

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, MAY 13, 2008

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

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

Absent: Council Members - None.

Upon motion unanimously adopted, Council recessed at 9:29 a.m. to a Closed Session in Room W133, (A) to confer with Legal Counsel pursuant to Government Code 54956.9, subsection (a) with respect to existing litigation: (1) San José Silicon Valley Chamber of Commerce Political Action Committee, et al. v. City of San José, et al. Names of Parties Involved: San José Silicon Valley Chamber of Commerce Political Action Committee, Compac Issues Fund, Sponsored by the San José Silicon Valley Chamber of Commerce, City of San José, San José Elections Commission and Does 1-10. Court: United States Court of Appeals for the Ninth Circuit. Case No: 06-17001. Amount of Money or other Relief Sought: Reverse judgment in U.S. District for the Northern District of California. (B) 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; Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (2) Organization or Name and Title of Unrepresented Employees: Municipal Employees Federation, AFSCME Local 101, AFL/CIO; Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and Municipal Employees Federation, AFSCME Local 101, AFL/CIO. (3) Organization or Name and Title of Unrepresented Employees: City Association of Management Personnel Agreement; Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Benefit and Compensation Summary between City of San José and City Association of Management Personnel Agreement. 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.

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.

CLOSED SESSION (Cont'd.)

By unanimous consent, Council recessed from the Closed Session at 11:45 a.m. and reconvened at 1:29 p.m. in the Council Chambers.

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

Absent: Council Members - None.

INVOCATION

Reverend Juan Saavedra, La Trinidad United Methodist Church presented an inspirational prayer. (District 5)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Vice Mayor Cortese and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (10-0-1. Absent: Oliverio.)

CEREMONIAL ITEMS

- 1.1 Presentation of a proclamation declaring May as “National Historic Preservation Month” in the City of San José. (Chirco)
(Rules Committee referral 5/7/08)**

Action: Mayor Reed and Council Member Chirco recognized the month of May 2008 as “National Historic Preservation Month” in the City of San José.

- 1.2 Presentation of a commendation to Friends of Guadalupe River Park and Gardens, Rose Garden and Heritage Orchard Volunteers, Parks Staff, Mauby All Natural, and Environmental Services for their partnership in implementing sustainable Integrated Pest Management techniques at Guadalupe River Park and Gardens. (Chirco/Liccardo)
(Rules Committee referral 5/7/08)**

1.2 (Cont'd.)

Action: Mayor Reed and Council Members Chirco and Liccardo recognized and commended the Friends of Guadalupe River Park and Gardens, Rose Garden and Heritage Orchard Volunteers, Parks Staff, Mauby All Natural, and Environmental Services for their partnership in implementing sustainable Integrated Pest Management techniques at Guadalupe River Park and Gardens.

**1.5 Presentation of a proclamation declaring May 13, 2008 as “LIVESTRONG Day” in the City of San José as part of the Lance Armstrong Foundation’s one day initiative to raise awareness and funds for the fight against cancer. (Liccardo)
(Rules Committee referral 5/7/08)**

Action: Mayor Reed and Council Member Liccardo recognized May 13, 2008 as “LIVESTRONG Day” in the City of San José to raise awareness and funds for the fight against cancer.

**1.3 Presentation of a commendation to YMCA’s Project Cornerstone Teen Volunteers of the Year, located in Country Lane Elementary School, for their commitment to promoting an environment where children and youth feel valued and thrive. (Constant)
(Rules Committee referral 5/7/08)**

Action: Mayor Reed and Council Member Constant recognized and commended YMCA’s Project Cornerstone Teen Volunteers of the Year for their commitment to promoting an environment where children and youth feel valued and thrive.

**1.4 Presentation of a proclamation declaring May 10-18, 2008 as “National Tourism Week” in the City of San José. (Constant)
(Rules Committee referral 5/7/08)**

Action: Mayor Reed and Council Member Constant recognized May 10 through May 18, 2008 as “National Tourism Week” in the City of San José.

