



MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, SEPTEMBER 18, 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, Chirco, Chu, Constant, Cortese, Liccardo, Nguyen, Oliverio, Pyle, Williams; Reed.

Absent: Council Members - None.

Upon motion unanimously adopted, Council recessed at 9:31 a.m. to a Closed Session in Room W133, (A) to confer with Legal Counsel pursuant to Government Code Section 54956.9 subsection (a) with respect to existing litigation to consider the case of: (1) In re Bystrom;(2) In re Seal; (3) Fong, et al. v. City of San José, et al.; (4) Licking Enterprises, Inc. 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 with significant exposure, subsection (b), in fourteen (14) matters.

By unanimous consent, Council recessed from the Closed Session at 10:30 a.m. and reconvened at 1:31 p.m. in the Council Chambers.

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

Absent: Council Members - None.

INVOCATION

Reverend Ellen Grace O'Brian, Spiritual Director of the Center for Spiritual Enlightenment presented a prayer. (District 8)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

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>

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Council Member Campos and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Item 3.1 deferred to September 25, 2007. (11-0.)

CLOSED SESSION REPORT

City Attorney Richard Doyle disclosed the following Closed Session action of August 28, 2007:

- A. Public Official/Employee Discipline/Dismissal/Release/Removal Pursuant to Government Code Section 54957:

Title: City Auditor

Name: Gerald Silva

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

Noes: None.

Disqualified: None.

Absent: None.

Pursuant to San José City Charter, Section 805, the Council unanimously voted to remove Gerald Silva from the position of City Auditor because of his inability or failure to perform the duties of the office and/or negligence in performance of the duties of the office based on an independent investigation and subsequent evidence and statements presented to the Council.

CEREMONIAL ITEMS

- 1.1 Presentation of a commendation to the City's Finance Department's Deputy Director and General Services Department Fleet Manager for incorporating exemplary pollution prevention practices into municipal operations. (Environmental Services)**

Action: Mayor Reed and Council Member Williams recognized and commended the City of San José's Finance Department Deputy Director and General Services Department Fleet Manager for incorporating exemplary pollution prevention practices into municipal operations. Director of Environmental Services John Stuffeban accepted the commendation.

1.2 Presentation of a commendation to the Small Business Ambassador Team for their exemplary dedication and valuable contributions to the City organization. (City Manager's Office/Mayor)

Action: Mayor Reed and City Manager Debra Figone recognized and commended the Small Business Ambassador Team for their excellent dedication and important contributions to the City of San José. Director of Planning, Building and Code Enforcement Joseph Horwedel accepted the commendation.

1.4 Presentation of a proclamation declaring September 17-21, 2007 as Pollution Prevention Week and recognizing the City's continuous efforts to implement pollution prevention practices into its operations. (Mayor/Williams)

Action: Mayor Reed, Council Member Williams and Director of Environmental Services John Stuffeban recognized the week of September 17 through September 21, 2007 as "Pollution Prevention Week" in the City of San José.

1.5 Presentation of a commendation to Yves Zsutty, Parks, Recreation and Neighborhood Services Trail Manager for receiving a number of awards and recognition for his commitments to the City organization. (Parks, Recreation and Neighborhood Services)

Action: Mayor Reed and Director of Parks, Recreation and Neighborhood Services Albert Balagso recognized and commended Recreation and Neighborhood Services Trail Manager Yves Zsutty for his dedication to the City of San José.

**1.6 Presentation of a proclamation declaring September 21, 2007 as "National POW/MIA Recognition Day" in the City of San José. (Mayor/Cortese)
(Rules Committee referral 9/12/07)**

Action: Mayor Reed and Vice Mayor Cortese recognized September 21, 2007 as "National POW/MIA Recognition Day" in the City of San José.

**1.7 Presentation of a proclamation declaring September 18, 2007 as United Air Force Day in the City of San José. (Mayor/Cortese)
(Rules Committee referral 9/12/07)**

Action: Mayor Reed and Vice Mayor Cortese recognized September 18, 2007 as "United Air Force Day" in the City of San José.

