CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA **TUESDAY, MARCH 6, 2007**

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, Constant, Cortese, Liccardo, Nguyen, Pyle, Williams; Reed.

Absent: Council Members - Chirco. (Excused)

Vacant: - Council Districts 4 and 6.

Upon motion unanimously adopted, Council recessed at 9:32 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: (1) Fisher, et al. v. City of San José. et al.; (2) Keesling v. City of San José, et al. (B) to confer with Legal Counsel pursuant to: Government Code Section 54956.9 with respect to anticipated litigation, (1) subsection (c), initiation of litigation in one (1) matter; (2), subsection (b) with significant exposure in two (2) matters. (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) International Association of Firefighters, Local 230.

By unanimous consent, Council recessed from the Closed Session at 10:30 a.m. and reconvened at 1:32 p.m. in the Council Chambers

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

Absent: Council Members - None.

Vacant: - Council Districts 4 and 6.

INVOCATION

Council Member Liccardo introduced Father Rubio, Sacred Heart Church, who presented the Invocation. (District 3)

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

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Williams, seconded by Council Member Campos and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Ceremonial Item 1.7 deferred to March 20, 2007, Item 3.2, February 7, 2007 Rules & Open Government Committee Report, deferred to March 13, 2007; Item 3.2, February 14, 2007 Rules & Open Government Committee Report deferred to March 20, 2007 and Item 5.2 was heard. (9-0.)

CEREMONIAL ITEMS

1.1 Presentation of an award to the City Manager's Budget Office for receiving the Distinguished Budget Presentation Award. (City Manager's Office)

Action: Mayor Reed and City Manager Les White recognized and commended the City Manager's Budget Office for their exceptional work in receiving the Distinguished Budget Presentation Award.

1.2 Presentation of a commendation recognizing a "Next Generation in the Public Sector" collaboration that encourages local junior high and high school students to consider a future career at the City of San José. (Human Resources)

Action: Mayor Reed, Council Member Chirco and Director of Human Resources Mark Danaj recognized and commended the "Next Generation in the Public Sector" collaboration which encourages local junior and high school students to consider a future career at the City of San José.

1.7 Presentation of a commendation to the National Hispanic University Debate Team for their victory in the California Regional Intercollegiate Ethics Bowl on December 2, 2006, advancing the team to represent California in the National Ethics Bowl Championship. (Mayor/Campos)
(Rules in-Lieu referral 2/21/07)

Action: Deferred to March 20, 2007, per Orders of the Day.

1.8 Presentation of a proclamation declaring March 6–13, 2007 as Irish Week in the City of San José. (Constant/Pyle/Williams)
(Rules Committee referral 2/28/07)

Action: Mayor Reed and Council Members Constant, Pyle and Williams recognized the week of March 6 through March 13, 2007 as "Irish Week" in the City of San José.

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. (9-0.)

2.1 Approval of Minutes:

(a) Regular Minutes of September 12, 2006
(b) Regular Minutes of September 19, 2006
(c) Regular Minutes of September 26, 2006
(d) Joint City Council/Santa Clara Valley Water District Minutes of September 27, 2006

Action: Deferred to March 13, 2007, per City Clerk.

2.3 Acceptance of the Office of the City Auditor's *Report of Activities for the Period December 16, 2006 through January 15, 2007*. (City Auditor)
(Rules in-Lieu referral 2/21/07)

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Pyle and carried unanimously, acceptance of the Office of the City Auditor's Report of Activities, was deferred to March 13, 2007. (9-0.)

2.4 Adoption of a resolution authorizing the City Manager to submit a grant application to the Federal Bureau of Justice Assistance in the amount of $394,891 to support the efforts of the Mayor's Gang Prevention Task Force, to accept the grant if awarded, and to execute a grant agreement accepting the grant and any collateral documents, and to execute amendments to the grant agreement to extend or modify the grant period or to accept additional grand funds under this grant. CEQA: Not a Project. (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated February 12, 2007, recommending adoption of a resolution.

Action: Resolution No. 73673, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute and Submit an Application to the Federal Bureau of Justice Assistance for a Grant to Support the Efforts of the Mayor's Gang Prevention Task Force in an Amount Not To Exceed $394,891, to Accept the Grant if Awarded, and to Execute All Related Documents", was adopted. (9-0.)

2.5 Adoption of a resolution initiating proceedings and setting April 3, 2007 at 7:00 p.m. for Council consideration on the reorganization of the territory designated as Berryessa No. 68 which involves the annexation to the City of San José of 15.3 gross acre County Pocket of land consisting of 2 parcels located on the southwest corner of Capitol Avenue and Hostetter Road, implementation of the annexation would result in the detachment of the same from the appropriate special districts including West Valley Sanitation, County Lighting County Service, Central Fire Protection and Area No. 01 (Library Services) County Service (Bianchi, Clara Trustee; Santa Clara Valley Transit Authority, Owners). CEQA: Resolution No. 65459, File No. C06-074. Council District 4. (Planning, Building and Code Enforcement)

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joe Horwedel, dated February 12, 2007, recommending adoption of a resolution. (2) Proof of Publication of Notice of Public Hearing, executed on February 23, 2007, submitted by the City Clerk.

