

CITY COUNCIL AGENDA

SEPTEMBER 14, 2004

SYNOPSIS

LINDA J. LE ZOTTE
FORREST WILLIAMS
CINDY CHAVEZ
CHUCK REED
NORA CAMPOS

DISTRICT 1
DISTRICT 2
DISTRICT 3
DISTRICT 4
DISTRICT 5

RON GONZALES MAYOR

KEN YEAGER
TERRY O. GREGORY
DAVID D. CORTESE
JUDY CHIRCO
PAT DANDO, VICE MAYOR

DISTRICT 6
DISTRICT 7
DISTRICT 8
DISTRICT 9
DISTRICT 10

Welcome to the San José City Council meeting!

This Agenda contains both a Consent Calendar section for routine business items that require Council approval, and general business items arranged to correspond with San José's City Service Areas (CSAs). City Service Areas represent the policy-making level for strategic planning, policy setting, and investment decisions in the critical functions the City provides to the community. They are:

- ***Strategic Support Services*** — The internal functions that enable the CSAs to provide direct services to the community in an effective and efficient manner.
- ***Economic and Neighborhood Development*** — Manage the growth and change of the community in order to create and preserve healthy neighborhoods and ensure a diverse range of employment and housing opportunities.
- ***Recreation and Cultural Services*** — Serve, foster, and strengthen community by providing access to lifelong learning and opportunities to enjoy life.
- ***Transportation Services*** — A safe and efficient transportation system that contributes to the livability and economic health of the City.
- ***Environment and Utility Services*** — Manage environmental services and utility systems to ensure a sustainable environment for the community.
- ***Aviation Services*** — Provide for the air transportation needs of the community and the region at levels that are acceptable to the community.
- ***Public Safety Services*** — Commitment to excellence in public safety by investing in neighborhood partnerships as well as prevention, enforcement, and emergency preparedness services.

Items listed in Section 10 require approval of both the City Council and the San José Redevelopment Agency Board.

You may speak to the City Council about any item that is on the agenda, and you may also speak on items that are not on the agenda during Open Forum. If you wish to speak to the City Council, please refer to the following guidelines:

1. **Fill out a Yellow Speaker's Card and submit it to the City Clerk seated at the front table. Do this before the meeting or before the item is heard.** This will ensure that your name is called for the item/s that you wish to address, and it will help ensure the meeting runs smoothly for all participants.
2. When the Council reaches your item on the agenda, Mayor Ron Gonzales will open the public hearing and call your name. Please address the Council from the podium, which is located to the left of the City Clerk's table.
3. Each speaker generally has two minutes to speak per item. The amount of time allotted to speakers may vary at the Mayor's discretion, depending on the number of speakers or the length of the agenda.
4. To assist you in tracking your speaking time, there are three lights located to the far right of the podium. The green light turns on when you begin speaking; the yellow light turns on when you have 30 seconds left; and the red light turns on when your speaking time is up.

Please be advised that, by law, the City Council is unable to discuss or take action on issues presented during Open Forum. According to State Law (the Brown Act) items must first be noticed on the agenda before any discussion or action.

The San José City Council meets every Tuesday at 1:30 p.m. and every first and third Tuesday at 7 p.m., unless otherwise noted. If you have any questions, please direct them to the City Clerk's staff seated at the tables just below the dais. Thank you for taking the time to attend today's meeting. We look forward to seeing you at future meetings.

Agendas and Staff Reports for City Council items may be viewed on the Internet at www.sanjoseca.gov/clerk/agenda.htm

To arrange an accommodation under the Americans with Disabilities Act to participate in this public meeting, please call 1 (408) 277-4424 or 1 (408) 998-5299 (TTY) at least two business days before the meeting.

On occasion the City Council may consider agenda items out of order.

- **Call to Order and Roll Call**
9:32 a.m. - Closed Session, Room 600, City Hall
Absent Council Members: None.

1:37 p.m. - Regular Session, Council Chambers, City Hall
Absent Council Members: None.

- **Invocation (District 8)**
Mohinder Singh, Sikh Temple recited a prayer for the Invocation, which Bob Gill translated.

- **Pledge of Allegiance**
Mayor Gonzales led the Pledge of Allegiance.

- **Orders of the Day**
The Orders of the Day and the Amended Agenda were approved.