**1.3 Presentation of a proclamation declaring September 21, 2007 as the "International Day of Peace". (Cortese)
(Rules Committee referral 9/5/07)**

Action: Mayor Reed, Vice Mayor Cortese and Reverend Ellen Grace O'Brian recognized September 21, 2007 as the "International Day of Peace".

- 1.8 Presentation of a commendation to Outlook Video for their commitment to providing quality programming focusing on the LGBT community and broader issues affecting all Bay Area residents. (Oliverio)
(Rules Committee referral 9/12/07)**

Action: Mayor Reed and Council Member Oliverio recognized and commended Outlook Video for their commitment to providing quality programming to the community.

CONSENT CALENDAR

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

- 2.3 Approval of a third amendment agreement to the Newsstand and General Merchandise Agreement and Lease with DFS Group L.P., extending the term of the Lease on a month-to-month basis for a term not to go beyond December 31, 2009. CEQA: Resolution Nos. 67380 and 71451, File No. PP07-157. (Airport)**

Documents Filed: Memorandum from Director of Aviation William Sherry, dated August 27, 2007, recommending approval of a third amendment to the agreement.

Action: The third amendment to the agreement to the Newsstand and General Merchandise Agreement and Lease with DFS Group L.P., extending the term of the Lease on a month-to-month basis for a term not to go beyond December 31, 2009 was approved. (11-0.)

- 2.4 Adoption of a resolution authorizing the City Manager to negotiate and execute a 20-year ground lease with Southwest Airlines for the construction and operation of a provisioning and ground equipment storage and maintenance facility on the southeast corner of Mineta San José International Airport, with interim rent of approximately \$8,594.50 per month until the earlier of the issuance of the certificate of occupancy or 12 months from the lease commencement date, and subsequent rent of approximately \$17,189 per month, subject to annual increases in the Consumer Price Index or 3%, whichever is lower, and adjustment by appraisal every 5 years. CEQA: Resolution Nos. 67380 and 71451, File No. PP07-176. (Airport)**

Documents Filed: (1) Memorandum from Director of Aviation William Sherry, dated August 27, 2007, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Aviation William Sherry, dated September 14, 2007, transmitting a correction to the original memorandum that should state the rent is subject to annual increases in the Consumer Price Index or 3%, whichever is higher. (3) Statement and Declaration of Conflict of Interest Form from Council Member Chirco, dated September 18, 2007, disclosing an investment interest with Southwest Airlines.

2.4 (Cont'd.)

Council Member Chirco abstained due to an investment with Southwest Airlines.

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Liccardo and carried unanimously, [Resolution No. 73996](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a 20 Year Ground Lease with Southwest Airlines Co. for the Construction and Operation of Provisioning and Ground Equipment Storage and Maintenance Facility at the Norman Y. Mineta San José International Airport”, was adopted. (10-0-1. Disqualified: Chirco.)

2.5 Adoption of a Resolution:

- (a) **Authorizing the City Manager to negotiate and execute Assistance Modification Number Eleven to the Cooperative Agreement with the Transportation Security Administration to partially reimburse Airport funded Police Department costs for four explosive detection canine teams starting October 1, 2007 for a total amount not to exceed \$200,000 per year at the Norman Y. Mineta San José International Airport; and,**
- (b) **Authorizing the City Manager to negotiate and execute Assistance Modifications to the Cooperative Agreement for future years in an annual amount not to exceed \$200,000 on the same terms and conditions as the Cooperative Agreement.**

CEQA: Not a Project. (Airport)

Documents Filed: Memorandum from Director of Aviation William Sherry, dated August 31, 2007, recommending adoption of a resolution.

Action: [Resolution No. 73997](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute Assistance Modification Number Eleven to the Cooperative Agreement with the Transportation Security Administration to Partially Reimburse Airport Funded Police Department Costs for Four Explosive Detection Canine Teams for a Total Amount Not To Exceed \$200,000 Per Year and to Authorize the City Manager to Negotiate and Execute Assistance Modifications to the Cooperative Agreement for Future Years in an Annual Amount Not To Exceed \$200,000”, was adopted. (11-0.)