Action: Dropped per Administration.

2.6 Approval of Contract Change Order No. 5 for the 84-Inch Reinforced Concrete Pipe Interceptor Rehabilitation Phase VIB project with the joint venture of Ebert Corporation and McGuire Hester in the amount of $185,674 for a total contract amount of $4,364,428.17 and an extension of 48 working days for a total of 278 working days. CEQA: Exempt, File No. PP02-05-114. Council Districts 3 and 4. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated February 12, 2007, recommending approval of the contract change order.

Action: The Contract Change Order No. 5 was approved. (9-0.)

2.7 Adoption of a resolution of intention to vacate the public service easement created by Tract 9588, located on the northwest corner of Magliocco Drive and Huff Avenue, and setting a public hearing on March 27, 2007 at 1:30 p.m. CEQA: Mitigated Negative Declaration, File No. PDC01-008. Council District 6. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated February 12, 2007, recommending adoption of a resolution.

Action: Resolution No. 73674, 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 on the Northwest Corner of Magliocco Drive and Huff Avenue", was adopted. (9-0.)

2.8 Adoption of a resolution of intention to increase the annual assessment and revise the scope of services in Maintenance District 18. CEQA: Exempt, File No. PP07-020. Council District 8. (Public Works)

Action: Deferred to 3/27/07 per Administration.

2.9 Adoption of a resolution urging NBC-Universal to reconsider the decision to eliminate KSTS-48 Telemundo's "Noticiero 48" broadcast. (Campos/ Liccardo) (Rules Committee referral 2/28/07)

Documents Filed: Memorandum from Council Member Campos and Council Member Liccardo, dated March 6, 2007, recommending adoption of a resolution.

Action: Resolution No. 73675, entitled: "A Resolution of the Council of the City of San José to Urge NBC-Universal to Reconsider the Elimination of KSTS-48 Telemundo Noticiero 48", was adopted. (9-0.)

2.10 Approve the appointment of Alexander Hull to the Project Diversity Screening Committee to a 2 year term ending December 31, 2009. (Constant/City Clerk) (Rules Committee referral 2/28/07)

Documents Filed: Memorandum from City Clerk Lee Price, dated February 28, 2007, transmitting the Rules and Open Government Committee approved appointment.

Action: The appointment of Alexander Hull to the Project Diversity Screening Committee was approved. (9-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

3.1 Approval of City Council Study Session Minutes:
(a) Recycle Plus Program and Procurement Process of August 11, 2006
(b) The Coyote Valley Specific Plan, Introduction to Form-Based Zoning of August 25, 2006

Action: Deferred to March 13, 2007, per City Clerk.

3.2 Report of the Rules and Open Government Committee – February 14, 2007
Mayor Reed, Chair

(a) City Council
  (1) Review New Add Items to February 20, 2007 Agenda
  (2) Review February 27, 2007 Draft Agenda
(b) Redevelopment Agency items reported out at Redevelopment Agency meeting
(c) Legislative Update
  (1) State
  (2) Federal
(d) Meeting Schedules
  (1) Approve the Proposed FY 2007-2008 Agency Budget Calendar. (RDA)
  (2) Approve the revised Study Session schedule from February through May 2007. (Manager's Office)
(e) The Public Record

3.2 Report of the Rules and Open Government Committee – February 14, 2007
Mayor Reed, Chair (Cont'd.)

(f) Appointments to Boards, Commissions and Committees
  (1) Appointments to the Project Diversity Screening Committee. (Cortese/ Constant/Chirco)
  (2) Appointment to the Arts Commission. (Williams)

(g) Rules Committee Reviews, Recommendations and Approvals
  (1) Referral of Audit of Resources for Families and Communities. (City Auditor)
  (2) Proposal to Convert Agnews Development Center to a State Prison. (Mayor)
  (3) Royal Coach Tours. (Planning, Building and Code Enforcement)
  (4) Addition of an Audit of the Camera Pavilion Management Corporation to the City Auditor's 2006-2007 work plan. (RDA)
  (5) City Process on Responding to No-Match Letters from the Social Security Administration regarding discrepancies in employee Social Security numbers. (City Manager)
  (6) Public Funded Campaigns (Voter-Owned Campaigns). (Elections Commission)

(h) Public Records Act Requests
  (1) Review of Significant Public Records Act Requests
  (2) Receive Public Concerns

(i) Review of Council Policy Updates per Sunshine Reforms

(j) Open Forum

(k) Adjournment

Action: Deferred to March 20, 2007, per Orders of the Day.

3.2 Report of the Rules and Open Government Committee – January 31, 2007
Mayor Reed, Chair

Documents Filed: The Rules and Open Government Committee Report dated January 31, 2007.

(a) City Council
  (1) Review New Add Items to February 6, 2007 Agenda

    The Committee approved the February 6, 2007 City Council Agenda with one revision.

  (2) Review February 13, 2007 Draft Agenda

    The Committee approved the February 13, 2007 Draft City Council Agenda with four additions.

(b) Redevelopment Agency items reported out at Redevelopment Agency meeting

3.2 Report of the Rules and Open Government Committee – January 31, 2007
Mayor Reed, Chair (Cont'd.)

(c) Legislative Update
(1) State
(2) Federal

There were none.

