa Clara; Case No: 1-06-CV-071442; Amount of Money or other Relief Sought: Seeking to obtain real property through eminent domain for fair market value. (2) Cimbra-Cruz, et al. v. Woodal, et al.; Names of Parties Involved: Cristabel Cimbra-Cruz, Rebecca Cimbra-Cruz, Jason Woodal, City of San José and Does 1 to 20; Court: Superior Court of California, County of Santa Clara; Case No: 1-06-CV-073533; Amount of Money or other Relief Sought: Damages according to proof. (3) Bernal v. AMPCO, et al.; Names of Parties Involved: Nanetta Bernal, AMPCO System Parking, City of San José and Does 1 to 20; Court: Superior Court of California, County of Santa Clara; Case No: 1-06-CV-070331; Amount of Money or other Relief Sought: Damages according to proof. (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Organization or Name and Title of Unrepresented Employees: San José Police Officers' Association; Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement, City of San José and San José Police Association; (2) Organization or Name and Title of Unrepresented Employees: International Brotherhood of Electrical Workers, Local 332; Nature of Negotiations:

Access the video, the agenda and related reports for this meeting by visiting the City's website at <http://www.sanjoseca.gov/clerk/agenda.asp> or <http://www.sanjoseca.gov/clerk/MeetingArchive.asp>. For information on any ordinance that is not hyperlinked to this document, please contact the Office of the City Clerk at (408) 535-1266.

(Cont'd.)

Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Brotherhood of Electrical Workers, Local 332; How to obtain a copy of existing contract or MOA: web: <http://www.sanjoseca.gov/employeerelations/moa.asp>; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 11:45 a.m. and reconvened at 1:33 p.m. in the Council Chambers.

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

Absent: Council Members - Reed. (Excused)

INVOCATION

Valley Christian High School Choir presented the Invocation. (District 2)

PLEDGE OF ALLEGIANCE

Vice Mayor Cortese led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Constant, seconded by Council Member Williams and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (10-0-1. Absent: Reed.)

CEREMONIAL ITEMS

- 1.1 Presentation of a commendation to Roem Development Corporation for developing critically needed affordable housing in the community, bringing neighbors together as a result of thoughtful design, and contributing to the quality of life in San José. (Nguyen/ Constant)**

Action: Vice Mayor Cortese and Council Members Nguyen and Constant recognized and commended Roem Development Corporation for developing critically needed affordable housing to the City of San José.

**1.2 Presentation of a commendation to Julie Scott of the Rosicrucian Order AMORC for her guidance in leading the museum toward green practices. (Oliverio)
(Rules Committee referral 2/13/08)**

Action: Vice Mayor Cortese and Council Member Oliverio recognized and commended Ms. Julie Scott for her leadership in guiding the Rosicrucian towards green practices.

CONSENT CALENDAR

Upon motion by Council Member Pyle, seconded by Council Member Campos, and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (9-0-2. Absent: Constant; Reed.)

2.1 Approval of minutes.

- (a) **Regular Minutes of January 8, 2008**
- (b) **Regular Minutes of January 15, 2008**
- (c) **Regular Minutes of January 29, 2008**

Documents Filed: Regular Minutes of January 8, 2008, January 15, 2008 and January 29, 2008.

Action: The Regular Minutes were approved. (9-0-2. Absent: Constant; Reed.)

2.3 (a) Approval of consultant master agreements with the following firms for various City projects:

- (1) **Quality Assurance Engineering dba Consolidated Engineering Laboratories for a variety of special inspections and material testing services from the date of execution through December 31, 2010 in an amount not to exceed \$500,000.**
- (2) **Kleinfelder West, Inc. for a variety of special inspections and material testing services from the date of execution through December 31, 2010 in an amount not to exceed \$500,000.**
- (3) **Krazan & Associates, Inc. for a variety of special inspections and material testing services from the date of execution through December 31, 2010 in an amount not to exceed \$500,000.**
- (b) **Adoption of a resolution authorizing the Director of Public Works to negotiate and execute amendments to the above master agreements to amend the scope of services and to add additional standard services.**
- (c) **Adoption of a resolution authorizing the Director of Public Works to negotiate and execute amendments to the above master agreements to amend the Schedule of Charges on an annual basis upon the request of the consultant for all the above master agreements.**

**CEQA: Not a Project. (Public Works)
(Deferred from 2/12/08 – Item 2.11)**

2.3 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen, dated January 22, 2008, recommending approval of the master agreements and adoption of resolutions. (2) Supplemental memorandum from Director of Public Works Katy Allen, dated February 8, 2008, providing an additional necessary action for approval of the contract language that was finalized after the Council memorandum was agendized.

Director of Public Works Katy Allen clarified that Staff is recommending that the City Manager be authorized to negotiate and execute the master agreements.

Action: Upon motion by Council Member Pyle, seconded by Council Member Campos and carried unanimously, [Resolution No. 74238](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute Master Agreements for Special Inspections and Material Testing Services with Quality Assurance Engineering DBA Consolidated Engineering Laboratories, Kleinfelder West, Inc. and Krazan & Associates Inc."; [Resolution No. 74239](#), entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Public Works to Negotiate and Execute Amendments to the Master Agreements for Special Inspections and Material Testing Services with Consolidated Engineering Laboratories, Kleinfelder West, Inc. and Krazan & Associates Inc. to Modify the Scope of Services to Include New Standard Services" and [Resolution No. 74240](#), entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Public Works to Negotiate and Execute Amendments to Master Agreements for Special Inspections and Material Testing Services with Consolidated Engineering Laboratories, Kleinfelder West, Inc. and Krazan & Associates Inc. to Amend the Schedule of Charges on an Annual Basis", were adopted. (9-0-2. Absent: Constant; Reed.)

2.4 **Acceptance of the Office of the City Auditor's Report of Activities and Findings for the Period December 16, 2007 through January 15, 2008. (City Auditor)**

Documents Filed: Report of Activities and Findings for the Period December 16, 2007 through January 15, 2008 from the Office of the City Auditor.

Action: The report was accepted. (9-0-2. Absent: Constant; Reed.)

2.5 **Adoption of a resolution authorizing the City Manager to certify and submit the 2008-2009 City of San José Urban Runoff Management Work Plans to the an Francisco Bay Regional Water Quality Control Board in conformance with the City's Municipal Separate Storm Sewer System National Pollutant Discharge Elimination System permit requirements. CEQA: Exempt, File No. PP06-013. (Environmental Services)**

2.5 (Cont'd.)

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated February 4, 2008, recommending adoption of a resolution and transmitting the 2008-2009 Urban Runoff Management Work Plans.

Public Comments: William Garbett objected to the Staff recommendations.

Action: Upon motion by Council Member Pyle, seconded by Council Member Constant and carried unanimously, [Resolution No. 74241](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Certify and Submit the 2008-2009 City of San José Urban Runoff Management Work Plans to the Regional Water Quality Control Board in Conformance with City's Municipal Separate Storm Sewer System National Pollutant Discharge Elimination System Permit Requirements", was adopted. (10-0-1. Absent: Reed.)

2.6 **Approval of award of open purchase orders for supplies, materials, equipment and services for FY 2007-2008 #5 and authorization for the Director of Finance to execute the purchase orders. CEQA: See Administration's memo to Council for specific CEQA clearance determinations on each recommended action. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated February 4, 2008, recommending approval of award of open purchase orders.