2.6 (a) Adoption of the following Appropriation Ordinance Amendments in the Park Trust Fund (Fund 375):

- (1) **Establish an appropriation to the Parks, Recreation and Neighborhood Services in the amount of \$85,000 for the TRAIL: Penitencia Creek - Viceroy Avenue Intersection project.**
- (2) **Decrease Ending Fund Balance by \$85,000.**

- 2.6 (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 4 (Fund 381):**
- (1) **Decrease the Beginning Fund Balance by \$61,000.**
 - (2) **Increase the appropriation to the Parks, Recreation and Neighborhood Services Department for the TRAIL: Penitencia Creek - Viceroy Avenue Intersection project by \$61,000.**

CEQA: Exempt, File No. PP05-067. Council District 4. (City Manager's Office/ Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso and Budget Director Larry Lisenbee, dated August 27, 2007, recommending adoption of appropriation ordinance and funding sources resolution amendments.

Action: [Ordinance No. 28118](#), 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: Penitencia Creek – Viceroy Avenue Intersection Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption"; [Ordinance No. 28119](#), 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: Penitencia Creek – Viceroy Avenue Intersection Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" and [Resolution No. 73998](#), entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 73862 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2007-2008 to Adjust Revenues in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District No. 4", were adopted. (11-0.)

- 2.7 **Report on bids and award of contract for Installation of Potable and Non-Potable Water Services and Mains: 2007-2008 to the lowest responsive bidder, San José Water Company, for the estimated term of December 2007 to January 2009, in an amount not to exceed \$612,527.13. CEQA: Exempt, File No. PP05-130. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated August 27, 2007, recommending award of the contract to the lowest responsive bidder. (2) Letter from the Treatment Plant Advisory Committee, dated September 13, 2007, stating concurrence with the Staff recommendation.

Action: The award of contract for Installation of Potable and Non-Potable Water Services and Mains: 2007-2008 to the lowest responsive bidder, San José Water Company, for the estimated term of December 2007 to January 2009, in an amount not to exceed \$612,527.13 was approved. (11-0.)

- 2.8 Report on bids and award of contract for the construction project entitled, “San José/Santa Clara Water Pollution Control Plant, FY 2007/2008 TPS VFD Replacement Project,” to the low bidder, Blocka Construction, Inc., in the amount of \$192,000; and approval of a contingency in the amount of \$19,000 for a total agreement amount not to exceed \$211,000. CEQA: Exempt, File No. PP07-154. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated August 27, 2007, recommending award of the contract to the lowest responsive bidder. (2) Letter from the Treatment Plant Advisory Committee, dated September 13, 2007, stating concurrence with the Staff recommendation.

Action: The award of contract for the construction project entitled, “San José/Santa Clara Water Pollution Control Plant, FY 2007/2008 TPS VFD Replacement Project,” to the low bidder, Blocka Construction, Inc., in the amount of \$192,000; and approval of a contingency in the amount of \$19,000 for a total agreement amount not to exceed \$211,000 was approved. (11-0.)

- 2.9 (a) Adoption of a resolution authorizing the City Manager to accept the Comprehensive Approaches to Sex Offender Management grant award from the Bureau of Justice Assistance in the amount of \$250,000, and authorizing the City Manager to negotiate and execute any necessary documents.**
- (b) Adoption of the following 2007-2008 Appropriation Ordinance and Funding Sources resolution amendments in the General Fund:**
- (1) Establish a city-wide appropriation to the Police Department for the Comprehensive Approaches to Sex Offender Management grant in the amount of \$250,000; and**
 - (2) Increase the estimate for Revenue from Federal Government by \$250,000.**

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

Documents Filed: Memorandum from Police Chief Robert Davis and Acting Budget Director Jennifer Maguire, dated August 27, 2007, recommending adoption of a resolution and appropriation ordinance and funding sources resolution amendments.

Action: [Resolution No. 73999](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Accept a Comprehensive Approaches to Sex Offender Management Grant from the Bureau of Justice Assistance in an Amount Not To Exceed \$250,000 and to Execute all Related Documents”; [Ordinance No. 28120](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28071 to Appropriate Monies in the General Fund Citywide Public Safety for Comprehensive Approaches to Sex Offender Management; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption” and [Resolution No. 74000](#), 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. (11-0.)