(d) Meeting Schedules
(1) Cancel the Regular Rules Meeting and approve a Rules in-Lieu on February 21, 2007.

The Committee approved Rules in Lieu on February 21, 2007 at 2:00 p.m.

(2) Approve four Council Orientation Sessions.

The Committee approved the following Council Orientation Sessions:
(a) February 9, 2007, 9:00-11:00 a.m.
(b) March 2, 2007, 9:00-11:00 a.m.
(c) March 5, 2007, 10:00-12:00 noon
(d) March 9, 2007, 9:00-11:00 a.m.

(e) The Public Record. Attachment: Memorandum from City Clerk Lee Price, dated January 19, 2007, transmitting items for the Public Record for the period of January 19-25, 2007.

The Committee asked Staff to return to the Rules and Open Government Committee on February 14, 2007 with the City's process on responding to No-Match Letters from the Social Security Administration.

(f) Appointments to Boards, Commissions and Committees - There were none.

(g) Rules Committee Reviews, Recommendations and Approvals
(1) Discussion on Council Expenditure and Reimbursement Policy. Attachment: Memorandum from City Attorney Richard Doyle and City Clerk Lee Price, dated January 26, 2007, presenting background on the Council Expenditure and Reimbursement Policy.
(Deferred from 1/24/07)

The Committee asked Staff to return to the Rules and Open Government Committee on February 28, 2007 with an analysis of what types of expenses can and cannot be paid for out of officeholder accounts and a draft policy to discuss, that reflects the Committee's input.

3.2 Report of the Rules and Open Government Committee – January 31, 2007
Mayor Reed, Chair (Cont'd.)

(g) Rules Committee Reviews, Recommendations and Approvals (Cont'd.)

(2) Discussion of Employee Values Project. Attachment: Employees Values Project Report.

The Committee directed the City Manager to integrate the Values into the City's Code of Ethics.

(3) Accept (1) Staff's report on Reed Reforms; (2) Provide clarification to staff on Reed Reforms #1, #5, #8 and #26; (3) Provide direction regarding exceptions outlined in the memorandum for Reed Reform #5; and (4) Request this report be considered by the City Council on February 6, 2007. Attachment: Memorandum from City Manager Les White, City Attorney Richard Doyle and City Clerk Lee Price, dated January 26, 2007, transmitting the Reed Reforms report.

The Committee approved the exceptions to the "10 day Rule", as amended ("emergency" items expanded to include all matter of public welfare, second readings/final adoption of ordinances and appointments to boards/committees/commissions added to the list); agreed to maintain the "early distribution" practice but discontinue the requirement of a 2/3 vote at the dais to hear any certain items now that it is no longer necessary; and agreed to hold a public hearing in April to review and discuss recent case studies on ethical issues.

(4) Approve the following proposed Committee Work Plans. Attachment: Memorandum from Mayor Reed and Council Member Williams, dated January 25, 2007, transmitting the Committee Work Plans.

(a) Transportation and Environment Committee
(b) Community and Economic Development Committee
(c) Public Safety, Finance and Strategic Support Committee
(d) Neighborhood Services & Education Committee
(e) Rules & Open Government Committee

The Committee approved the five proposed Committee Work Plans for the period February through June 2007.

(g) Rules Committee Reviews, Recommendations and Approvals (Cont'd.)

(5) Approve Mayor's Travel to Washington, D.C. on February 14-16, 2007. Attachment: Memorandum from Mayor Reed, dated January 23, 2007, requesting approval of travel.

The Committee approved the travel request.

3.2 Report of the Rules and Open Government Committee – January 31, 2007
Mayor Reed, Chair (Cont'd.)

(h) Public Records Act Requests
(1) Review of Significant Public Records Act Requests
(2) Receive Public Concerns

There were none.

(i) Review of Council Policy Updates per Sunshine Reforms - There were none.

(j) Open Forum - None were presented.

(k) Adjournment - The meeting was adjourned at 4:10 p.m.
(Deferred from 2/27/07 – Item 3.2)

Action: Upon motion by Council Member Williams, seconded by Council Member Chirco and carried unanimously, the Rules Committee Report and the actions of January 31, 2007, were accepted. (9-0.)

3.2 Report of the Rules and Open Government Committee – February 7, 2007
Mayor Reed, Chair

(a) City Council
(1) Review New Add Items to February 13, 2007 Agenda
(2) Review February 20, 2007 Draft Agenda
(b) Redevelopment Agency items reported out at Redevelopment Agency meeting
(c) Legislative Update
(1) State
(a) Overview of the City's Legislative Process for Determination of Official City positions on State and Federal Issues. (
(2) Federal
(d) Meeting Schedules
(1) Set a Hearing for Spring 2007 for General Plan Amendments and Initiating the Re-establishment of a fall Annual Review of the General Plan.
(e) The Public Record
(f) Appointments to Boards, Commissions and Committees
(1) Appointment to the Project Diversity Screening Committee.
(g) Rules Committee Reviews, Recommendations and Approvals
(1) Recommend acceptance to the Redevelopment Agency's Horizon Report for the first half of 2007.
(2) Addition to the City Auditor's Work Plan to Review Resources for Families and Communities' Financial information.
(h) Public Records Act Requests
(1) Review of Significant Public Records Act Requests
(2) Receive Public Concerns
(i) Review of Council Policy Updates per Sunshine Reforms
(j) Open Forum

3.2 Report of the Rules and Open Government Committee – February 7, 2007 Mayor Reed, Chair (Cont'd.)

(k) Adjournment
(Deferred from 2/27/07 – Item 3.2)

Action: Deferred to March 13, 2007, per Orders of the Day.