1 CEREMONIAL ITEMS

- 1.1** Presentation of a proclamation declaring September as Leukemia, Lymphoma and Myeloma Awareness Month in San José. (Mayor)
Mayor Gonzales presented a proclamation to Delora Wiley of the Leukemia and Lymphoma Society, declaring September 2004 as “Leukemia, Lymphoma and Myeloma Awareness Month” in the City of San José.

1 CEREMONIAL ITEMS

- 1.2 Presentation of state and national awards for the City's Street Smarts Public Education Program. (Transportation)
Mayor Gonzales invited Director of Transportation James Helmer, Mark Spencer, Institute of Transportation Engineers, and Bill Hein, California Transportation Foundation, to the podium. Mayor Gonzales accepted the following awards. Mr. Spencer presented the 2004 Pedestrian Award for Safety; Director Helmer presented the Award of Excellence, in the category of marketing; and Mr. Hein presented the "Tranny" Award, for community awareness. Mayor Gonzales and Director Helmer also recognized the City of San José's partners, City of San José Police Chief Robert Davis, Merry Banks, Northern California Offices of California State Automobile Association, Gladwyn D'Souza, President of Walk San José, Don Iglesias, Superintendent of San José Unified School District, and Scott Gardner, President, Liquid Agency, Inc.

2 CONSENT CALENDAR

- 2.1 **Approval of Minutes.**
There were none.

- 2.2 **Final adoption of ordinances.**

Recommendation: Final adoption of ordinances:

- (a) ORD. NO. 27240 – Amends Section 7.08.595 of Chapter 7.08 of Title 7 of the San José Municipal Code to clarify the limit of dogs and cats is per dwelling unit and to increase the maximum number of dogs and cats allowed per dwelling unit.
Ordinance No. 27240 adopted.
- (b) ORD. NO. 27241 – Adopts a limited amnesty program under which the City will forgive all late licensing fees, delay the implementation of Fiscal Year 2004-2005 increase in fees for licensing unaltered dogs and cats, suspend issuance of citations for violations of Section 7.08.610 of Chapter 7.08 of the San José Municipal Code, and exempt pet owners who license their dog or cat during the amnesty period from Section 7.08.595 of Chapter 7.08 of the San José Municipal Code.
Ordinance No. 27241 adopted.

- 2.3 **Approval of open purchase orders for the purchase of supplies, materials, equipment, and services.**

Recommendation: Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 2004-2005 #3, and authorization for the Director of General Services to execute the purchase orders. CEQA: See memo for CEQA designation(s). (General Services)

Approved.

2 CONSENT CALENDAR

2.4 Approval to accept a donation for the Summer Reading Celebration.

Recommendation: Adoption of a resolution accepting \$10,000.00 in donations from the Friends of the San José Public Library for the Summer Reading Celebration. CEQA: Not a Project. (Library)

Resolution No. 72309 adopted.

Staff directed to measure the success rate and continue to inform Council of the results and progress.

2.5 Approval of actions related to the Young Audiences of Northern California.

Recommendation: Adoption of a resolution approving a one-time exemption from certain eligibility requirements of the Operating Grant Arts Grant Program for Young Audiences of Northern California (YANC), the legal successor of Young Audiences of San José & Silicon Valley (YASJSV), and directing the City Manager to negotiate and execute a grant agreement with YANC in the amount of \$30,009, to allow the FY2004-05 Operating Grant award that the Council approved in that amount for YASJSV on June 22, 2004, to be made to YANC with the requirement that the grant be used to support the provision of programs and services in San José. CEQA: Not a Project (Office of Cultural Affairs)

Resolution No. 72310 adopted.

2.6 Approval of fiscal actions for the 2004-06 Spending Plan for the Local Law Enforcement Block Grant Fund.

Recommendation:

(a) Approval of the proposed 2004-06 Spending Plan for the Local Law Enforcement Block Grant (LLEBG) Fund.

Approved.

(b) Adoption of the following amendments to the annual appropriation ordinance and the annual funding sources resolution in the General Fund (Fund 001) and Local Law Enforcement Services Block Grant Fund (Fund 415) for FY 2004-05 to:

- (1) Establish the LLEBG 2004-06 appropriation in the Local Law Enforcement Services Fund for the Police Department in the amount of \$349,494.
- (2) Increase the Earned Revenue by \$314,545.
- (3) Transfer \$34,949 from the General Fund Contingency Reserve to the Local Law Enforcement Services Block Grant Fund.