2.10 Adoption of the following Appropriation Ordinance and Funding Sources Resolution amendments in the Services for Redevelopment Capital Projects Fund (City-side Redevelopment Fund) for 2007-2008:

- (a) Increase the estimate for Earned Revenue by \$848,300.
- (b) Increase the appropriation to the Department of Transportation for the NBD's Banner project (PSM #378, Amendment 3) in the amount of \$30,000.
- (c) Increase the appropriation to the Department of Public Works for the University Neighborhood Phase 2 Pedestrian Streetlights project (PSM #479, Amendment 1) in the amount of \$798,300.
- (d) Increase the appropriation to the Department of Transportation for the Additional Contingency Services project (PSM #499) in the amount of \$20,000.

CEQA: Exempt, File No. PP07-160. Council District 3. SNI: University. (Public Works/Transportation/City Manager's Office)

Documents Filed: Memorandum from Director of Public Works Katy Allen, Director of Transportation James Helmer and Budget Director Larry Lisenbee, dated August 27, 2007, recommending appropriation ordinance and funding sources resolution amendments.

Action: [Ordinance No. 28121](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 28071 to Appropriate Monies in the Services of Redevelopment Capital Projects Fund for the University Neighborhood Phase 2 Pedestrian Streetlight Project, NBD's Banner Program Project and Additional Consistency Services Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" and [Resolution No. 74001](#), entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 73862 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2007-2008 to Adjust Revenues in the Services of Redevelopment Capital Projects Fund", were adopted. (11-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

**3.1 Report of the Rules and Open Government Committee – August 22, 2007
Mayor Reed, Chair**

Action: Deferred to September 25, 2007 per Orders of the Day.

**3.3 Adoption of a resolution to implement the terms of the award resulting from the interest arbitration between the City and the International Association of Firefighters, Local 230, and authorizing the City Manager to execute the award.
CEQA: Not a Project. (City Manager's Office)**

Documents Filed: Memorandum from Director of Employee Relations Alex Gurza, dated September 4, 2007, recommending adoption of a resolution.

3.3 (Cont'd.)

Action: Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, [Resolution No. 74002](#), entitled: “A Resolution of the Council of the City of San José Approving Implementation of the Terms of the Award Resulting from the Interest Arbitration Between the City and the International Association of Firefighters, Local 230”, was adopted. (11-0.)

3.4 **Approval of Staff’s response to the Civil Grand Jury Report regarding the City’s Emergency Communications System Support Fee. CEQA: Not a Project. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated September 4, 2007, recommending acceptance of Staff’s response.

Action: Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, Staff’s response to the Civil Grand Jury Report regarding the City’s Emergency Communications System Support Fee was approved

3.5 **Adoption of a resolution approving a revised City Council Policy No. 9-5, “Travel by Elected and Appointed City Officials”. (City Attorney/City Clerk) (Deferred from 9/11/07 – Item 3.7)**

Documents Filed: Replacement memorandum from City Clerk Lee Price, dated September 11, 2007, recommending adoption of a resolution

City Clerk Lee Price and City Attorney Richard Doyle responded to Council questions.

Action: Upon motion by Council Member Constant, seconded by Council Member Chirco and carried unanimously, [Resolution No. 74003](#), entitled: “A Resolution of the Council of the City of San José Approving an Amendment to City Council Policy No. 9-5, Travel by Elected and Appointed City Officials”, was adopted, as amended, to include: (1) A reference to the constitutional prohibition of common carrier “freebies” and upgrades. (2) Clarification regarding airline travel when point of origination of travel is not from the City of San José. (11-0.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.2 **Administrative Hearing on appeal and adoption of a resolution denying the appeal and approving staff’s recommendation to reduce the required reimbursement in Condition No. 15.f of Planned Development Permit No. PD05-069 which requires reimbursement to the City of its costs of traffic improvements for the construction of six single-family detached units on an 0.83 gross acre site at the SE corner of Hostetter Road and Sierra Creek Way, from \$548,268 to \$341,349 (a reduction of \$206,919). CEQA: Mitigated Negative Declaration. Council District 4. (Public Works/ Planning, Building and Code Enforcement) (Deferred from 8/21/07 – Item 4.3)**

4.2 (Cont'd.)