Action: The open purchase orders were approved and the Director of Finance was authorized to execute the purchase orders. (9-0-2. Absent: Constant; Reed.)

2.7 **Approval of the Report on the Status of Healthy Food Choices offered through the City Vending Machine Program and direction to amend the nutrition specifications for the City's Vending Machine Program by allowing the sale of fresh, canned, and dried fruits and vegetables. CEQA: Not a Project. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated February 4, 2008, recommending approval of the report.

Public Comments: Marjorie Freedman, PhD, expressed concern that not all City vending machines are in compliance with City Code.

Action: The Report on the Status of Healthy Food Choices offered through the City Vending Machine Program and direction to amend the nutrition specifications were approved. (10-0-1. Absent: Reed.)

2.8 **Request for an excused absence for Council Member Nguyen from the Priority Setting Session on February 15, 2008 from 12:00 Noon to 4:00 p.m. due to prior long standing commitment. (Nguyen) (Rules Committee referral 2/13/08)**

2.8 (Cont'd.)

Documents Filed: Memorandum from Council Member Nguyen, dated February 8, 2008, requesting an excused absence due to a prior long standing commitment.

Action: The absence was excused. (9-0-2. Absent: Constant; Reed.)

- 2.9 (a) Adoption of a resolution authorizing the City Manager to negotiate and execute a first amendment to the agreement between the City of San José and Los Lagos Golf Course, LLC for Construction of the Safety Improvements, increasing the contract amount by \$260,946 from \$1,958,125 to \$2,219,071, and extending the term from June 30, 2008 to January 31, 2009.**
- (b) Adoption of the following Appropriation Ordinance amendments in the Construction Tax and Property Conveyance Tax Fund: City-Wide Parks Purposes (Fund 391):**
- (1) Increase the Los Lagos Golf Course Safety Improvements appropriation in the Parks, Recreation and Neighborhood Services Department in the amount of \$261,000; and**
 - (2) Decrease the Ending Fund Balance by \$261,000.**

CEQA: Exempt, File No. PP06-102. Council District 7. (Parks, Recreations and Neighborhood Service/City Manager's Office/Public Works)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, Budget Director Larry Lisenbee, dated February 4, 2008, recommending adoption of a resolution.

Motion: Council Member Oliverio moved that this item be deferred to the budget hearings. Council Member Constant seconded the motion. Council Member Nguyen explained that the neighborhood was there before the golf course and that Council approved this several months ago and should not wait until the budget process to alleviate the liability concerns. Council Member Constant withdrew the second. The motion died.

Action: Council Member Nguyen moved approval of the Staff recommendations. Council Member Pyle seconded the motion. The motion carried, and [Resolution No. 74242](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a First Amendment to the Agreement with Los Lagos Golf Course, LLC for Construction of the Safety Improvements at Los Lagos Golf Course, Increasing the Amount to \$2,219,071 and Extending the Term to January 31, 2009" and [Ordinance No. 28243](#), 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 Los Lagos Golf Course Safety Improvements; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" were adopted. (9-1-1. Noes: Oliverio. Absent: Reed.)

- 2.10 Adoption of a resolution ordering the reorganization of territory designated as Burbank No. 39 which involves the consenting annexation to the City of San José of an approximately 0.11 acres more or less of land located at the east side of North Bascom Avenue approximately 225 feet north of Olive Avenue, and generally bounded by City of San José Annexations Burbank Nos. 34 and 37, and the detachment of the same from the appropriate special districts including Central Fire Protection, Area No. 01 (Library Services) County Service, Burbank Sanitary and County Lighting County Services. CEQA: Resolution No. 65459, File No. C07-036. Council District 6. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated February 4, 2008, recommending adoption of a resolution.

Action: [Resolution No. 74243](#), entitled: "A Resolution of the Council of the City of San José Ordering the Reorganization of Certain Uninhabited Territory Designated as Burbank No. 39, Subject to Liability for General Indebtedness of the City", was adopted. (9-0-2. Absent: Constant; Reed.)

- 2.11 Approval of the second amendment to the master agreement with HMM Engineers for consultant land surveying services for various projects extending the term of the agreement from February 29, 2008 to December 31, 2009 and to modify the rates of compensation, with no increase in total compensation. CEQA: Not a Project. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated February 4, 2008, recommending approval of the second amendment to the master agreement.

Action: The master agreement with HMM Engineers for consultant land surveying services for various projects extending the term of the agreement from February 29, 2008 to December 31, 2009 and to modify the rates of compensation, with no increase in total compensation was approved. (9-0-2. Absent: Constant; Reed.)

- 2.12 Report on bids and award of contract for the ADA Accessibility Ramps for the Street Resurfacing Project 2008 to the low bidder, Golden Bay Construction and approval of a contract in the amount of \$793,367, plus a contingency in the amount of \$79,337 for a total contract amount of \$872,704. CEQA: Exempt, File No. PP05-212. Council Districts 1, 2, 3, 4, 6, 7, 9 and 10. (Transportation)**

Documents Filed: Memorandum from Director of Transportation James Helmer, dated February 4, 2008, recommending award of the contract.

Action: The award of the contract for the ADA Accessibility Ramps for the Street Resurfacing Project 2008 to the low bidder, Golden Bay Construction and approval of a contract in the amount of \$793,367, with related contingency, was approved. (9-0-2. Absent: Constant; Reed.)

STRATEGIC SUPPORT SERVICES

3.2 Report of the Rules and Open Government Committee – February 6, 2008 Mayor Reed, Chair

Action: Deferred to March 4, 2008 per City Clerk.

3.3 Report of the Rules and Open Government Committee – February 13, 2008 Mayor Reed, Chair

Action: Deferred to March 4, 2008 per City Clerk.

- 3.5 (a) Approval of Amendment No. 3 to the Naming Rights and Trademark License Agreement among the City, San José Arena Management, San José Sharks and Hewlett Packard Corporation removing certain restrictions on the use of a portion of the funds received by the City in exchange for the Arena naming rights.**
- (b) Adoption of a resolution specifying the City Council’s intent to use the additional funds from the Naming Rights Agreement for any use allowed under the Council Expenditure and Reimbursement Policy, except personnel.**
- (City Attorney)**
(Rules Committee referral 1/30/08)
(Deferred from 2/12/08 – Item 3.5)

Action: Deferred to March 4, 2008 per City Attorney.

3.6 Adopt a resolution in support of the issuance of a commemorative postal stamp in honor of the late Mayor Tom Bradley. (Williams) (Rules Committee referral 2/13/08)

Documents Filed: Replacement memorandum from Council Member Williams, dated February 7, 2008, recommending adoption of a resolution..

Action: Upon motion by Council Member Williams, seconded by Council Member Constant and carried unanimously, [Resolution No. 74244](#), entitled: “A Resolution of the Council of the City of San José Supporting the Issuance of a Postal Stamp in Honor of Mayor Tom Bradley”, was adopted. (10-0-1. Absent: Reed.)