CONSENT CALENDAR

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

2.2 Final adoption of ordinances:

- (a) **ORD. NO. 28296 – Amending Part 12 of Chapter 20.100 of Title 20 of the San José Municipal Code to allow businesses that are designated as Public Eating Establishments and maintain a valid Entertainment Permit under Title 6 of the San José Municipal Code the ability to obtain a Sidewalk Café Permit to operate a Sidewalk Café in the Downtown, to allow Retail Sales Establishments the ability to operate a Sidewalk Café, and making other clarifying changes to said Part 12 of Chapter 20.100 and to related definitions set forth in Chapter 20.200, all of Title 20 of the San José Municipal Code.**

Documents Filed: Proof of Publication of the title of Ordinance No. 28296 executed on May 6, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28296](#)

was adopted. (11-0.) (First Reading: 7-1. Noes: Chu, Constant, Liccardo; Reed.)

- 2.3 (a) Approval of an ordinance repealing Ordinance No. 27748 to terminate the Commercial Solid Waste and Recyclables Collection Franchise with The Residential Bin Co., Inc.**
- (b) Adoption of a resolution authorizing the Director of the Environmental Services Department to send a notice to The Residential Bin Co., Inc., terminating the Commercial Solid Waste and Recyclables Collection Franchise Agreement effective July 1, 2008.**

CEQA: Negative Declaration, File No. PP92-11-308. (Environmental Services)

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated April 21, 2008, recommending approval of an ordinance and adoption of a resolution.

Action: [Ordinance No. 28305](#), entitled: “An Ordinance of the City of San José Repealing Ordinance No. 27748 to Terminate the Commercial Solid Waste and Recyclables Collection Franchise Previously Granted to the Residential Bin Company, Inc.”, was passed for publication and [Resolution No. 74354](#), entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Environmental Services to Send a Notice to the Residential Bin Co., Inc. Terminating the Commercial Solid Waste and Recyclables Collection Franchise”, was adopted. (11-0.)

- 2.4 Report on bids and award of construction contract for the Dissolved Air Flotation Pressure Retention Tanks and Valves Replacement – Phase II Project to the lowest responsive bidder, Anderson Pacific Engineering Construction, Inc., in the amount of \$819,780, and approval of a 10% contingency in the amount of \$82,000. CEQA: Exempt, File No. PP07-141. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated April 21, 2008, recommending award of the contract to the lowest responsive bidder. (2) Letter from the Treatment Plant Advisory Committee, dated May 8, 2008, stating concurrence with the Staff recommendation.

2.4 (Cont'd.)

Public Comments: William Garbett objected to the Staff recommendations.

Action: Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, the construction contract for the Dissolved Air Flotation Pressure Retention Tanks and Valves Replacement – Phase II Project to the lowest responsive bidder, Anderson Pacific Engineering Construction, Inc., in the amount of \$819,780, with related contingency, was approved. (11-0.)

2.5 **Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with Quantum Energy Services and Technologies, Inc. to obtain technical assistance and financial incentives under the California Wastewater Process Optimization Program, for the implementation of energy savings to the San José/Santa Clara Water Pollution Control Plant, at no cost to the City, for a term commencing upon approval of the agreement and extending through December 31, 2008. CEQA: Not a Project. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated May 13, 2008, recommending adoption of a resolution. (2) Letter from the Treatment Plant Advisory Committee, dated May 8, 2008, stating concurrence with the Staff recommendation.

Action: [Resolution No. 74355](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with Quantum Energy Services and Technologies, Inc. to Obtain Technical Assistance and Financial Incentives Under the California Wastewater Process Optimization Program”, was adopted. (11-0.)