Documents Filed: Memorandum from Director of Public Works Katy Allen and Director of Planning, Building and Code Enforcement Joseph Horwedel, dated July 30, 2007, recommending deny the appeal and approve the Staff recommendation.

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

Rogelio Ruiz and Bonnie Bamburg (Applicant) spoke in favor of the reimbursement agreement and presented pictures of Stonecreek (both blocking the street) and Sierra Creek.

Deputy Director of Public Works Timm Borden outlined the reimbursement ordinance.

Motion: Council Member Chu moved for Staff to study the issue, negotiate with the applicant and return in six weeks with a recommendation. Council Member Williams seconded the motion.

Brief Council discussion followed.

Action: On a call for the question, the motion carried unanimously, Staff was directed to work with the Applicant and return to Council with a recommendation within 6 weeks. (11-0.)

4.3 (a) Adoption of a resolution:

- (1) **Expanding the Housing Department's existing Acquisition/ Rehabilitation Policy to include those projects that include a minimum of 10% ELI (extremely low-income) units and involve a reasonable cost to the City in order to help the City meet its affordable housing goals;**
- (2) **Approving the use of the Housing Department's Acquisition Loan product to projects involving the acquisition of existing residential buildings;**

(b) Adoption of a resolution:

- (1) **Approving a funding commitment of up to \$4,275,000 to Mid-Peninsula Housing Coalition, or its designated affiliate, for the acquisition and rehabilitation of 48 townhome units, the Hillsdale Townhomes project, that is located at the Southwest corner of Hillsdale and Meridian Avenues; and**
- (2) **Finding that use of 20% Low and Moderate-Income Housing Funds for the Hillsdale Townhomes project is of benefit to the Redevelopment Project Areas in San José.**

CEQA: Exempt, File No. PP07-179. Council District 9. (Housing)

4.3 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Housing Leslye Krutko, dated August 28, 2007, recommending adoption of resolutions. (2) Supplemental memorandum from Director of Housing Leslye Krutko, dated September 14, 2007, transmitting a request for income restrictions.

Action: Upon motion by Council Member Chirco, seconded by Council Member Liccardo and carried unanimously, [Resolution No. 74004](#), entitled: "A Resolution of the Council of the City of San José (1) Expanding the Housing Department's Existing Acquisition/Rehabilitation Policy to Include those Projects that Involve a Minimum of 10% Extremely Low Income Units and Involve a Reasonable Cost to the City in Order to Help the City Meet Its Affordable Housing Goals; (2) Approving the Use of the Housing Department's Acquisition Loan Product to Projects Involving the Acquisition of Existing Residential Buildings" and [Resolution No. 74005](#), entitled: "A Resolution of the Council of the City of San José (1) Approving a Funding Commitment of up to \$4,275,000 to Mid-Peninsula Housing Coalition or Its Designated Affiliate for the Acquisition and Rehabilitation of 48 Townhome Units, the Hillsdale Townhomes Project, that is Located at the Southwest Corner of Hillsdale and Meridian Home; (2) Finding that Use of 20% Low and Moderate Income Housing Funds for the Hillsdale Townhomes Project is of Benefit to the Redevelopment Project Areas in San José", were adopted. (11-0.)

4.4 (a) Adoption of the following Appropriation Ordinance Amendments in the Multi-Source Housing Fund for 2007-2008:

- (1) Decrease the Ending Fund Balance by \$100,000.
- (2) Establish an appropriation for Predevelopment Grants and Loans in the amount of \$100,000.

(b) Adoption of a resolution:

- (1) Converting to a grant all principal and accrued interest totaling approximately \$2,480,053 on a loan to Family Supportive Housing, Inc., formerly known as Concern For The Poor, Inc., or designee, for the acquisition, construction, and permanent financing of the existing San José Family Shelter project located at 1590 Las Plumas Avenue.
- (2) Approving an additional \$100,000 grant from the Multi-Source Housing Fund to Family Supportive Services for additional predevelopment expenses related to the New San José Family Shelter's development, and authorizing the Director of Housing to negotiate and execute all documents for this grant.