3.7 As recommended by the Rules and Open Government Committee on February 20, 2008, adopt an oppose position to Proposition 98 and a support position for Proposition 99 – Constitutional Amendments Dealing with Government Acquisition Regulation of Private Property. (City Manager’s Office/Redevelopment Agency) [Rules Committee referral 2/20/08 – Item (C)(1)(a)]

Documents Filed: Memorandum from City Clerk Lee Price, dated February 21, 2008, transmitting the recommendations of the Rules and Open Government Committee.

3.7 (Cont'd.)

Action: Upon motion by Council Member Chirco, seconded by Council Member Nguyen and carried, an oppose position to Proposition 98 and a support position to Proposition 99 were adopted. (8-2-1. Noes: Constant, Oliverio. Absent: Reed.)

3.8 As recommended by the Rules and Open Government Committee on February 20, 2008, accept the Santa Clara Valley Water District's (SCVWD) FY 2009 – Federally partnered projects in the City of San José's jurisdiction and approve the City's mutual request for funds through the appropriation process. (City Manager's Office/Environmental Services)

[Rules Committee referral 2/20/08 – Item (C)(2)(a)]

Documents Filed: Memorandum from City Clerk Lee Price, dated February 21, 2008, transmitting the recommendations of the Rules and Open Government Committee.

Action: Upon motion by Council Member Pyle, seconded by Council Member Campos and carried unanimously, the Santa Clara Valley Water District's FY 2009 – Federally partnered projects in the City of San José's jurisdiction and the City's mutual request for funds through the appropriation process were approved. (10-0-1. Absent: Reed.)

COMMUNITY AND ECONOMIC DEVELOPMENT

- 4.4 (a) Approval of the assumption of ownership through a deed in lieu of foreclosure of The Haven Disaster Relief Shelter and the Locust Street triplex located at 937-943 Locust Street by the City of San José from EHC Lifebuilders.**
- (b) Adoption of a resolution authorizing the Director of Housing to negotiate and execute all required legal instruments to accomplish the assumption of ownership and continued operations of the property as a disaster and emergency relief shelter.**

CEQA: Exempt. Council District 3. SNI: Washington-Guadalupe. (Housing)

Documents Filed: Memorandum from Director of Housing Leslye Krutko, dated January 25, 2008, recommending approval of the assumption of ownership and adoption of a resolution.

Director of Housing Leslye Krutko presented an update of the Haven Disaster Relief Shelter and the Locust Street triplex.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, [Resolution No. 74245](#), entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Housing to Negotiate and Execute all Required Legal Instruments to Accomplish the Assumption of Ownership and Continued Operations of the Haven Disaster Relief Shelter and the Locust Street Triplex Located at 937-943 Locust Street in San José as a Disaster and Emergency Relief Shelter", was adopted. (10-0-1. Absent: Reed.)

- 4.5 (a) Adoption of a resolution authorizing the Director of Housing to accept Building Equity and Growth in Neighborhoods Housing (BEGIN) Program grants from the California Department of Housing and Community Development and to negotiate and execute the grant agreements and any amendments or other documents necessary to implement the programs funded by the following BEGIN grants:
- (1) A \$1,200,000 grant to fund downpayment assistance loans to first-time homebuyers purchasing in the Modern Ice condominium development.
 - (2) A \$240,000 grant to fund down payment assistance loans to first-time homebuyers purchasing in The One East Julian condominium development.
 - (3) A \$360,000 grant to fund downpayment assistance loans to first-time homebuyers purchasing in the Tierra Encantada townhome development.
 - (4) A \$720,000 grant to fund downpayment assistance loans to first-time homebuyers purchasing in the Skyline/Tamien Station condominium development.
 - (5) A \$480,000 grant to fund downpayment assistance loans to first-time homebuyers purchasing in the San Carlos Bowl townhome development.
 - (6) A \$2,280,000 grant to fund down payment assistance loans to first-time homebuyers purchasing in the Monte Vista at Cannery Square development.
- (b) Adoption of the following Appropriation Ordinance and Funding Sources Resolution amendments in the Multi-Source Housing Fund for 2007-2008:
- (1) Increase the estimate for Earned Revenue in the Multi-Source Housing Fund by \$5,280,000.
 - (2) Increase the CalHOME Program appropriation in the Multi-Source Housing Fund by \$5,280,000.

CEQA: Not a Project. Council Districts 3, 5 and 6. SNI: 13th Street, Mayfair, Burbank/Del Monte and Washington. (Housing/City Manager's Office)

Documents Filed: (1) Memorandum from Director of Housing Leslye Krutko and Budget Director Larry Lisenbee, dated February 4, 2008, recommendation adoption of a resolution and appropriation ordinance and funding sources resolution amendments.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Oliverio and carried unanimously, [Resolution No. 74246](#), entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Housing to Accept Building Equity and Growth in Neighborhoods Housing Program Grants from the California Department of Housing and Community Development and to Negotiate and Execute Grant Agreements and Any Amendments or Other Documents Necessary to Implement the Programs Funded By Six BEGIN Grants"; [Ordinance No. 28244](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 28071 to Appropriate

4.5 (Cont'd.)

Monies in the Multi-Source Housing Fund for the CalHOME Program; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption” and [Resolution No. 74247](#), 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 Multi-Source Housing Fund”, were adopted. (10-0-1. Absent: Reed.)

4.6 Actions related to the Coyote Valley Specific Plan and the revised Environmental Impact Report.

Action: Deferred to March 4, 2008 per Rules Committee.

NEIGHBORHOOD SERVICES

5.1 Report of the Neighborhood Services and Education Committee – February 14, 2008 Council Member Chirco, Chair

Documents Filed: The Neighborhood Services and Education Committee Report dated February 14, 2008.

Action: Upon motion by Council Member Chirco, seconded by Council Member Pyle and carried unanimously, the Neighborhood Services and Education Committee Report and the actions of February 14, 2008 were accepted. (10-0-1. Absent: Reed.)

5.2 (a) Adoption of the following Appropriation Ordinance amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District #4 (Fund 381):

- (1) Establish an appropriation to the Parks, Recreation and Neighborhood Services Department in the amount of \$86,000 for the TRAIL: Lower Guadalupe River (Gold Street to Highway 880);
- (2) Establish an appropriation to the Parks, Recreation and Neighborhood Services Department in the amount of \$113,000 for the TRAIL: Coyote Creek (Highway 237 to Story Road);
- (3) Decrease the appropriation for TRAIL: Coyote Creek/Montague Expressway to Story Road Master Plan Project by \$113,000; and
- (4) Decrease the Ending Fund Balance by \$86,000.

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

- (1) Establish an appropriation to the Parks, Recreation and Neighborhood Services Department in the amount of \$1,819,000 for the TRAIL: Lower Guadalupe River (Gold Street to Highway 880);
- (2) Establish an appropriation to the Parks, Recreation and Neighborhood Services Department in the amount of \$955,000 for the TRAIL: Bay Trail Reach 9 (Gold Street to San Tomas Aquino);

- 5.2 (b) (3) Establish an appropriation to the Parks, Recreation and Neighborhood Services Department in the amount of \$991,000 for the TRAIL: Coyote Creek (Highway 237 to Story Road);
- (4) Decrease the Reserve: Trail Development - North San José by \$350,000;
- (5) Decrease the Reserve: Alviso Area Improvements by \$1,580,000;
- (6) Decrease the Reserve: District 4 North San José Development by \$494,000;
- (7) Decrease the Reserve: District 4 Land Acquisition, and Development Southern Area by \$862,000;
- (8) Decrease the Reserve: Future PDO/PIO Projects by \$380,000; and
- (9) Increase the Earned Revenue estimate by \$99,000.