2.6 **Report on Request for Proposals for Collections Services Providers for the Finance Department and adoption of a resolution authorizing the Director of Finance to:**

(a) **Execute agreements for collection services with Professional Recovery Systems Inc., the primary contractor with a set fee equal to 9.9% of debt collected or a flat fee of \$25, whichever is greater and Collection Bureau of America, Ltd., the secondary contractor with a set fee equal to 14.75% of debt collected or a flat fee of \$25, whichever is greater for an initial term of three years (May 13, 2008 through May 12, 2011) for the collection of delinquent accounts.**

(b) **Exercise three one-year options to extend the agreements subject to the appropriation of funds.**

CEQA: Not a Project. (Finance)

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated April 21, 2008, recommending adoption of a resolution.

Public Comments: William Garbett objected to the Staff recommendations.

2.6 (Cont'd.)

Action: Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, [Resolution No. 74356](#), entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Finance to Execute Agreements with Professional Recovery Systems, Inc. and Collection Bureau of America, LTD. For Collection Services", was adopted. (11-0.)

2.7 Adoption of a resolution setting a public hearing for June 24, 2008 at 1:30 p.m. for the approval of the report of the Director of Finance on the cost of sidewalk repairs. CEQA: Not a Project. (Finance)

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated April 21, 2008, recommending adoption of a resolution.

Action: [Resolution No. 74357](#), entitled: "A Resolution of the Council of the City of San José Setting a Public Hearing for the Approval of a Report of the Director of Finance on the Cost of Unpaid Sidewalk Repairs for June 24, 2008", was adopted. (11-0.)

2.8 Approval of a consultant master agreement with Callander Associates Landscape Architecture, Inc. for project design and management for aquatics facility projects from the date of execution through December 31, 2010, in an amount not-to-exceed \$500,000. CEQA: Not a Project. (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated April 21, 2008, recommending approval of the agreement.

Action: The consultant master agreement with Callander Associates Landscape Architecture, Inc. for project design and management for aquatics facility projects from the date of execution through December 31, 2010, in an amount not-to-exceed \$500,000 was approved. (11-0.)

2.9 Approval of an agreement with RTKL Associates Inc. for In-Building Wireless Reinforcement Design consultant services for the New City Hall complex, from the date of execution to December 31, 2008, in an amount not-to-exceed \$125,000. CEQA: Not a Project. (Public Works/Information Technology)

Documents Filed: Memorandum from Director of Public Works Katy Allen and Director of Information Technology Randall Murphy, dated April 21, 2008, recommending approval of an agreement.

Public Comments: William Garbett objected to the Staff recommendations.

Action: Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, the agreement with RTKL Associates Inc. for In-Building Wireless Reinforcement Design consultant services for the New City Hall complex, from the date of execution to December 31, 2008, in an amount not-to-exceed \$125,000 was approved. (11-0.)

- 2.10 Request for an excused absence for Council Member Campos from the Budget Study Session on May 8, 2008 due to Long Standing Commitment: Speaking Engagement at the 2008 International Hispanic Network Conference in Burlingame, CA. (Campos)**
(Rules Committee referral 4/30/08)

Documents Filed: Memorandum from Council Member Campos, dated April; 23, 2008, requesting an excused absence due to a long standing commitment.

Action: The absence was excused. (11-0.)

- 2.11 Request for excused absences for Council Member Constant.**
- (a) Request for an excused absence from the Closed Session and City Council Meeting of May 20, 2008 due to Authorized City Business: Required Federated City Employees' Retirement Services Educational Training in Philadelphia, PA.**
 - (b) Request for an excused absence from the Rules and Open Government Committee of May 21, 2008 due to Authorized City Business: Required Federated City Employees' Retirement Services Educational Training in Philadelphia, PA.**
- (Constant)**
(Rules Committee referral 4/30/08)

Documents Filed: Memoranda from Council Member Constant, both dated April 29, 2008, requesting excused absences due to authorized City business.