CEQA: Not a Project. Council District 3. (Housing)

Documents Filed: Memorandum from Director of Housing Leslye Krutko, dated August 28, 2007, recommending adoption of appropriation ordinance and a resolution.

4.4 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and carried unanimously, [Ordinance No. 28122](#) and [Resolution No. 74006](#), entitled: “A Resolution of the Council of the City of San José (1) Converting to a Grant all Principal and Accrued Interest Totaling Approximately \$2,480,053 on a Loan to Family Supportive Housing, Inc., Formerly Known as Concern for the Poor, Inc. or Designee, for the Acquisition, Construction and Permanent Financing of the Existing San José Family Shelter Project Located at 1590 Las Plumas Avenue; (2) Approving an Additional \$100,000 Grant from the Multi Source Housing Fund to Family Supportive Services for Additional Predevelopment Expenses Related to the New San José Family Shelter’s Development and Authorizing the Director of Housing to Negotiate and Execute All Documents for this Grant”, was adopted. (11-0.)

4.5 **Public Hearing and approval of the 2006-2007 Consolidated Annual Performance Evaluation Report. CEQA: Not a Project. (Housing)**

Documents Filed: (1) Memorandum from Director of Housing Leslye Krutko, dated August 28, 2007, recommending approval of the report. (2) Supplemental memorandum from Director Krutko, dated September 14, 2007, reporting on comments received during the 15 day public comment period. (3) Proofs of Publications of Notices of Public Hearing, executed on August 21, 2007, August 22, 2007 and August 24, 2007, submitted by the City Clerk.

Director of Housing Leslye Krutko responded to Council questions.

Public Comments: Mayor Reed opened the public hearing. Ross Signorino commented on the report.

Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Chirco, seconded by Council Member Williams and carried unanimously, the 2006-2007 Consolidated Annual Performance Evaluation Report was accepted. (9-0-2. Absent: Constant, Cortese.)

4.6 **Approval of the recommendations of the Arts Commission regarding the Arts Stabilization Loan Fund, as modified by the Offices of Economic Development and Cultural Affairs, and direct the City Manager to implement the revised Arts Commission recommendations. CEQA: Not a Project. (Economic Development) [Community and Economic Development Committee referral 8/27/07 – Item (h)] (Deferred from 9/11/07 – Item 4.2)**

Action: Deferred to October 2, 2007 per Administration.

TRANSPORTATION & AVIATION SERVICES

- 6.2 (a) Adoption of a resolution authorizing the City Manager to negotiate and execute the following grant agreements and lease agreement with Our City Forest:
- (1) An Annual Operating Grant Agreement for 2007-08, not to exceed One-Hundred Forty-Three Thousand (\$143,000) dollars;
 - (2) A Matching Grant Agreement in an amount not to exceed One-Hundred Twenty Thousand (\$120,000) dollars for Our City Forest to apply towards its local match required to secure the AmeriCorps Grant; and
 - (3) A Lease Agreement allowing Our City Forest to use office space, at below market rate, in the City-owned building at 151 W. Mission Street from October 1, 2007 to September 30, 2008, with an option for the City to extend the lease on a month-to-month basis thereafter for up to a maximum of two additional years.
- (b) Adoption of a resolution finding Our City Forest exempt from the provision in Council Policy 7-1 that requires non-profit agencies to fund repair and maintenance costs for any City-owned facility they lease from the City at a below market rate.
- (c) Direction to the Administration to incorporate future grant requests for tree-related services through the annual budget process.

CEQA: Exempt, File No. PP04-313. (City Manager's Office/Transportation)

Action: Deferred to September 25, 2007 per Administration.

6.3 As recommended by the Rules and Open Government Committee of September 12, 2007:

- (a) Initiate a series of Residential Traffic Calming Community Hearings to begin immediately and end in December 2007.
- (b) The Residential Traffic Calming Community Hearings be chaired by Council Member Oliverio.
- (c) The Traffic Calming Chair will require staff support from DOT and Public Safety. This team will develop a work plan, hold community meetings, and report results to the Transportation and Environment Committee in December 2007.
- (d) The Chair will work with Council Members to optimize the number of meetings.
- (e) Amend the Transportation and Environment Committee work plan to allow Council Member Oliverio to make a report in December 2007.