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

Ordinance No. 27247 adopted.

Resolution No. 72311 adopted.

2 CONSENT CALENDAR

2.7 Approval to summarily vacate a portion of a Landscape Easement.

Recommendation: Adoption of a resolution summarily vacating a portion of the Landscape Easement lying within the parcel located at Lot 232 Tract 8991, also known as 2398 Bentley Ridge Drive. CEQA: Exempt, PP03-12-370. Council District 8. (Public Works)

Resolution No. 72312 adopted.

2.8 Approval to award a contract for the Old Oakland Road Habitat Mitigation Project Re-Bid.

Recommendation: Report on bids and award of contract for the Old Oakland Road Habitat Mitigation Project Re-Bid to the low bidder, Ecological Concerns, Inc. in the amount of \$276,700, and approval of a contingency in the amount of \$14,000. CEQA: Mitigated Negative Declaration, PP 96-08-123. Council District 3. SNI: Spartan/Keyes. (Public Works/Transportation)

Approved.

2.9 Approval to amend the agreement for the San Tomas Aquino/Saratoga Creek Trail Project (Reach 6).

Recommendation:

(a) Acceptance of the staff report related to unforeseen soil conditions for the San Tomas Aquino/Saratoga Creek Trail Reach 6 Project.

Report Accepted.

(b) Approval of a first amendment to the agreement with A-N West, Inc., for consultant services for the San Tomas Aquino/Saratoga Creek Trail Reach 6 Project, increasing the total compensation by \$25,000 from \$350,000, for a total agreement amount of \$375,000.

CEQA: Mitigated Negative Declaration, and addenda thereto, PP03-03-084. Council District 1. Public Works)

Approved.

2.10 Approval of agreements and acceptance of deeds from property owners on Towers Lane.

Recommendation: Adoption of a resolution authorizing the City Manager to execute individual agreements and accept deeds from property owners (as detailed in the report) on Towers Lane who are ready to close escrows and have signed donation agreements for real property and temporary construction easements. CEQA: Exempt, PP02-03-046. Council District 7. SNI: West Evergreen. (Public Works)

(Rules Committee referral 9/8/04)

Resolution No. 72313 adopted.

3 STRATEGIC SUPPORT SERVICES

3.1 Report of the Study Session

Mayor Gonzales, Chair

- (a) May 2004 Proposed Operating and Capital Budget Study Sessions
(Deferred from 9/7/04 – Item 3.1)

The May 2004 Proposed Operating and Capital Budget Study Sessions, dated May 10, 12, 13, 14, 17, 20 and 21, 2004, were approved.

3.2 Report of the Rules Committee - Meeting of September 1, 2004

Vice Mayor Dando, Chair

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting

- (b) City Council

- (1) Review September 14, 2004 Draft Agenda

The Committee recommended approval of the September 14, 2004 City Council Agenda.

- (a) Additions/Changes

The Committee recommended approval of three additions to the September 14, 2004 City Council Agenda.

- (2) Add New Items to September 7, 2004 Amended Agenda

- Mayor and Council Member Requests
- City Manager Requests
- City Attorney Requests
- City Clerk Requests

The Committee recommended approval of three additions to the September 7, 2004 Amended Agenda.

- (3) List of Reports Outstanding

The Committee noted and filed the City Manager's Report stating there are three Staff reports outstanding for the September 1, 2004 Council Agenda.

- (c) Legislative Update

- (1) State

- (a) AB 1878 (Chan) relating to motor scooters, operation and noise; SB 1694, SB 1695, SB 1696, SB 1697 (Torlakson), relating to driving under the influence

This item was reported during the September 7, 2004 City Council Meeting, Item 3.2c(1)(a).

3 STRATEGIC SUPPORT SERVICES

3.2 Report of the Rules Committee - Meeting of September 1, 2004 (Cont'd.)

Vice Mayor Dando, Chair

(c) Legislative Update (Cont'd.)

(2) Federal

There was no report.

(d) Meeting Schedules

There were none.

(e) The Public Record

There were none.

(f) Appointment to Boards, Commissions and Committees

There were none.