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

- 2.12 Approval of travel by Council Member Constant to Philadelphia, PA on May 19-22, 2008 to attend an educational training on IFEBP Portfolio Concepts and Management. Source of Funds: Federated City Employees' Retirement System Board of Administration. (Constant)**
(Rules Committee referral 4/30/08)

Documents Filed: Memorandum from Council Member Constant, dated April 29, requesting approval of travel.

Action: The travel request was approved. (11-0.)

- 2.13 Approval of travel by Council Member Constant to Chicago, IL on October 1-3, 2008 to attend the San José/Silicon Valley Chamber of Commerce City-to-City 2008 Trip. Source of Funds: Mayor/Council Travel Fund. (Constant)**
(Rules Committee referral 4/30/08)

Documents Filed: Memorandum from Council Member Constant, dated April 25, requesting approval of travel.

Action: The travel request was approved. (11-0.)

STRATEGIC SUPPORT SERVICES

3.1 Report of the City Manager, Debra Figone (Verbal Report)

Action: City Manager Debra Figone reported that the National Weather Service has declared a Heat Alert for the City of San José and the surrounding cities and added that ten cooling centers will be open throughout San José beginning Wednesday, May 14, 2008 through Friday evening, May 16, 2008.

3.2 Report of the Rules and Open Government Committee – April 30, 2008 Mayor Reed, Chair

Documents Filed: The Rules and Open Government Committee Report dated April 30, 2008.

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Chirco and carried unanimously, the Rules and Open Government Committee Report and the actions of April 30, 2008 were accepted. (11-0.)

3.5 Acceptance of staff's presentation to the City Council regarding recent ethical issues in the news and federal offenses that may be enforced against local officials. (City Attorney's Office)

Documents Filed: Memorandum from City Attorney Richard Doyle, dated May 1, 2008, recommending acceptance of the Staff presentation.

Chief Deputy General Counsel Patricia Deignan summarized recent ethical issues in the news and federal offenses that may be enforced against local officials for failure by elected officials to disclose certain information.

In response to inquiry from Mayor Reed, City Attorney Doyle advised that Council disclosures of meetings with lobbyists should be made at the beginning of deliberations and should include: (1) The name of the lobbyist, (2) The date of the meeting, and (3) the substance of the meeting.

Action: The Staff presentation was received.

3.6 Adoption of a resolution authorizing the Director of Finance to write-off the uncollectible accounts in the total amount of \$3,481,148.99 listed in the Bad Debt Write-off Report, as provided for in Section 4.24.030 of the Municipal Code. CEQA: Not a Project. (Finance)

3.6 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Finance Scott Johnson, dated April 21, 2008, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Finance Scott Johnson, dated May 8, 2008, updating the write off list due to payments received and inadvertent duplication of accounts on previously submitted write off report.

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

Director of Finance Scott Johnson responded to Council questions and discussion followed.

Council Member Pyle amended the motion to request that Staff return annually with an updated report, including a column for status of the collection actions taken to date. Council Member Constant amended the motion to add direction to Staff to explore the responsibility of recovering credit card fees.

Council Member Liccardo requested an amendment to the motion by directing Staff to explore opportunities to recover unpaid debts through future contract negotiations. The amendment was accepted by Council Members Pyle and Constant.

Director of Finance Scott Johnson stated Staff is currently developing a framework plan with a collection agency and will provide Council with an information memorandum when available.

Action: On a call for the question, the motion carried unanimously, Resolution No. 74358, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Finance to Write Off Uncollectible Amounts", was adopted, as amended, with Staff directed to: (1) Explore the possibility of recovering credit card fees. (2) Return annually with an updated report, including a column for status of the collection actions taken to date. (3) Explore opportunities to recover unpaid debts through future contract negotiations. (11-0.)