(Mayor)

[Rules Committee referral 9/12/07 – Item A(1)(a)]

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

6.3 (Cont'd.)

Motion: Council Member Oliverio moved approval of the recommendations with Staff directed to notice Community Hearings between October 8 and November 29, 2007 and return to the Transportation and Environment Committee in December. Council Member Liccardo seconded the motion.

Director of Transportation James Helmer responded to Council questions.

Public Comments: Speaking in favor of traffic calming measures were Michael Larocca, Leah Kaltsas, Bill Cardoza, Elizabeth Williams and Frank Throckmorton.

Action: On a call for the question, the motion carried unanimously, the recommendations outlined above were approved, as amended and Staff was directed to notice Community Hearings between October 8 and November 29, 2007 and return to the Transportation and Environment Committee in December. (11-0.)

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Redevelopment Agency Board convened at 3:18 p.m. to consider Item 9.1 in a Joint Session.

9.1 **Approval of purchase of insurance policies for the period October 1, 2007 to October 1, 2008 at a cost not to exceed \$2,600,000 by the Director of Human Resources with the following insurance carriers:**

- (a) **Property Insurance: Property; FM Global to achieve the \$1 Billion limit desired. (City and Agency)**
 - (b) **Boiler and Machinery: FM Global. (City and Agency)**
 - (c) **Airport Owners and Operators Liability: ACE Property & Casualty Insurance Company and Lloyds of London. (City)**
 - (d) **Secondary Employment Law Enforcement Professional Liability: Arch Specialty Insurance Company. (City)**
 - (e) **Automobile Liability (Airport/WPCP) and Airport Shuttle Bus: St. Paul/Travelers. (City)**
 - (f) **Police Aircraft and Hull: Westchester Fire Insurance Company. (City)**
- CEQA: Not a Project. (Human Resources)**

Documents Filed: (1) Memorandum from Director of Human Resources Mark Danaj, dated August 27, 2007, recommending approval of the purchase of insurance policies. (2) Supplemental memorandum from Director of Human Resources Mark Danaj, dated September 12, 2007, providing additional information related to the efforts of the City's insurance broker.

Action: Upon motion by Council Member Chirco, seconded by Council Member Pyle and carried unanimously, purchase of insurance policies for the period October 1, 2007 to October 1, 2008 at a cost not to exceed \$2,600,000 by the Director of Human Resources was approved (11-0.)

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>
9923	E/S Almaden Rd., 800’ N of Curtner Av.	6	DHP Almaden Investors, LLC	12 Lots/ 11 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>
9952	Area generally bounded by Cottle Rd, Monterey Hwy, Highway 85 and Manasas Rd.	2	Hitachi Global Storage	31 Lots	Residential Commercial Industrial Park

NOTICE OF CITY ENGINEER’S AWARD OF CONSTRUCTION PROJECTS

In accordance with Council Resolution No. 73532, the construction Contract Process Streamlining Policy approved on December 5, 2006, the following is a list of projects that were awarded or rejected by the Director of Public Works in August 2007:

AWARD:

<u>Project Name</u>	<u>Council District</u>	<u>Contractor</u>	<u>Contract Award Amount</u>	<u>Award Date</u>
Falls Creek Park	8	Suarez & Construction, Inc.	Munoz \$563,949	8/13/07

OPEN FORUM

Documents Filed: Stephen Hazel submitted copies of lottery tickets.

- (1) Carl Guardino, Silicon Valley Leadership Group, invited the City Council and the Community to this year’s Turkey Trot on Thanksgiving Day, November 22, 2007, benefiting the Santa Clara Family Health Foundation.
- (2) Ross Signorino spoke about using tap water in the City of San José.
- (3) Robert Apgar shared personal observations.
- (4) John Vierra complained about the need of a 7 foot fence near his property because of the new development.
- (5) Stephen Hazel presented personal viewpoints.
- (6) Steve Bennette spoke about the loss of the San José Grand Prix.