3.4 San José Elections Commission recommendation to defer consideration of public financing of City Campaigns. (Elections Commission)

Documents Filed: Memorandum from San José Elections Commission Chair Tom Mertens, dated February 9, 2007, transmitting the Elections Commission report.

San José Elections Commission Chair Tom Mertens provided a brief overview of the recommendations of the Elections Commission. Council questions followed.

City Attorney Richard Doyle provided an update on pending litigation relating to the City's appeal of a Court decision regarding expenditures made by the San José/Silicon Valley Chamber of Commerce Political Action Committee.

Public Comment: Craig Dunkerley, Clean Money Campaign and Christina Lokke, California Common Cause, spoke in support of the concept of publicly funded campaigns.

Action: Upon motion by Council Member Campos, seconded by Council Member Williams and carried unanimously, the Elections Commission Report, was accepted. (9-0.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.2 Approval of the following actions to continue funding for the completion of the Evergreen*East Hills Vision Strategy, Evergreen Area Development Policy update, and related documents:

(a) Approval of a continuation to the funding agreement with Yerba Buena Opco, Inc. to extend the funding agreement from January 1, 2007 through June 30, 2007 for the work associated with completing the Evergreen*East Hills Vision Strategy which encompasses an update to the Evergreen Area Development Policy and related documents; and

(b) Adoption of a resolution authorizing the Director of Planning, Building and Code Enforcement to negotiate and execute minor amendments to the funding agreement to account for increases in funding received from Yerba Buena Opco, Inc. and minor schedule or task changes that remain consistent with the information contained in and the goals identified in the memorandum.

CEQA: Exempt, PP03-10-349. Council Districts 5, 7, and 8. SNI: West Evergreen, K.O.N.A and East Valley/680. (Planning, Building and Code Enforcement).
(Deferred from 1/30/07 – Item 4.2, 2/6/07 – Item 4.4, and 2/27/07 – Item 4.2)

4.2 (Cont'd.)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joe Horwedel, dated January 9, 2007, recommending approval of a continuation to the funding agreement and adoption of a resolution.

Action: Dropped per Administration.

NEIGHBORHOOD SERVICES

5.2 Acceptance of the Parks, Recreation and Neighborhood Services Department's response to the 2006-2007 Santa Clara County Civil Grand Jury's Report entitled "Flawed RFP Process Holds Up Selection of Northside Community Center Operator". CEQA: Not a Project. Council District 3. (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated February 12, 2007, recommending acceptance of the report.

Director of Parks, Recreation and Neighborhood Services Albert Balagso presented an overview of the Civil Grand Jury Report on the Northside Community Center Operator Selection Process and responded to Council questions about the facility's re-use, programming and options for community partnerships.

Action: Upon motion by Council Member Williams, seconded by Council Member Chirco and carried unanimously, the Civil Grand Jury Report for the Northside RFP Process, was accepted. (9-0.)

TRANSPORTATION & AVIATION SERVICES

6.1 Report of the Transportation & Environment Committee – February 22, 2007
Council Member Williams, Chair

Documents Filed: The Transportation and Environment Committee Report, dated February 22, 2007.

(a) Recommended Modifications to the Photo Radar Speed Enforcement Program. Attachment: Memorandum from Director of Transportation James Helmer and Police Chief Robert Davis, dated February 13, 2007, recommending approval of the report.

The Committee approved the Staff report, with Staff to report to the City Council at the March 6, 2007 City Council Meeting as a part of the FY 2007-2008 budget process on modifying NASCOP from an enforcement program to a warning program. See Item 6.3 for Council action taken.

6.1 Report of the Transportation & Environment Committee – February 22, 2007 Council Member Williams, Chair (Cont'd.)

(b) Recycle Plus Transition Update and Service Rate Increase. Attachment: Memorandum from Director of Environmental Services John Stufflebean, dated February 8, 2007, recommending acceptance of the report.

The Committee approved the Staff report, with Staff to bring the recommendation to the City Council at the March 6, 2007 City Council Meeting. See Item 7.1 for Council action taken.

(c) Water Pollution Control System Infrastructure Condition and Capital Funding. Attachment: Memorandum from Director of Environmental Services John Stufflebean, Director of Public Works Katy Allen and Director of Transportation James Helmer, dated February 8, 2007, recommending acceptance of the report.

Deferred to 3/5/07 Transportation and Environment Committee Meeting.

(d) State and Federal Legislation Update. Attachment: Memorandum from Director Intergovernmental Relations Betsy Shotwell, dated February 8, 2007, recommending acceptance of the report.

The Committee approved the Staff report.

(e) Oral Petitions - None were presented.