CEQA: Not a Project. Council Districts 3 and 4. SNI: University, Spartan/Keyes, Five Wounds/Brookwood Terrace, 13th Street. (Parks, Recreation and Neighborhood Services/City Manager's Office)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso and Budget Director Larry Lisenbee, dated February 4, 2008, recommending adoption of appropriation ordinance amendments and appropriation ordinance and funding sources resolution amendments.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Liccardo and carried unanimously, [Ordinance No. 28245](#), 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: Parks Purposes Council District No. 4 for the Trail: Guadalupe River (Gold Street to Highway 880) and for the Trail: Coyote Creek (Highway 237 to Story Road); and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption"; [Ordinance No. 28246](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 28071 to Appropriate Monies in the Subdivision Park Trust Fund for the Trail: Lower Guadalupe River (Gold Street to Highway 880) and for the Trail: Bay Trail Reach 9 (Gold Street to San Tomas AcQuino) and for the Trail: Coyote Creek (Highway 237 to Story Road); and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" and [Resolution No. 74248](#), 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 Subdivision Park Trust Fund", were adopted. (10-0-1. Absent: Reed.)

TRANSPORTATION & AVIATION SERVICES

6.1 Report of the Transportation and Environment Committee – February 4, 2008 Council Member Williams, Chair

Documents Filed: The Transportation and Environment Committee dated February 4, 2008.

6.1 (Cont'd.)

Action: Upon motion by Council Member Williams, seconded by Council Member Chirco and carried unanimously, the Transportation and Environmental Committee Report and the actions of February 4, 2008 were accepted. (10-0-1. Absent: Reed.)

6.2 **Adoption of a resolution authorizing the City Manager to negotiate and execute an amendment to the URS Corporation Master Agreement for continuing program support services on Airport Capital Improvement Projects, increasing compensation by \$7.5 million for a total amount not to exceed \$15 million, and clarifying the methodology used to set labor billing rates. CEQA: Resolution Nos. 67380 and 71451, File No. PP07-255. (Airport)**

Documents Filed: Memorandum from Director of Aviation William Sherry, dated February 6, 2008, recommending adoption of a resolution.

Action: Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, [Resolution No. 74249](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Amendment to the Master Agreement with URS Corporation for Continuing Program Support Services on Airport Capital Improvement Projects, Increasing Compensation by \$7.5 Million for a Total Amount Not To Exceed \$15 Million and Clarifying the Methodology Used to Set Labor Billing Rates", was adopted. (10-0-1. Absent: Reed.)

6.3 **Adoption of a resolution authorizing the City Manager to negotiate and execute a first amendment to the Ground Lease with SJC Fuel Company, LLC for Fuel System (Agreement) at Norman Y. Mineta San José International Airport to relocate the fuel dispensing area at a cost of \$1.435 million dollars, to expand the size of the premises with a corresponding rental increase of \$1.565 million over the term of the Agreement, and to allow for changes in the design of the fuel system. CEQA: Resolution Nos. 67380 and 71451, File No. PP07-259. (Airport)**

Documents Filed: Memorandum from Director of Aviation William Sherry, dated February 4, 2008, recommending adoption of a resolution.

Action: Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, [Resolution No. 74250](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a First Amendment to the Ground Lease with SJC Fuel Company, LLC for Fuel System at the Norman Y. Mineta San José International Airport to Relocate the Fuel Dispensing Area at a Cost of \$1.435 Million, To Expand the Size of the Premises with a Corresponding Rental Increase of \$1.565 Million Over the Term of the Agreement, and to Allow for Changes in the Design of the Fuel System", was adopted. (10-0-1. Absent: Reed.)

- 6.4 (a) Adoption of a resolution authorizing the City Manager to negotiate and execute the first amendment to the On-Airport Rental Car Operations and Lease Agreements with the current on-Airport rental car companies (Avis Budget Car Rental (operating as Avis and Budget), DTG Operations, Inc. (operating as Dollar and Thrifty), EAN, LLC (operating as Enterprise, Alamo and National), Fox Rent A Car, Inc. and The Hertz Corporation) for on-Airport rental car operations at the Consolidated Rental Car Garage to extend the maximum term for an additional five year period by providing for a term of ten years from commencement of operations at the Consolidated Rental Car Garage, and up to two ten-year renewal periods, subject to mutual agreement of the City and the rental car companies, for a total maximum term of up to thirty years, to establish a Rent Stabilization Fund to be funded from excess facility rent payments in an amount not to exceed \$1,000,000 and to provide that any unexpended Program Reserve on hand upon completion of construction of the Consolidated Rental Car Garage will be credited to either the Rent Stabilization Fund or the repayment of debt on the Consolidated Rental Car Garage.
- (b) Approval of the second amendment to the Contract with Hensel Phelps Construction Co. for design and construction of the Airport Terminal Area Improvement Program to increase the maximum not-to-exceed contract compensation by \$13 million, from \$647,119,130 to \$660,119,130.
- (c) Adoption of the following Appropriation Ordinance Amendments in the Airport Revenue Bond Improvement Fund:
- (1) Increase the Consolidated Rental Car Facility appropriation by \$22,900,000;
 - (2) Increase the Public Parking Garage appropriation by \$1,300,000;
 - (3) Decrease the Terminal Area Development, Phase I appropriation by \$1,300,000;
 - (4) Decrease the Ending Fund Balance by \$22,900,000.
- (d) Approval of a City-controlled program reserve for potential additions to the scope of the Consolidated Rental Car Garage, in an amount not to exceed \$11,200,000.
- (e) Adoption of a resolution authorizing the City Manager to negotiate and execute contract change orders for the City-controlled program reserve in an amount not to exceed \$11,200,000.
- (f) Authorize the City Manager to increase the estimated premium and estimated loss reserves in the City's current Owner Controlled Insurance Program for the Airport's Master Plan projects with American International Group from \$19,500,000 to a total amount not to exceed \$25,000,000.

CEQA: Resolution Nos. 67380 and 71451, File No. PP08-015. (Airport/Public Works/ City Manager's Office)

6.4 (Cont'd.)

Documents Filed: Memorandum from Director of Aviation William Sherry, Director of Public Works Katy Allen and Budget Director Larry Lisenbee, dated February 4, 2008, recommending adoption of a resolution, approval of the second amendment to the contract with Hensel Phelps, adoption of appropriation ordinance amendments, approval of a City controlled program, adoption of a resolution and authorization to the City Manager to increase estimated premium and loss reserves in the City's current insurance program.

Assistant Director of Aviation Frank Kirkbride responded to Council questions.