3.7 **Consider a request to waive the Attorney-Client privilege regarding the April 18, 2008 memorandum entitled, "Confidential Legal Advice Related to Imposition of appropriate Conditions in Land Use Approvals". (Constant)** **[Rules Committee referral 4/30/08 – Item A(1)(a)]**

Documents Filed: (1) Memorandum from Council Member Constant, dated April 28, 2008, recommending waiving the attorney-client privilege on the April 18, 2008 memorandum. (2) Memorandum from City Attorney Richard Doyle, dated May 7, 2008, providing background on the attorney-client privilege.

City Attorney Richard Doyle provided an overview of the attorney-client privilege and responded to Council questions.

3.7 (Cont'd.)

Extensive Council discussion followed.

Action: Upon motion by Council Member Constant, seconded by Vice Mayor Cortese and carried unanimously, the request to waive the privilege was denied, with direction to the City Attorney to: (1) Release a public version of the April 18, 2008 memorandum, and (2) Return with a Council Policy giving guidance on conditions the City may require in land use decisions. (11-0.)

**3.8 That the City Council direct the anticipated, unscheduled vacancy for an employee member on the Board of Administration of the Federated Employees Retirement System be filled through an appointment process, with the Council selecting between the two options to appoint a new City employee to the end of the existing member's term, November 30, 2009. (City Clerk)
(Rules Committee referral 5/7/08)**

Documents Filed: Memorandum from City Clerk Lee Price, dated May 6, 2008, recommending as depicted above.

Public Comments: Patrick Skillsky spoke in favor of the Federated Employees Retirement System appointment process.

Motion: Council Member Constant moved approval of the recommendations of the City Clerk. Council Member Nguyen seconded the motion.

A short discussion followed.

Action: On a call for the question, the motion carried unanimously, the Staff recommendations were approved, and the City Clerk was directed to give Notice of the Vacancy on the Federated Retirement Board and to initiate the process for accepting petitions for nominations and appointment of a new employee member, pursuant to regulations governing employee elections. (11-0.)

**3.9 Consider a position of support for SB1625 (Corbett) – Add All Plastic Containers to the State Bottle and Can Recycling Law. (City Clerk)
(Rules Committee referral 5/7/08)**

Documents Filed: Memorandum from City Clerk Lee Price, dated May 9, 2008, transmitting the recommendations of the Rules and Open Government Committee.

Action: Upon motion by Council Member Williams, seconded by Council Member Pyle and carried unanimously, the position of support for SB1625 was approved. (11-0.)

**3.10 Consider a position of support for AB3034 (Galgiani) – Safe, Reliable High-Speed Passenger Bond Act for the 21st Century. (City Clerk)
(Rules Committee referral 5/7/08)**

Documents Filed: Memorandum from City Clerk Lee Price, dated May 9, 2008, transmitting the recommendations of the Rules and Open Government Committee.

Action: Upon motion by Council Member Pyle, seconded by Council Member Williams and carried unanimously, a position of support for AB3034 was approved. (10-0-1. Absent: Constant.)

COMMUNITY & ECONOMIC DEVELOPMENT

**4.1 Report of the Community & Economic Development Committee – April 28, 2008
Council Member Pyle, Chair**

Action: Deferred to May 20, 2008 per Administration.

4.2 Adoption of a resolution approving:

- (a) **The City Real Property Asset Report, and**
- (b) **The proposed process for surplusizing underutilized City of San José real property assets.**

CEQA: Not a Project. (Public Works)

[Community and Economic Development Committee referral 4/28/08 – Item (g)]

Documents Filed: Memorandum from Memorandum from Agenda Services Manager Nadine Nader, dated April 30, 2008, transmitting the recommendations of the Community and Economic Committee.

Director of Public Works Katy Allen summarized the report and explained how the Staff proposes to surplus property. Deputy Director of Public Works Philip Prince presented the property inventory. Director of Public Works Katy Allen outlined next steps.

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

Director of Public Works Katy Allen, Deputy City Manager Ed Shikada and City Manager Debra Figone responded to Council questions.

Public Comments: William Garbett objected to the Staff recommendations.