(f) Adjournment - The meeting was adjourned at 3:06 p.m.

Action: Upon motion by Council Member Williams, seconded by Council Member Chirco and carried unanimously, the Transportation and Environment Committee Report and the actions of February 22, 2007, were accepted. (9-0.)

6.2 Report on bids and award of contract for the Senter Road Widening Project – Phase II (Tully Road to Singleton Road) to the low bidder, Top Grade Construction, Inc. in the amount of $2,593,446, and approval of a contingency in the amount of $130,000. CEQA: Resolution No. 57204 and addenda thereto. Council District 7. (Public Works/Transportation)

Documents Filed: Memorandum from Director of Public Works Katy Allen and Director of Transportation James Helmer, dated February 12, 2007, recommending award of the contract.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried unanimously, the award of the contract to Top Grade Construction Inc., with related contingency, was approved. (9-0.)

6.3 (a) Accept the February 22, 2007 report on the Recommended Modification to the Photo Radar Speed Enforcement Program,

(b) Direct the Department of Transportation to report back to the City Council as part of the FY2007-2008 budget process on modifying the Neighborhood Automated Speed Compliance Program (NASCOP) from an enforcement program to a warning program; and

(c) Direct the Department of Transportation to work with the City Manager's Office and City Attorney's Office to explore options to retain or reinstate the NASCOP program for the purpose of photo radar enforcement on local streets.

CEQA: Not a Project. (Transportation/Police)
[Transportation and Environment Committee 02/22/07 – Item 6.1(a)]

Documents Filed: Memorandum from Director of Transportation James Helmer, dated February 27, 2007, recommending acceptance of the report and direction to the Department of Transportation.

Director of Transportation James Helmer presented an outline of the Modifications to NASCOP Program and responded to Council questions.

Motion: Council Member Liccardo moved acceptance of the February 22, 2007 report with amendments as outlined below in "Action". Vice Mayor Cortese seconded the motion.

Significant Council discussion followed.

Public Comment: Ross Signorino urged the City to be tougher with the enforcement of speeding.

Action: On a call for the question, the motion carried unanimously, the report was accepted, with the following additional direction to the Department of Transportation Staff: (1) Immediately cease issuing tickets and assessing fines for speed violations detected by NASCOP system, until the legality of such sanctions can be clarified. (2) Explore the use of measures other than fines for speed violations, including warnings. The Department of Transportation should specifically consider the use of neighborhood based forms of advocacy, such as letters issued by local neighborhood associations, and/or direct communications by sworn Staff. Staff was requested to return with alternatives for the Police Department's direct involvement. (3) Report to Council within 6 months of the implementation of the measures described in (2) to determine whether these measures have any impact in suppressing the incidence of speeding, so that Council can assess whether to continue the program as modified. (4) Direct the Office of Intergovernmental Relations to partner with other interested cities, including but not limited to Los Angeles and Beverly Hills and the League of California Cities to advocate for legislation in Sacramento authorizing the use of NASCOP for speed enforcement. (5) Department of Motor Vehicle personal information about residents to remain strictly confidential. (9-0.)

ENVIRONMENTAL & UTILITY SERVICES

7.1 (a) Acceptance of the status report on the 2007 Recycle Plus Hauler Transition.

(b) Set a public hearing for May 8, 2007, on the recommended Recycle Plus rate increases for Fiscal Year 2007-2008, and potential Recycle Plus rate increases covering the following two fiscal years.

(c) In accordance with Proposition 218 requirements, direct the Administration to send notices to San José residential property owners for receipt no later than March 23 informing them of potential Recycle Plus rate increases over the next three fiscal years. For Fiscal Year 2007-2008, the rate notices would provide for an increase of not-to-exceed 29% for single-family services and not-to-exceed 10% for multi-family services. For Fiscal Years 2008-2009 and 2009-2010, the rate notices would provide for increases of not-to-exceed 10% each year for both single-family and multi-family services. Council would set the specific level increases at the conclusion of the May 8 public hearing, which could be at or below the not-to-exceed percentages provided in the public notices.

CEQA: Not a Project. (Environmental Services)
[Transportation and Environment Committee 02/22/07 - Item 6.1(b)]

Documents Filed: Memorandum from Agenda Services Manager Nadine Nader, transmitting the Transportation and Environment Committee's recommendation of acceptance of the report.

Director of Environmental Services John Stuffebean, Deputy Director Environmental Services Jo Zientek and Director of Information Technology Randall Murphy presented the Staff report and recommendations.

Motion: Council Member Williams moved acceptance of the staff report and the noticing of the increase. Council Member Chirco seconded the motion.

Council discussion followed.

Public Comment: William Garbett spoke in opposition to the Staff recommendation and complained about his garbage collection services.

Mayor Reed requested that the public hearing be set for a time certain of 3:30 pm on May 8, 2007. Council Members Williams and Chirco accepted the amendment.

Action: On a call for the question, the motion carried unanimously, the status report on the 2007 Recycle Plus Hauler Transition was accepted, the direction was approved, and the Public Hearing was set for 3:30 p.m. on May 8, 2007. (8-0-1. Absent: Nguyen.)