(g) Rules Committee Reviews, Recommendations and Approvals

(1) Report back on Secondary Units Outreach Efforts and Legislative Update

The Committee accepted the report, with further direction to Staff:

(a) Determine how many of the Top 10 Cities in California allow secondary units; (b) Update, as appropriate, the City's 1984 policy on secondary units.

Note: Council may wish to restate findings of adverse impacts, particularly in the light of the progress San José has made in the production of affordable housing.

(2) Follow up report from Office of Economic Development on project impacts if the referral to expand the Small Business Development Commission is approved

The Committee accepted the report, with Staff directed to coordinate the workload with "Driving a Strong Economy", and "Getting Families Back to Work" Committees and report back to the Rules Committee January 2005.

(h) Oral communications

None were presented.

(i) Adjournment

The meeting was adjourned at 2:43 p.m.

3 STRATEGIC SUPPORT SERVICES

3.2 Report of the Rules Committee - Meeting of September 8, 2004 (Cont'd.)

Vice Mayor Dando, Chair

(c) Legislative Update

(1) State

(a) Approval of the 2004 League of California Cities Resolutions to be considered at the Conference in Long Beach, September 17-19, 2004.

- Resolution Amending Bylaws of the League of California Cities.
- Resolution Relating to Encouraging Healthier Lifestyles for Children, Adults, Seniors in Cities Throughout California.

The Committee recommended support of the two resolutions.

(d) Meeting Schedules

(1) Approval of the Redevelopment Agency Budget Schedule

The Committee recommended approval of the Redevelopment Agency Budget Schedule.

The Rules Committee Reports, and the Actions of September 1, and September 8, 2004, were accepted.

3.3 Report of the Making Government Work Better Committee

Council Member Campos, Chair

No Report.

3.4 Resolution amending the Schedule of Fees and Charges to establish lobbyist registration fees.

Recommendation: Adoption of a resolution amending the Schedule of Fees and Charges to establish lobbyist registration fees and delinquency charges for late registrations and delinquent lobbyist reports. (City Clerk/City Attorney)

Resolution No. 72314 adopted, as amended to take effect January 1, 2005.

Staff directed to return before January 1, 2005 with recommendation regarding fees for nonprofits.

3 STRATEGIC SUPPORT SERVICES

3.5 Review of report regarding the personnel investigation related to the Converged Data Network and Telephony System for the New City Hall and report on Council investigations.

Recommendation:

- (a) Review of report regarding the personnel investigation related to the Converged Data Network and Telephony System for the New City Hall. (City Manager's Office) (Referred from 8/31/04 – Item 3.5)
- (b) Review and acceptance of report on Council investigations pursuant to Charter Section 416. (City Attorney's Office)

The memorandum from Mayor Gonzales, and Council Members Cortese and Chavez, dated September 14, 2004, was approved, with the following direction:

- (1) **The Independent External Investigator already on contract to the San José Elections Commission to:**
 - (a) **Review the multiple internal investigations related to the purchasing of the converged network technology for the new City Hall to assess their completeness;**
 - (b) **Address the question of whether there had been any inappropriate involvement by any member of the City Council, City Manager, and City Attorney or their offices related to this matter.**
- (2) **Direct that this independent review and investigation should be completed and reported back to the City Council within 30 days, and that the report and its findings and recommendations be considered at an open Public Hearing conducted by the City Council. Direct the City Clerk to negotiate and execute an agreement with the Elections Commission Investigator to conduct this work.**
- (3) **Direct the City Auditor to conduct a management audit, review and comment on the City Manager's reforms, and make any additional recommendations about how better management controls could prevent future problems within 30 days.**
- (4) **Recommend that issues of management performance related to this matter be reviewed by the City Council as part of our regular performance evaluations of Council Appointees.**
- (5) **Ask the Independent Investigator to include additional questions provided by individual Council Members.**

3.6 Response to the 2004 Mayor's Budget Message regarding the Public Art Program.

Recommendation: Approval to continue to dedicate the public art funds designated from eligible capital improvement projects for the acquisition of works of art and that a cap not be imposed on large-scale CIP projects. CEQA: Not a Project. (Office of Cultural Affairs)

The memorandum from Mayor Gonzales and Council Member Williams, dated September 13, 2004, and the memorandum from City Attorney Richard Doyle, dated August 31, 2004, were approved.