PUBLIC SAFETY SERVICES

- 8.1 Acceptance of the City Attorney's Office report in response to Council direction on June 21, 2007, regarding the existing review authority of the Independent Police Auditor under the Charter and the Municipal Code, and the legal issues associated with granting additional authority for in-custody deaths and critical incidents. CEQA: Not a Project. (City Attorney/Independent Police Auditor)**
- 8.2 Acceptance of the City Council's formal response to the 2006-2007 Santa Clara County Civil Grand Jury's report entitled "Police Misconduct May Be Underreported". CEQA: Not a Project. (City Manager's Office/City Attorney/Independent Police Auditor)**

Documents Filed: (1) Memorandum from Mayor Reed, Vice Mayor Cortese and Council Member Constant, dated September 14, 2007, recommending acceptance of the City Attorney's Report, direction to the Police Department and acceptance of the response to the Civil Grand Jury report. (2) Memorandum from City Attorney Richard Doyle, dated September 4, 2007, regarding the IPA Authority and Legal Issues. (3) Memorandum from City Manager Debra Figone and City Attorney Richard Doyle, dated September 5, 2007, recommending acceptance of the Council's formal response to the Civil Grand Jury's report. (4) Memorandum from Independent Police Auditor Barbara Attard, dated September 7, 2007, recommending acceptance of the Council's formal response to the Civil Grand Jury's report. (5) Memorandum from Independent Police Auditor Barbara Attard, dated September 14, 2007, recommending approval of the IPA to direct the City Manager to direct the San José Police Department to conduct administrative investigations in all critical incidents.

Police Chief Robert Davis responded to Council questions.

Motion: Vice Mayor Cortese moved approval of the memorandum he cosigned with Mayor Reed and Council Member Constant, with the clarification to direct the City Manager to review all death cases that are the result of the use of force to the same level of auditing by the IPA as officer involved shootings, within the limits of the Charter; this direction is subject to the meet and confer process. Council Member Constant seconded the motion.

Council Member Liccardo moved to amend the motion to add "follow the use of force". The amendment was accepted by Vice Mayor Cortese and Council Member Constant.

Extensive Council discussion ensued.

Vice Mayor Cortese accepted an amendment from Council Member Constant to substitute "audit" with "review".

Public Comments: Speaking to the recommendations were Richard Konda (Asian Law Alliance), Ross Signorino, Mark Scholsberg, Sanjeer Bery (ACLU), William Lawrence, Raj Jayadev, Fred Hirsh, Charlotte Casey (San José Peace Center), Ishmael Tarikh, Jesse Dominguez, Jeff Moore (NAACP), Stephen Hazel and Aram James.

8.1/8.2 (Cont'd.)

Council Member Nguyen objected to the motion as she believed that the Council is moving backwards.

Action: On a call for the question, the motion carried, the memorandum from Mayor Reed, Vice Mayor Cortese and Council Member Constant, dated September 14, 2007 was approved, with the following conditions: (1) The City Attorney's memorandum on the Independent Police Auditor's Authority and Legal Issues responding to Council direction on June 21, 2007 was accepted. Staff was directed to amend the Municipal Code to include the April 27, 2004 Council approved IPA process. (2) The City Manager was directed to review all death cases that follow the use of force, with the strong recommendation that the Independent Police Auditor (IPA) participate in the review to the same level of review by the IPA in officer involved shootings, within the limits of the Charter. The IPA's involvement is limited to participation in the officer involved shooting review panel, or a similar panel if created for in-custody deaths, except when a complaint is filed therefore triggering an audit or a full review. This direction is subject to the meet and confer process. (3) The Civil Grand Jury report entitled "Police Misconduct May Be Underreported", as authored by the City Manager and City Attorney, was directed to be submitted to the Grand Jury. (10-1. Noes: Nguyen.)

ADJOURNMENT

The Council of the City of San José adjourned at 5:53 p.m. in memory of Rachel Rivera, a Community Worker for Santa Clara County who was involved with the North Valley and Alum Rock Leagues; in memory of Marty Peterson, a long time San José resident and activist, who served on the City's Mobile Home Advisory Commission and the Senior Citizens Commission, and in memory of James (Jimmy) Richard Wells, son of a long time City of San José employee Diana Jamison, who passed away tragically in a motorcycle accident.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

smd/9-18-07MIN

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