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Redevelopment Agency Board convened at 4:15 p.m. to consider Item 9.1 in a Joint Session.

9.1 (a) Adoption of a resolution approving the San José City Council Green Building Policy;
(b) Acceptance of staff report on recommended strategies to achieve USGBC LEED certification for the projects currently underway;
(c) Referral to the Transportation & Environment Committee to oversee the development of incentives to encourage Green Building into private development projects.
CEQA: Not a Project. (City Manager's Office/Redevelopment Agency)

Documents Filed: Memorandum from City Manager Les White and Redevelopment Agency Executive Director Harry S. Mavrogenes, dated February 14, 2007, recommending adoption of a resolution, acceptance of the report and referral to the Transportation & Environment Committee to oversee development of incentives.

Environmental Services Program Manager Mary Tucker and Assistant Director of Public Works David Sykes presented an outline of the Green Building Policy. Deputy City Manager Ed Shikata and Assistant Director of Public Works David Sykes responded to Council questions.

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

Mayor Reed requested that Staff aim for a higher level, either Gold or Platinum and perform a cost benefit analysis for the projects. Vice Mayor Cortese and Council Member Williams accepted the amendment.

Public Comment: Mark Trout spoke off topic. William Garbett spoke in favor of Mayor Reed's amendments to the Staff recommendation.

Action: On a call for the question, the motion carried unanimously, Resolution No. 73676, entitled: "A Resolution of the Council of the City of San José Revising Council Policy No. 8-13 Relating to Green Building", was adopted, the Staff Report was accepted, with Staff requested to: (1) Proceed at a higher minimum level, i.e. Gold or Platinum in lieu of Silver, setting a higher goal for the City. (2) Perform a Cost Benefit Analysis for the projects. Staff was further directed to return to the Transportation and Environmental Committee by June 2007. (9-0.)

The Redevelopment Agency Board portion of the meeting was adjourned at 4:53 p.m.

NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS

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

Tract	Location	Council District	Developer	Lots/ Units	Type	Proposed Decision
9833	West side of Cypress Ave. 400 feet south of Stevens Creek Blvd.	1	Cypress Quarter Homes Corp.	5 Lots / 4 Units	SFD & SFA	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:

Tract	Location	Council District	Developer	Lots/Units	Type
9903	Southeast Corner of Leigh Avenue and Foxworthy Avenue	9	Edenbridge Inc.	24 Lots / 23 Units	Single Family

OPEN FORUM

(1) Robert Apgar voiced personal observations.
(2) Mark Trout presented religious points of view.

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 4:48 p.m.

RECESS/RECONVENE

The City Council recessed at 4:48 p.m. from the afternoon Council Session and reconvened at 7:04 p.m. in the Council Chambers, City Hall.

Present: Council Members	-	Campos, Chirco, Constant, Cortese, Liccardo, Nguyen, Pyle, Williams.
Absent: Council Members	-	Reed. (Excused)
Vacant:	-	Council Districts 4 & 6.

City Clerk Lee Price read the requests for continuance of the applications. Upon motion by Vice Mayor Cortese, seconded by Council Member Williams, and carried unanimously, the below noted continuances and actions were taken as indicated. (8-0-1. Absent: Reed.)

CEREMONIAL ITEMS

1.3 Presentation of a commendation to Aubrey Parrott for his 45 years of dedicated service with the San José Police Department. (Constant)
(Rules in-Lieu referral 2/21/07)

Action: Vice Mayor Cortese and Council Member Constant recognized and commended Mr. Aubrey Parrot for his outstanding service and dedication to the San José Police Department for the past 45 years.

1.4 Presentation of a proclamation declaring March 2007 as "Greek History Month." (Constant)
(Rules in-Lieu referral 2/21/07)

Action: Vice Mayor Cortese and Council Member Constant recognized March 2007 as "Greek History Month" in the City of San José.

1.5 Presentation of a commendation to Khoa Nguyen as the first Vietnamese American to be inducted to the United States Table Tennis Hall of Fame. (Nguyen)
(Rules in-Lieu referral 2/21/07)

Action: Vice Mayor Cortese and Council Member Nguyen recognized and commended Mr. Khoa Nguyen as the first Vietnamese American to be inducted into the United States Table Tennis Hall of Fame.

1.6 Presentation of a commendation to the Silver Creek High School Japanese Program and 2007 Japan Bowl team for their continued success to bring Japanese culture to the City of San José. (Cortese)
(Rules in-Lieu referral 2/21/07)

Action: Vice Mayor Cortese recognized and commended the Silver Creek High School Japanese Program and 2007 Japan Bowl team for their continued success in the City of San José.

STRATEGIC SUPPORT SERVICES

3.5 Adoption of a resolution that takes the following actions:

(1) Reaffirm the San José Police Department's longstanding policy that its officers will not arrest persons merely for their unlawful presence in the United States.

(2) Reaffirm that no otherwise law-abiding undocumented immigrants should fear arrest or deportation for coming forward to report a crime as a victim or a witness.

(3) Reaffirm that no otherwise law-abiding undocumented immigrants should fear arrest or deportation by contacting any employee of the City of San José to express concerns or to ask questions.