Action: On a call for the question, the motion carried unanimously and [Resolution No. 74359](#), entitled: “A Resolution of the Council of the City of San José Approving Recommendations for the Outreach and City Process for Sales of Surplus Properties, Consistent with San José Municipal Code Chapter 4.20”, was adopted. (10-0-1. Absent: Campos.)

4.3 Adoption of a resolution:

- (a) **Approving a Memorandum of Understanding between the City of San José, Coleman Airport Partners, LLC, FWSH Partners, LLC and Earthquakes Soccer, LLC regarding proposed development of certain real properties including the 74.8-acre 1125 Coleman Avenue property.**
- (b) **Authorizing the City Manager or her designee to negotiate and execute an option agreement and a purchase and sale agreement for the property located at 1125 Coleman Avenue that will facilitate the development of 1.5 million square feet of office development, 300 hotel rooms, 95,000 square feet of retail space and the required parking for all uses including a proposed stadium.**
- (c) **Authorizing the City Manager or her designee to ensure that a 13.5 acre site for a proposed soccer stadium is reserved at the 1125 Coleman Avenue property. Staff will return to Council with information regarding financing and development of the stadium when appropriate.**

CEQA: Not a Project. Council District 3. (Economic Development)

[Community and Economic Development Committee referral 4/28/08 – Item (h)]

Action: Deferred to May 20, 2008 per Administration.

4.5 Consideration of an ordinance rezoning the real property located on the southeast corner of Stevens Creek and South Winchester Boulevard (Santana Row) from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to (1) modify perimeter setbacks and (2) change allowed uses, including the elimination of previously entitled 22,500 square feet of retail uses, a 190 room hotel and 229 residential dwelling units. This proposal would allow the addition of 160,000 square feet of office/commercial uses on a 40.8 gross acre site (FRIT San José Town & Country Village LLC, c/o Randy Paul, Developer). Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required. CEQA: EIR Resolution No. 68210 and Addendum thereto.

PDC07-095 – District 6

(Continued from 4/22/08 - Item 11.1(d) et al, and 5/6/08 – Item 11.7)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC07-095, dated March 26, 2008, recommending approval. (2) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated April 10, 2008, providing General Development Plans, Development Standards/Conditions, memorandum from Public Works and a copy of the project vicinity map for review. (3) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated May 8, 2008, noting minor technical changes made to the Development Standards/Conditions previously submitted on April 10, 2008. (4) Proof of Publication of Notice of Public Hearing, executed on April 4, 2008, submitted by the City Clerk.

Mayor Reed opened the public hearing.

4.5 (Cont'd.)

Public Comment: Randy Paul representing the Applicant, Federal Realty Investment Trust, outlined the project and spoke in favor of the rezoning.

Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Constant and carried unanimously, [Ordinance No. 28306](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Located at the Southeast Corner of Stevens Creek and Winchester Boulevards on Approximately 40.8 Acres (at a site commonly known as Santana Row) to A(PD) Planned Development Zoning District”, was passed for publication. (9-0-2. Absent: Chirco, Cortese.)

4.4 **Acceptance of the 2007 Development Services Customer Satisfaction Study – Final Survey Report which provides statistically reliable measures of customer satisfaction among customers of the City’s development permit process. CEQA: Not a Project. (Planning, Building and Code Enforcement)** **[Community and Economic Development Committee referral 4/28/08 – Item (i)]**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated April 23, 2008, transmitting the 2007 Development Services Customer Satisfaction Survey Results.

Director of Planning, Building and Code Enforcement Joseph Horwedel provided an overview of the 2007 Customer Satisfaction Study and responded to Council questions.

Action: Report accepted.