Action: Upon motion by Council Member Chirco, seconded by Council Member Williams and carried unanimously, [Resolution No. 74251](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute the First Amendment to the On Airport Rental Car Operations and Lease Agreements with the Current On Airport Rental Car Companies"; [Ordinance No. 28247](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 28071 to Appropriate Monies in the Airport Revenue Bond Improvement Fund for the Consolidated Rental Car Facility and for the Public Parking Garage; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" and [Resolution No. 74252](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute Contract Change Orders for the City Controlled Program Reserve for the Norman Y. Mineta San José International Airport Consolidated Rental Car Garage in an Amount Not To Exceed \$11,200,000", were adopted; the second amendment to the Contract with Hensel Phelps Construction Co. for design and construction of the Airport Terminal Area Improvement Program to increase the maximum not-to-exceed contract compensation by \$13 million, from \$647,119,130 to \$660,119,130; a City-controlled program reserve for potential additions to the scope of the Consolidated Rental Car Garage, in an amount not to exceed \$11,200,000 were approved, and the City Manager was authorized to increase the estimated premium and estimated loss reserves in the City's current Owner Controlled Insurance Program for the Airport's Master Plan projects with American International Group from \$19,500,000 to a total amount not to exceed \$25,000,000. (10-0-1. Absent: Reed.)

6.5 **Report on Request for Proposal for shuttle bus service at the Norman Y. Mineta International Airport and adoption of a resolution authorizing the Director of Finance, subject to annual appropriation of funds, to:**

- (a) **Execute an agreement with ShuttlePort California LLC (Oak Brook, IL) for shuttle bus service to include management, operations, scheduling and maintenance, with a first year maximum compensation of \$9,500,000, for a three-year initial term subject to the Consumer Price Index (CPI).**
- (b) **Execute amendments to the agreement to add and delete routes and schedules.**
- (c) **Exercise one two-year option to renew the agreement subject to the CPI.**

CEQA: Resolution Nos. 67380 and 71451, File No. PP08-004. (Finance)

6.5 (Cont'd.)

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated February 4, 2008, recommending adoption of a resolution.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, [Resolution No. 74253](#), entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Finance to Execute an Agreement with ShuttlePort California LLC for Shuttle Bus Service at the Norman Y. Mineta San José International Airport", was adopted. (10-0-1. Absent: Reed.)

PUBLIC SAFETY SERVICES

8.1 (a) Adoption of a resolution authorizing the City Manager to:

- (1) Negotiate and execute a Memorandum of Understanding (Governance MOU) with the City and County of San Francisco, City of Oakland, Alameda County, and Santa Clara County as partners in the Fiscal Year 2007 Super Urban Area Security Initiative (SUASI) grant.**
- (2) Negotiate and execute a joint Memorandum of Understanding (Funding MOU) between the City of San José and the City and County of San Francisco, acting as fiscal agent for the Bay Area SUASI, to allocate \$3,860,000 of the 2007 SUASI grant to the City of San José.**
- (3) Negotiate and execute an amendment to the existing 2006 SUASI MOU to extend the grant term from February 29, 2008, to June 30, 2008, facilitating completion of the ECOMM project.**

(b) Adoption of the following Appropriation Ordinance and Funding Sources Resolution in the General Fund for Fiscal Year 2007-2008:

- (1) Establish a City-wide appropriation to the Police Department for the 2007 Super Urban Area Security Initiative (SUASI) - Police in the amount of \$200,000;**
- (2) Establish a City-wide appropriation to the Police Department for the 2007 Super Urban Area Security Initiative (SUASI) - Interoperable Communications in the amount of \$2,660,000;**
- (3) Establish a City-wide appropriation to the Office of Emergency Services (OES) for the 2007 Super Urban Area Security Initiative (SUASI) - OES in the amount of \$1,000,000;**
- (4) Increase the Revenue from the Federal Government estimate by \$3,860,000;**

CEQA: Mitigated Negative Declaration, File No. PP07-055. (Police/City Manager's Office)

Documents Filed: Memorandum from Police Chief Robert Davis and Budget Director Larry Lisenbee, dated February 4, 2008, recommending adoption of a resolution and appropriation ordinance and funding sources resolution amendments.

8.1 (Cont'd.)

Director of Office of Emergency Services Kimberly Shunk responded to Council questions.

Action: Upon motion by Council Member Pyle, seconded by Council Member Campos and carried unanimously, [Resolution No. 74254](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Memorandum of Understanding with the City and County of San Francisco, City of Oakland, Alameda County and Santa Clara County Related to the Fiscal Year 2007 Super Urban Security Initiative Grant, a Memorandum of Understanding with the City and County of San Francisco to Act as Fiscal Agent for the Bay Area Super Urban Security Initiative and the Amendment to the Existing Memorandum of Understanding Related to the 2006 Urban Security Initiative Grant to Extend the Grant Term”; [Ordinance No. 28248](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28071 to Appropriate Monies in the General Fund for the 2007 Super Urban Area Security Initiative - Office of Emergency Services for the 2007 Super Urban Area Security Initiative – Police and to the Super Urban Area Security Initiative – Interoperable Communications; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption” and [Resolution No. 74255](#), entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 73862 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2007-2008 to Adjust Revenues in the General Fund” were adopted. (10-0-1. Absent: Reed.)

OPEN FORUM

Documents Filed: The Homeowners and Bank Protection Act of 2007 information sheet, provided by Ben Deniston and Damien Yule, dated February 26, 2008.

- (1) Ross Signorino commented on the protest at City Hall about the naming of a portion of Story Road.
- (2) Ben Deniston and Damien Yule provided information about the Homeowners and Bank Protection Act of 2007.
- (3) David Wall informed Council that there is a code enforcement problem in District 3 regarding illegal signage and vehicle abatement issues.
- (4) Therese Wiese urged Council to keep the Pearl Avenue Library open.
- (5) Wilma Hashi urged Council to keep the Seven Trees Library open.

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 3:41 p.m.

RECESS/RECONVENE

The City Council recessed at 3:41 p.m. from the afternoon Council Session and reconvened at 7:02 p.m. in the Council Chambers, City Hall.

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

Absent: Council Members - Chirco; Reed. (Excused)

City Clerk Lee Price read the requests for continuance of the applications. Upon motion by Council Member Liccardo, seconded by Council Member Oliverio, and carried unanimously, the below noted continuances and actions were taken as indicated. (9-0-2. Absent: Chirco; Reed.)

CEREMONIAL ITEMS

1.3 Presentation of a commendation to three outstanding junior tennis players: Cassandra Borjon, Tayler Davis, and Cameron Klinger. (Williams)

Action: Vice Mayor Cortese and Council Member Williams recognized and commended Cassandra Borjon, Tayler Davis and Cameron Klinger for their achievements and Don Johnson, Coach for helping them achieve success.

1.4 Presentation of commendations to the grand prize winners in the Art in Silicon Valley Conference for Community Justice's Martin Luther King Jr. Student Art/Writing/ Multimedia contest this past January; Heather Le in Art, Melissa Marfell in Writing and Randy Tran in Multimedia. (Williams/Nguyen) (Rules Committee referral 2/13/08)

Action: Vice Mayor Cortese and Council Members Williams and Nguyen recognized and commended the grand prize winners in the Art in Silicon Valley Conference for Community Justice's Martin Luther King Jr. Student Art/Writing/Multimedia contest this past January: Heather Le (Art), Melissa Marfell (Writing) and Randy Tran (Multimedia). Melissa Marfell read her award winning poem.