(4) Express the view of the San José City Council that continued ICE raids, while laudable where they target violent or predatory criminals for deportation, can have harsh unintended consequences. Those sweeps that have cast the net widely to arrest otherwise law-abiding undocumented immigrants have raised the Council's concern, insofar as they undermine the ability of the police, fire department, and other City agencies to interact with fearful immigrants, leaving all of San José's residents less safe.

(Cortese/Campos/Liccardo/Nguyen)
(Rules Committee referral 2/28/07)

Documents Filed: Memorandum from Vice Mayor Cortese, and Council Members Liccardo, Campos and Nguyen, dated February 26, 2007, recommending adoption of a resolution.

Motion: Council Member Liccardo moved approval the memorandum he cosigned with Council Members Campos and Nguyen, recommending adoption of the resolution. Council Member Campos seconded the motion.

Council Member Constant requested that the motion be separated into two parts: recommending 1 - 3 heard together and 4, heard separately. He stated he could not support the recommendation because they City does not have the right to tell another agency that their mission is wrong, and further that it sets a bad precedent.

3.5 (Cont'd.)

Council Member Campos expressed concern in separating the motion and withdrew her second. Motion withdrawn.

Council Member Liccardo moved approval of the recommendations in two parts: Recommendations 1 through 3 heard together and 4, heard separately. Council Member Nguyen seconded the motion. (6-2-1. Noes: Campos, Williams. Absent: Reed.)

Public Comment: Speaking in favor of the resolution were: Anne Im (AACI), Donnalynn Rubiano (Asian Law Alliance), St. Patrick's Parishioner, Cristo Ray Parishioner, St. Julies Parishioner, St. Julies Student, Father Jon Pedigo, St. Julies Mother, St. Patrick's Mother, Father Bill Leninger, Adam Lupercio, Janet Cardillo, John Bohnett, Gloria Nieto, Teresa Pedrizco, Kate Taylor, Rand Owens, Lawrence Ames, Javier Poirto, Harvey Darnell, Michael Hilde and Elena Robles.

Speaking in opposition to the resolution were Carol Joyal, Jan Soule, Peter Soule, Don Stone, Fred Zela, Nancy De La Cruz, Gary Seiler, Philip Reynolds Jr., Roberta Allen and Charles Birkman.
Council Member Constant expressed support for Recommendations 1, 2 and 3 of the memorandum and reiterated his concern for Recommendation 4.

Action: On a call for the question, the motion carried, Resolution No. 73677, entitled: "A Resolution of the Council of the City of San José Supporting Public Safety and Immigrant Rights", was adopted, with Council Member Constant registering opposition to Recommendation 4. (8-0-1. Absent: Reed.)

PUBLIC HEARINGS

11.2 Administrative Hearing on consideration of an appeal of the Planning Commission's decision to deny a Conditional Use Permit to allow the construction of an outdoor dining patio and storage building for an existing restaurant (Tomato Thyme) on a 0.40 gross acre site, in the CN Neighborhood Commercial Zoning District, located on the south side of Hamilton Avenue approximately 320 feet easterly of Meridian Avenue (1560 Hamilton Avenue) (John D. Smith, Owner). CEQA: Mitigated Negative Declaration.
CP02-008 - District 6
(Continued from 1/23/07 – Item 11.5)

Action: Continued to April 17, 2007 per Administration and Applicant's Request.

11.3 Consideration of ordinance rezoning the real property located on the southeast corner of Almaden Expressway and Almaden Road (18951 Almaden Road) from A Agriculture Zoning District to A(PD) Planned Development Zoning District to allow removal of the Feed and Fuel building for construction of up to 13 single-family detached residences on a 1.24 gross acre site (Carson Jon D and R Jennifer, Owner). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommended approval (6-0-0).
PDC05-109 – District 10
(Continued from 2/27/07 – Item 11.5)

Documents Filed: (1) Memorandum from Council Member Pyle, dated March 6, 2007, recommending approval of the rezoning as recommended by the Planning Commission. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC05-109, dated September 11, 2006, recommending approval on the subject property. (2) Memorandum from Planning Commission Secretary Joe Horwedel, dated February 13, 2007, transmitting the Planning Commission recommendation of the subject property. (3) Proofs of Publications of Notices of Public Hearings, executed on January 19, 2007, and January 28, 2007, submitted by the City Clerk. (4) Letter from the public, dated March 6, 2007, protesting the development.

Motion: Council Member Pyle moved approval of the Planning Commission recommendation. Council Member Williams seconded the motion.

Mayor Reed opened the public hearing.

Public Comments: Jon Carson, applicant, spoke to the merits of this in-fill project and asserted that the plans will improve the blighted property. He added that the bar was closed in May 2006 and the historical value was thoroughly reviewed (building was formerly called Feed and Fuel Gas Station and built in 1934). Speaking in favor of the development were Dan Kirby and Bill Gunter.

Speaking in opposition to the development and in favor of saving the "historical: building: Michael Hilde, Misty Marie Dodd, Edward Della Monica, Mark Erickson, Mike Boulland, Lauren Bowker, Julie Zlatunich, Ed Rast, Sharon Pfeiffer and Harvey Darnell. Mayor Reed closed the public hearing.