NEIGHBORHOOD SERVICES

- 5.2 (a) **Adoption of a resolution authorizing the City Manager to negotiate and execute agreements with:**
- (1) **Santa Clara County Open Space Authority for a grant amount not-to-exceed \$400,000 to supplement existing City funds for the construction of Gary Albertson Parkway Trail.**
 - (2) **Pacific Gas & Electric Company for an easement that permits development of the planned improvements and recreational use upon their property.**

- 5.2 (b) **Adoption of the following appropriation ordinance and funding sources resolution amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District #2 (Fund 378):**
- (1) **Increase the estimate for Earned Revenue in the amount of \$400,000.**
 - (2) **Increase the trail: Albertson Parkway Project in the amount of \$319,000.**
 - (3) **Increase the Ending Fund Balance by \$81,000.**
- CEQA: Exempt, File No. PP07-076. Council District 2. (Parks, Recreation and Neighborhood Services/City Manager's Office)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso and Acting Budget Director Jennifer Maguire, dated April 21, 2008, recommending adoption of a resolution and appropriation ordinance and funding sources resolution amendments.

Action: Upon motion by Council Member Williams, seconded by Council Member Pyle and carried unanimously, [Resolution No. 74360](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute Agreements with the Santa Clara County Open Space Authority and Pacific Gas & Electric Company Relating to the Gary Albertson Parkway Trail"; [Ordinance No. 28307](#) and [Resolution No. 74361](#) were adopted. (11-0.)

TRANSPORTATION & AVIATION SERVICES

- 6.2 **Report on bids and award of contract for the Slurry Seal 2008 Project to the low bidder, Bond Blacktop, Inc. in the amount of \$2,519,001 and approval of a five percent (5%) contingency in the amount of \$125,950. CEQA: Exempt, File No. PP04-039. (Transportation)**

Documents Filed: Memorandum from Director of Transportation James Helmer, dated April 21, 2008, recommending award of the contract to the low bidder.

Council Member Campos requested data that shows how much linear feet of street maintenance per Council District (8 and 10 year cycle).

Action: Upon motion by Council Member Constant, seconded by Council Member Chirco and carried unanimously, the award of contract for the Slurry Seal 2008 Project to the low bidder, Bond Blacktop, Inc. in the amount of \$2,519,001, with related contingency, was approved. (11-0.)

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 **Report on bids and award of construction contract for the Alternative Disinfection Project to the lowest responsive bidder, Anderson Pacific Engineering Construction, Inc., in the amount of \$7,709,000 and approval of a 15% contingency in the amount of \$1,160,000. CEQA: Exempt, File No. PP07-145. (Environmental Services)**

7.1 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated April 21, 2008, recommending award of the contract to the lowest responsive bidder. (2) Letter from the Treatment Plant Advisory Committee, dated May 8, 2008, stating concurrence with the Staff recommendation.

Action: Upon motion by Council Member Pyle, seconded by Council Member Chirco and carried unanimously, the award of construction contract for the Alternative Disinfection Project to the lowest responsive bidder, Anderson Pacific Engineering Construction, Inc., in the amount of \$7,709,000, with related contingency, was approved. (11-0.)

7.2 **Adoption of a resolution increasing rates for Recycle Plus single-family services by 4.5% and multi-family services by 8%, effective July 1, 2008. CEQA: Not a Project. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated April 21, 2008, recommending adoption of a resolution.

Director of Environmental Services John Stufflebean presented the Recycle Plus Program Rate recommendations.

Action: Upon motion by Council Member Liccardo seconded by Council Member Nguyen and carried unanimously, [Resolution No. 74362](#), entitled: "A Resolution of the Council of the City of San José Adopting Service Rates for the Recycle Plus Program Effective July 1, 2008 and Superseding Resolution No. 73757", was adopted. (11-0.)

OPEN FORUM

- (1) Mark Trout expressed religious viewpoints.

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 4:53 p.m.

RECESS/RECONVENE

The City Council recessed at 4:53 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, Chu, Constant, Cortese, Liccardo, Nguyen, Pyle, Williams; Reed.