COMMUNITY & ECONOMIC DEVELOPMENT

4.2 Conduct Public Hearing and consider the adoption of a resolution on the reorganization/annexation to the City of San José of territory designated as Evergreen No. 200 on an approximately 34.1 gross acre County island consisting of 36 parcels located between Pleasant Acres Drive and Ruby Avenue, west of Murillo Avenue, and detachment of the same from the appropriate special districts including Central Fire Protection and Area No. 01 (Library Services) County Service (Multiple Owners). CEQA: Resolution No. 65459 (Related Rezoning C06-127). Council District 8. (Planning, Building and Code Enforcement) (Deferred from 1/29/08 – Item 4.6)

4.2 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated January 7, 2008, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated February 22, 2008, stating that this item was deferred from the January 29, 2008 Meeting to allow Staff time to investigate concerns related to the existing water service infrastructure and the provision of fire protection services.

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

Action: Upon motion by Council Member Williams, seconded by Council Member Constant and carried unanimously, [Resolution No. 74256](#), entitled: "A Resolution of the Council of the City of San José Making Determinations and Ordering the Reorganization of Certain Inhabited, Unincorporated Island Territory Designated as Evergreen No. 200, Subject to Liability for General Indebtedness of the City", was adopted. (9-0-2. Absent: Chirco; Reed.)

4.3 **Denial or continued processing of General Plan Amendment request to change the Land Use/Transportation Diagram designation from Very Low Density Residential (2 DU/AC) to Medium Low Density Residential (8 DU/AC) on a 1.82-acre site located on the east side of Almaden Expressway approximately 300 feet northerly of Fleetwood Drive (Tom Mazzone, Owner and Applicant). CEQA: Incomplete. Director of Planning, Building and Code Enforcement recommends denial. Planning Commission recommends continued processing of the application (6-0-1, Platten Absent).**

GP07-10-01 – District 10
(Deferred from 2/5/08 – Item 4.2).

Documents Filed: (1) Memorandum from Council Member Pyle, dated January 31, 2008, recommending approval of the Planning Commission's recommendation to continue processing the General Plan request with conditions as listed below in "Action". (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP07-10-01, dated December 13, 2007. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated January 17, 2008, transmitting the Planning Commission recommendation. (4) Letter from Lawrence Ames, resident of District 10, dated February 26, 2008, requesting denial of the application.

Motion: Council Member Pyle moved approval of the Planning Commission recommendation to continue processing of the application. Council Member Constant seconded the motion.

Vice Mayor Cortese opened the public hearing.

4.3 (Cont'd.)

Public Comment: Tom Mazzone, Owner and Applicant, spoke in favor of the proposed rezoning of the property. Larry Ames, Jean Dresden and Lilah Freitas (Friends of the Los Alamitos Creek) expressed concern about the riparian corridor setbacks and spoke in support of the Planning Director's recommendation to deny the project.

Vice Mayor Cortese closed the public hearing.

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

Council Member Pyle added direction that the project not exceed six (6) units. Council Member Constant accepted the amendment.

Action: On a call for the question, the motion carried, the continued processing of the General Plan Amendment request was approved, with the following direction: (1) Evaluate the dedication and improvement of project frontage to facilitate future construction of an acceleration/deceleration lane consistent with the Jayden Lane Planned Development Rezoning File No. PDC06-070 (Attachment A) since that evaluation will inform any future decision related to the subject site. (2) Evaluate the establishment of a riparian setback along Los Alamitos Creek consistent with the City's Riparian Corridor Policy Study, May 1994 as a part of this application. (3) Identify existing easements and other constraints related to this site on a survey plan prepared by a registered civil engineer. (4) Pursue a residential development density that is consistent with the surrounding neighborhood, and with the added direction that the project not exceed six (6) units. (8-1-2. Noes: Oliverio. Absent: Chirco; Reed.)

PUBLIC HEARINGS ON CONSENT CALENDAR

Upon motion by Council Member Liccardo, seconded by Council Member Oliverio and carried unanimously, the Public Hearings on Consent Calendar were approved and the below listed actions were taken as indicated. (9-0-2. Absent: Chirco; Reed.)

- 11.1 (a) Consideration of an ordinance rezoning the real property located at the northeast corner of Monterey Road and Umbarger Road (2680 Monterey Rd) from County to the CN Commercial Neighborhood Zoning District to allow commercial uses on a 2.7 gross acre site (Caputo, Daniel J. Jr. Trustee & Et Al, Owner; Phil Rolla, Developer). CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.**
C07-092 – District 7
[Deferred from 1/29/08 – Item 11.1(e)]

11.1 (a) (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C07-092, dated January 7, 2008, recommending approval. (2) Proof of Publication of Notice of Public Hearing, executed on February 15, 2008, submitted by the City Clerk.

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

Action: The recommendation of the Planning Director was approved, and [Ordinance No. 28249](#), entitled: "An Ordinance of the City of San José Prezoning Certain Real Property Situated at the Northeast Corner of Monterey Road and Umbarger Road (2680 Monterey Road) to CN Commercial Neighborhood Zoning District", was passed for publication. (9-0-2. Absent: Chirco; Reed.)

- (b) Consideration of an ordinance rezoning the real property located on the north side of San Felipe Road, approximately 650 feet south of Fowler Road (3810 San Felipe Road) from Agriculture to R-1-5 Single Family Residence Zoning District on a 0.46 gross acre site (Li Chaoyang and Cao Hong, Owner). CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.**

C07-093 – District 8

[Continued from 2/5/08 – Item 11.1(c)]

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C07-0923 dated February 4, 2008, recommending approval. (2) Proof of Publication of Notice of Public Hearing, executed on January 25, 2008, submitted by the City Clerk.

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

Action: The recommendation of the Planning Director was approved, and [Ordinance No. 28250](#), entitled: "An Ordinance of the City of San José Prezoning Certain Real Property Situated on the North Side of San Felipe Road Approximately 650 Feet South of Fowler Road (3819 San Felipe Road) to R-1-5 Single Family Residence Zoning District", was passed for publication. (9-0-2. Absent: Chirco; Reed.)

- 11.1 (c) **Consideration of an ordinance rezoning the real property located at/on the east side of Almaden Road, approximately 450 feet south of McKean Road (19600 Almaden Road) from R-1-8 Residence Zoning District to A(PD) Planned Development Zoning District to allow up to six single-family detached residences on a 1.09 gross acre site (Masoumi Mike Et Al, Owner; Mike Masoumi, Developer). CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1).**

PDC07-037 – District 10

[Deferred from 2/5/08 – Item 11.1(d)]

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC07-037, dated January 9, 2008, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated January 17, 2008, transmitting the Planning Commission recommendation of approval. (3) Proof of Publication of Notice of Public Hearing, executed on January 4, 2008, submitted by the City Clerk.

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

Action: The recommendation of the Planning Director and the Planning Commission was approved, and [Ordinance No. 28251](#), entitled: “An Ordinance of the City of San José Prezoning Certain Real Property Situated on the East Side of Almaden Road, Approximately 450 Feet Southerly of McKean Road (19600 Almaden Road) to A(PD) Planned Development Zoning District”, was passed for publication. (9-0-2. Absent: Chirco; Reed.)