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 27988, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Southeast Corner of Almaden Expressway and Almaden Road (18951 Almaden Road) to A(PD) Planned Development Zoning District", was passed for publication. (8-0-1. Absent: Reed.)

11.4 Consideration of an ordinance rezoning the real property located at/on the east side of North 4th Street, approximately 600 feet northerly of Gish Road, from LI Light Industrial Zoning District to A(PD) Planned Development Zoning District to allow up to 100 multi-family residences on a 0.75 gross acre site (1470 N. 4th Street)(Owner/Developer; First Community Housing Inc). CEQA: North San José Area Development Policy Resolution No. 72768. The Director of Planning, Building and Code Enforcement and Planning Commission recommended approval (6-1-0). PDC06-022 – District 3

Action: Continued to March 13, 2007, time certain 2:30 p.m., per Council Member Liccardo.

11.5 Consideration of an ordinance rezoning the real property located on the terminus of Duckett Way, approximately 420 feet east of S. De Anza Boulevard from R-1-5 Residence Zoning District to A(PD) Planned Development Zoning District to allow up to 19 new single family attached residential units and one single family residence on an 1.83 gross acre site (1566 Duckett Way) (P. Lenahan and M. Barshow, Owners; Barry Swenson Builders, Developer). CEQA: Mitigated Negative Declaration. The Director of Planning, Building and Code Enforcement and Planning Commission recommended to not adopt the rezoning ordinance (4-1-2). PDC06-062 - District 1
(Continued from 12/5/06 – Item 11.4, et al. 2/27/07 – Item 4.9)

Documents Filed: (1) Memorandum from Council Member Constant, dated March 6, 2007, recommending approval of the rezoning with conditions as described in "Action". (2) Memorandum from Director of Planning, Building and Code Enforcement Joe Horwedel, dated November 14, 2006, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC06-062, dated August 1, 1980, recommending denial on the subject property. (3) Memorandum from Planning Commission Secretary Joe Horwedel, dated November 16, 2006, transmitting the Planning Commission recommendation of denial of the subject rezoning. (4) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joe Horwedel, dated March 1, 2007, after revisiting the riparian corridor issue as directed, continues to recommend denial. (5) Proof of Publications of Notice of Public Hearings, executed on October 31, 2006, submitted by the City Clerk. (16) Eighteen letters of protest from the public.

Director of Planning Building and Code Enforcement Joe Horwedal presented an overview of the proposed rezoning and responded to Council questions. Mayor Reed opened the public hearing.

Public Comments: Eric Schoennauer, representing Barry Swenson Builder, spoke in favor of the rezoning and summarized the benefits for the site.

11.5 (Cont'd.)

Concurring with the Planning Commission recommendation to deny the application were: Lawrence Ames, Ivon Tsai, Shanli Chien, Lin Chaoho, Oscar Wu, Brian Schmidt (Committee for Green Foothills), Sharlene Wong, Randi Kinman, Bob Mulvany, Jean Dresden, Harvey Darnell and Ed Rast.

Eric Schoennauer addressed the issues the speakers brought up and stated that the Santa Clara Valley Water District had no concerns about the riparian policy. He added with that the site is outside the flood control area and there is no City or County plan for a creek trail.

Motion: Council Member Constant moved approval of the subject rezoning, including the clarifications contained in his memorandum dated March 6, 2007. Council Member Nguyen seconded the motion.

Council Member Chirco commented in support of the Planning Commission recommendation to deny the rezoning.

Action: On a call for the question, the motion carried, the public hearing was closed, and Ordinance No. 27989, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated in the R-1-5 Residence Zoning District to A(PD) Planned Development Zoning District to Allow 19 New Single Family Attached Residential Units and One Existing Single Family Residence on a 1.83 Gross Acre Site Located at the Terminus of Duckett Way, Approximately 420 Feet East of South De Anza Boulevard (1566 Duckett Way)", was passed for publication, with the following amendments: (1) Relocate a unit equivalent in size to #14 from the riparian setback area to a new location adjacent to Unit 7, (a) To accommodate the relocated unit adjacent to #7, the zoning will allow the removal of the two ordinance-size trees #42 and #43, allow a 20 foot curb to curb cul-de-sac and allow a parking requirement of 10 guest parking spaces; (2) Shrink the footprint of Unit 8 as much as possible, while preserving the unit's square footage. Allow a third story element, if necessary; (3) Prohibit third story balconies on the north side of Units 16, 17 and 18. (4) Allow a minimum 15 foot setback on the west property line to afford the applicant an opportunity to shift the entire project further away from the riparian area, and at the Planned Development Permit stage, Staff should work with the applicant to balance shifting the project away from the riparian area with preserving as many of the mature ordinance size trees along the west property line as possible. (7-1-1. Noes: Chirco. Absent: Reed.)

OPEN FORUM

(1) Brian Schmidt, Committee for Green Foothills, criticized the Draft Fiscal Analysis for the Coyote Valley Specific Plan.

(2) Harvey Darnell objected to the last minute change in recommendation for Item 11.5 and added that the community deserves to have more input on land use decisions.

ADJOURNMENT

The Council of the City of San José was adjourned at 10:44 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

smd/3-6-07MIN