Absent: Council Members - Oliverio. (Excused)

STRATEGIC SUPPORT SERVICES

3.4 Public Hearing on the Proposed Operating and Capital Budgets for the Fiscal Year July 1, 2008 to June 30, 2009, the Proposed Five-Year Capital Improvement Program for 2009-2013, the Proposed Fees and Charges Report for the Fiscal Year 2008-2009, and the Mayor's June Budget Message for Fiscal Year 2008-2009. CEQA: Not a Project. (City Manager's Office)

Documents Filed: (1) Proof of Publication of Notice of Public Hearing, executed on April 29, 2008, submitted by the City Clerk. (2) Petition of 77 signatures to avoid layoff through sensible cuts in the City Attorney's Office for the FY 2008-2009 Budget, dated May 13, 2008.

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

Action: No Council action was taken.

ADJOURNMENT

The Council of the City of San José was adjourned at 7:05 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

smd/5-13-08 MIN

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NOTICE OF CITY ENGINEER'S AWARD OF CONSTRUCTION PROJECTS:

In accordance with Council Resolution No. 73532, the Construction Contract Process Streamlining policy approved on 12/05/06, the following is a list of projects that were awarded or rejected by the Director of Public Works in April 2008:

| <u>Project Name</u> | <u>Council District</u> | <u>Contractor</u> | <u>Contract Award Amount</u> | <u>Award Date</u> |
|---|-------------------------|---|------------------------------|-------------------|
| SNI MAY 07d: Traffic Signal Installation at San Antonio Street & Scharff Avenue | 5 | San José Signal Electric Construction, Inc. | \$225,000 | 4/1/08 |
| Norman Y. Mineta San José International Airport General Electrical Contract 07-08 | Citywide | Cupertino Electric Inc. | \$130,000 | 4/2/08 |
| Norman Y. Mineta San José International Airport Building Trades Contract 07-08 | Citywide | Universal Builders Systems | \$200,000 | 4/2/08 |
| Hedding Street Lighting Improvement | 6 | Pacific Electric Company | \$113,200 | 4/25/08 |
| Rhodes Court Sanitary Sewer Replacement | 6 | Ranger Pipelines, Inc. | \$295,425 | 4/25/08 |

JOINT REDEVELOPMENT AGENCY ITEM

The Joint Redevelopment Agency Board convened at 4:54 p.m. to consider Items 8.1 and 8.2 in a Joint Session.

- 8.1 (a) **Redevelopment Agency Board approval of the third amendment to the Disposition and Development Agreement (DDA) with 360 Residences LLC, revising the public art provision and providing for a public art payment to the Office of Cultural Affairs of \$57,500 upon execution of the third amendment and payment to the Office of Cultural Affairs of \$539,000 upon the sale of the first residential unit in the 23 story mixed use condominium project located in the SoFA District at Market and San Salvador Streets.**
- (b) **City Council adoption of the following appropriation ordinance and funding sources resolution amendments in the General Fund:**
- (1) **Increase the estimate for other revenue by \$32,500.**
 - (2) **Increase the citywide expenses appropriation to the Office of Economic Development for the Public Art in Private Development Project by \$32,500.**

CEQA: Resolution No. 72767 and addenda thereto, File No. H05-037. [MARKET GATEWAY]

Documents Filed: Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes and City Manager Debra Figone, dated May 1, 2008, recommending approval of the third amendment to the DDA and adoption Council appropriation ordinance and funding sources resolution amendments.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, the third amendment to the Disposition and Development Agreement with 360 Residences LLC, revising the public art provision and providing for a public art payment to the Office of Cultural Affairs of \$57,500 upon execution of the third amendment and payment to the Office of Cultural Affairs of \$539,000 upon the sale of the first residential unit in the 23 story mixed use condominium project located in the SoFA District at Market and San Salvador Streets was approved; [Ordinance No. 28308](#) and [Resolution No. 74363](#) were adopted. (11-0.)

The Council of the City of San José and Redevelopment Agency Board was adjourned at 4:55 p.m.