- (d) **Consideration of an ordinance rezoning the real property located on the southwest corner of Neilson Court and Eberly Drive (Giani Smith, Owner) from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow for a total of four single-family detached residences and subsequent subdivision on a 1.7 gross acre site. This rezoning differs from the previously approved rezoning (PDC04-091) in that it would allow a 25-foot front setback instead of the 30-foot front setback as previous approved. All other aspects of the subjects rezoning are identical to the previous approval. CEQA: Re-Use of MND. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.**

PDC07-100 – District 2

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC07-100, dated January 9, 2008, recommending approval with conditions. (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated February 4, 2008, recommending approval with conditions. (3) Proof of Publication of Notice of Public Hearing, executed on February 15, 2008, submitted by the City Clerk.

11.1 (d) (Cont'd.)

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

Action: The recommendation of the Planning Director was approved, and [Ordinance No. 28252](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property at the Southwesterly Corner of Eberly Drive and Neilson Court to A(PD) Planned Development Zoning District”, was passed for publication. (9-0-2. Absent: Chirco; Reed.)

END OF PUBLIC HEARINGS ON CONSENT CALENDAR

PUBLIC HEARINGS

- 11.2 Consideration of an ordinance zoning the real property located on the south side of East Taylor Street approximately 90 feet westerly of North 20th Street (944 E. Taylor St.) to remove one existing single-family residence and construct two single-family detached residences on a 0.23 gross acre site (Anh-Mai Phuong Le, Owner). CEQA: Exempt. Director of Planning, Building and Code Enforcement recommends approval and Planning Commission recommended approval with conditions (4-2-1).**

PDC07-003 – District 3

[Deferred from 1/29/08 – Item 11.1(b)]

Documents Filed: (1) Memorandum from Council Member Liccardo, dated February 22, 2008, recommending approval of Staff recommendations with further conditions. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC07-003, dated January 5, 2007, recommending approval. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated February 4, 2008, transmitting the Planning Commission recommendation of approval with conditions. (4) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated February 5, 2008, presenting Planning Staff's analysis of the Planning Commission's recommended development standards for the subject project and the appropriateness of such standards. (5) Proofs of Publications of Notices of Public Hearings, executed on November 23, 2007 and January 27, 2008, submitted by the City Clerk.

Motion: Council Member Liccardo moved approval of the Staff recommendations and his memorandum dated February 22, 2008, with further conditions as depicted in "Action". Council Member Nguyen seconded the motion.

Council Member Constant objected to imposing additional conditions on the project, as outlined in Council Member Liccardo's memorandum.

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

Action: On a call for the question, the motion carried, [Ordinance No. 28253](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated at the South Side of East Taylor Street Approximately 90 Feet Westerly of North 20th Street (944 East Taylor Street) to A(PD) Planned Development Zoning District", was passed for publication. The memorandum from Council Member Liccardo, dated February 22, 2008 was approved and included the following conditions: (1) Limit the Floor Area Ratio (FAR) of each unit to 0.45. The community appropriately expressed concern regarding the scale and massing of the proposed design. Limiting the FAR to 0.45 would better fit the residential scale of the neighborhood. (2) Employ architecture and design consistent with the neighborhood. Although design review and consistency with the surrounding neighborhood is not typically addressed at this stage of approval, due to significant neighborhood concern about the loss of an existing structure, it should be included as a development standard in rezoning. (8-1-2. Noes: Constant. Absent: Chirco; Reed.)

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

**CP07-072/ABC07-006 – District 10
(Deferred from 1/29/08 – Item 11.3)**

Action: Upon motion by Council Member Pyle, seconded by Council Member Campos and carried unanimously, Item 11.3 was deferred to March 18, 2008. (9-0-2. Absent: Chirco; Reed.)

- 11.4 Consideration of an ordinance rezoning the real property located on the north side of East Taylor Street approximately 110 feet east of North Second Street (65 E. Taylor Street) from R-M Multi-Family Residential District to A(PD) Planned Development Zoning District to allow office uses in an existing single-family residence on a 0.13 gross acre site (Lindstrom Cary O., Owner). CEQA: Incomplete. Director of Planning, Building and Code Enforcement and Planning Commission recommend denial (6-0-1).**

**PDC05-123 – District 3
(Deferred from 2/5/08 – Item 11.2)**

Documents Filed: (1) Memorandum from Planning Commission Secretary Joseph Horwedel, dated January 17, 2008, transmitting the Planning Commission recommendation of denial. (2) Proof of Publication of Notice of Public Hearing, executed on January 4, 2008, submitted by the City Clerk.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, the proposed rezoning was denied. (9-0-2. Absent: Chirco; Reed.)

- 11.5 (a) Adoption of a resolution overriding a determination by the Airport Land Use Commission that the PD Rezoning request File No. PDC06-130 is inconsistent with the maximum allowable height policies of the Land Use Plan for Areas Surrounding Santa Clara County Airports due to inconsistency with the height regulations as stated in the FAA Part 77 elevations.**

- 11.5 (b) **Consideration of an ordinance rezoning IP Industrial Park Zoning District to A(PD) Planning Development Zoning District for construction of up to 600 multiple dwelling units in two high-rise towers with ground floor commercial on a 6.08 gross acre site, located on the southwest corner of the intersection of Airport Parkway and Old Bayshore Highway (50 Airport Pkwy.) (Foster Airport Pkwy. LP, Owner). CEQA: Resolution No.72768, and Addenda thereto. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2).**

PDC06-130 - District 3

Documents Filed: (1) Memorandum from Council Member Liccardo, dated February 25, 2008, recommending approval of the Staff recommendations with further direction as depicted below in “Action”. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC06-130, dated January 23, 2008, recommending approval. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated January 30, 2008, transmitting the Planning Commission recommendation. (4) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated February 21, 2008, providing responses by the Santa Clara County Airport Land use Commission and the State of California Department of Transportation Division of Aeronautics. (5) Proofs of Publications of Notices of Public Hearings executed on January 18, 2008 and January 29, 2008, submitted by the City Clerk.

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

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, [Resolution No. 74257](#), entitled: “A Resolution of the Council of the City of San José Making Certain Findings Required by California Public Utilities Code Section 21676 that Proposed Planned Development Rezoning Application File No. PDC06-130 is Consistent with the Purposes Set Forth in California Public Utilities Code Section 21670 and Overruling the Airport Land Use Commission’s Determination that the Proposed Project is Not Consistent with the Airport Land Use Commission Height Policies as Defined by the Land Use Plan for Areas Surrounding Santa Clara County Airports”, was adopted; [Ordinance No. 28254](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Southwest Corner of the Intersection of Airport Parkway and Old Bayshore Highway (40 and 50 Airport Parkway) from IP Industrial Park Zoning District to A(PD) Planned Development Zoning District”, was passed for publication and the memorandum from Council Member Liccardo dated February 25, 2008 was approved with the following direction to Staff: (1) Require construction of commercial retail of no less than 6,000 square feet on the site, regardless of the size of the residential development. (2) Override the contrary decision of the Airport Land Use Commission, such that the Council specifically finds that each of the conditions listed on pages 7-8 in the January 23, 2008, Staff memorandum, paragraphs 1-4, to be true. (3) Require “green building” practices similar to those standards that Council has mandated on construction throughout North

11.5 (Cont'd.)

San José since mid 2007. Specifically, the Department of Planning, Building and Code Enforcement will ensure that construction is roughly equivalent to a “Silver” Leadership in Energy and Environmental Design (LEED) standard or similar GreenPoint Rating level, or if a less stringent Citywide policy is in effect at the time of approval of the Planned Development Permit, then to the standard in effect Citywide. (9-0-2. Absent: Chirco; Reed.)

11.6 **Consideration of an ordinance rezoning the real property located between Los Esteros Road and Grand Blvd. (675 Los Esteros Road) from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to expand resource recovery and recycling operations to construct an approximately 200,000 square foot materials recovery facility building and to allow 24-hour operations on a 52.5 gross acre site (Zanker Road Resource Mgt Ltd, Owner/Developer). CEQA: Environmental Impact Report. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1).**

PDC06-120 – District 4

Documents Filed: (1) Memorandum from Mayor Reed and Council Member Chu, dated February 22, 2008, recommending approval of the Staff recommendations with further additions as outlined in “Action”. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC06-120, dated January 24, 2008, recommending approval. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated February 4, 2008, transmitting the Planning Commission recommendation. (4) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated February 20, 2008, providing the revised Draft Development Standards for the Zanker Material Recovery Facility Planned Development Rezoning with minor text clarifications. (5) Proofs of Publications of Notices of Public Hearings, executed on January 18, 2008 and January 27, 2008, submitted by the City Clerk. (6) Email correspondence from a member of the public, dated February 25, 2008, regarding the Zanker Road Rezoning.

Vice Mayor Cortese opened the public hearing.

Public Comment: Erik Schoennauer, representing the Applicant, provided an overview and merits of the project. Speaking in support of the Zanker Road Rezoning were Caroline Rodman (Teamsters Local 350), George Maciel (Alviso Rock), Vern Santos, Tony Santos, Richard Santos, Paul Nelson (Greenteam of San José), Steven Jones (Garden City Sanitation), Eileen McLaughlin, Dr. Robert Gross and Lonnie Gross. Jack Lueder (Silicon Valley Bicycle Coalition) spoke about concerns of impacts on bicycles and trails.

Vice Mayor Cortese closed the public hearing.

11.6 (Cont'd.)

Director of Planning, Building and Code Enforcement Joseph Horwedel stated conversations with the Association of Bay Area Governments (ABAG) have occurred regarding the concerns of impacts on bicycles and trails. Vice Mayor Cortese suggested that Staff continue to work with the Applicant on the issue of the Bay Trail.

A short discussion followed.

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

Action: Upon motion by Council Member Chu, seconded by Council Member Constant and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, [Ordinance No. 28255](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the North Side of Los Esteros Road, 2,000 Feet East of Grand Avenue (675 Los Esteros Road) from A(PD) Planned Development Zoning to A(PD) Planned Development Zoning District”, was passed for publication; the memorandum from Mayor Reed and Council Member Chu, dated February 22, 2008, was approved, with the following additions: (1) Direction to the applicant, Zanker Road Resource Management, Ltd., to assist the City in analyzing traffic counts and traffic impacts at or immediately after commencement of operations of the proposed development. While Staff has determined that the proposed project is in conformance with the City of San José Transportation Level of Service Policy, it is important to validate that the proposed project, once it is in full operation, will not cause safety risks to truck drivers who serve the site or to residents and visitors in the vicinity of the proposed project. (2) Direction to the applicant to work with the City to conduct a street sweeping program for Los Esteros that maintains the health, safety and cleanliness of the road using the timetable under the direction in Item (1) above. (3) Direction to applicant to work with the City during the Planned Development permit phase of the project to generate an appropriate plan and protocol for truck parking at the facility. (9-0-2. Absent: Chirco; Reed.)

- 11.7 Consideration of an ordinance rezoning the real property located on the northwest corner of North First Street and River Oaks Place from the IP Industrial Park zoning District to the A(PD) Planned Development Zoning District to allow up to 1,660 single-family and multi-family attached residences, 40,000 square feet of retail space, and a 5.1 acre public park on a 32.6 gross acre site (Wti Inc, Owner; Thompson Dorfman, Developer). CEQA: Addendum to North San José EIR. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-1-1). PDC07-057 – District 4**

11.7 (Cont'd.)

Documents Filed: (1) Memorandum from Mayor Reed and Council Member Chu, dated February 22, 2008, recommending approval of the Staff recommendations with additions as outlined below in "Action". (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated February 4, 2008, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC07-057, dated January 23, 2008, recommending approval. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated February 14, 2008, transmitting the Planning Commission recommendation of approval. (3) Proofs of Publications of Notices of Public Hearings executed on January 18, 2008 and January 27, 2008, submitted by the City Clerk.

A member of the Planning, Building and Code Enforcement provided a Staff Report on the proposed rezoning of the property.

Motion: Council Member Chu moved approval of the Staff recommendations and the memorandum he cosigned with Mayor Reed, dated February 22, 2008, with further conditions. Council Member Williams seconded the motion.

Public Comment: Vice Mayor Cortese opened the public hearing. Jean Dresden stated that the riparian corridor setback should be modified in accordance with the municipal code.

Bruce Dorfman, representing the Applicant, spoke in support of the proposed project.

Vice Mayor Cortese closed the public hearing.

Council Member Constant reiterated concern about addition additional requirements project-by-project, but added that he was in support of the motion.

Council disclosures were made by Council Member Chu.

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, [Ordinance No. 28256](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated at the West Side of North First Street at River Oaks Place to the A(PD) Planned Development Zoning District", was passed for publication. The memorandum from Mayor Reed and Council Member Chu, dated February 22, 2008, was approved, with the following additions: (1) Direction to the developer to maximize retail square footage as market conditions provide and to establish a strong retail presence along both River Oaks Place and North First Street. (2) Direction to the developer to work with the City to assess the feasibility of the installation of automatic external defibrillators as a special feature of the residential and retail development. (3) Direction to the developer to implement green building techniques to achieve credits sufficient for a LEED Silver or equivalent certification. (9-0-2. Absent: Chirco; Reed.)

NOTICE OF CITY ENGINEER’S PENDING DECISION ON FINAL MAPS

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

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>	<u>Proposed Decision</u>
9466	SE corner of Lucretia Ave. and Owsley Ave.	7	Union Pacific Funding, Inc.	15 Lots / 15 Units	SFD	Approve

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

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>
9981	NE corner of Willow Glen Way and Cross Way	6	H3 Development LLC	10 Lots / 9 Units	SFD

OPEN FORUM

Documents Filed: Package regarding incident reports of the Animal Care and Services Department, dated February 26, 2008, submitted by Lori Hart Beninger.

- (1) Lori Hart Beninger requested that the City address and correct complacency and corruption with the Animal Care and Services Department. City Manager Debra Figone agreed to follow up.

ADJOURNMENT

The Council of the City of San José was adjourned at 8:45 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

smd/2-26-08 MIN

Access the video, the agenda and related reports for this meeting by visiting the City's website at <http://www.sanjoseca.gov/clerk/agenda.asp> or <http://www.sanjoseca.gov/clerk/MeetingArchive.asp>. For information on any ordinance that is not hyperlinked to this document, please contact the Office of the City Clerk at (408) 535-1266.