3 STRATEGIC SUPPORT SERVICES

3.7 Approval to extend the agreement for citywide purchases of personal computers, peripherals, and software.

Recommendation: Adoption of a resolution authorizing the Director of General Services to execute an extension of the agreement with ComputerLand of Silicon Valley (“ComputerLand”) located in San José, CA through June 30, 2005, for citywide purchases of personal computers, peripherals, and software, in an amount not to exceed \$3,000,000 for FY 2004/2005. CEQA: Not a Project. (General Services)
(Rules Committee referral 9/8/04)

Resolution No. 72315 adopted.

4 ECONOMIC & NEIGHBORHOOD DEVELOPMENT

4.1 Report of the Building Strong Neighborhoods Committee Council Member Chavez, Chair

No Report.

4.2 Report of the Driving a Strong Economy Committee Council Member Williams, Chair

No Report.

4.3 Approval to revise the affordability requirements for substantial rehabilitation loans.

Recommendation: Approval for the affordability requirements for substantial rehabilitation loans made by the City of San José Housing Department be revised as follows:

- (a) The affordability requirements (i) for substantial rehabilitation loans currently in the Housing Department’s portfolio, and (ii) for substantial rehabilitation loans the Housing Department makes in the future be revised as follows:
 - (1) Cap the amount of equity share borrowers pay to the City at 50% of the gain in equity in the property.
 - (2) For the term of the affordability restriction, annually reduce the share of the equity increase borrowers must pay the City proportional to the length of the affordability restriction.
 - (3) Upon the sale of a home to an income-ineligible buyer, borrowers, at a minimum, must pay the City the loan principal plus 3% simple interest.
 - (4) The revisions will not impact borrowers who sell their home to an income-eligible household.
 - (5) The revisions will not impact borrowers who sell their home before five years of the loan term.

CEQA: Not a Project. (Housing)

Approved.

4 ECONOMIC & NEIGHBORHOOD DEVELOPMENT

4.4 Approval to award a contract for the Towers Lane Improvement Project.

Recommendation: Reports on bids and award of contract for the Towers Lane Improvement Project (north of Aborn Road) to the low bidder, DeSilva Gates Construction, LP, in the amount of \$626,191, and approval of a 15 percent contingency in the amount of \$94,000. CEQA: Exempt, PP 02-03-046. Council District 7. SNI: West Evergreen. (Public Works/Transportation)
(Deferred from 8/31/04 – Item 4.3 and 9/7/04 – Item 4.3)

Deferred to 9/21/04.

5 RECREATION & CULTURAL SERVICES

5.1 Report of the All Children Achieve Committee Council Member Yeager, Chair No Report.

6 TRANSPORTATION SERVICES

6.1 Report of the Building Better Transportation Committee Council Member Cortese, Chair No Report.

7 ENVIRONMENTAL & UTILITY SERVICES

7.1 Approval to award a contract for the South Bay Water Recycling Program.

Recommendation: Report on bids and award of contract for the South Bay Water Recycling (SBWR) - San Fernando Pipeline Project to the low bidder, Pacific Underground Construction, Inc., for the base bid in the amount of \$1,056,450, and approval of a contingency in the amount of \$158,000. CEQA: Resolution No. 64667, and addenda thereto, PP03-11-350. Council District 3. SNI: University. (Public Works/Environmental Services)

Approved.

Staff directed to continue with updates to Council on the progress of the Program.

7 ENVIRONMENTAL & UTILITY SERVICES

7.2 Approval to amend the agreement with Norcal for Recycle Plus Integrated Waste Management Services.

Recommendation:

- (a) Accept the staff report regarding Norcal Waste Systems of San José, Inc's request for an amendment to the Recycle Plus Integrated Waste Management Services agreement. (City Manager's Office)
- (b) Adoption of a resolution authorizing the City Manager and City Attorney to negotiate and authorizing the City Manager to execute an amendment to the agreement between the City and Norcal Waste Systems of San José, Inc. for Recycle Plus Integrated Waste Management Services to include payment for additional labor costs, contribution to a recycle characterization study, an e-scrap collection and processing program, and bins for 10 additional neighborhood cleanups. (Mayor's Office)

(Deferred from 9/7/04 – Item 7.1)

Deferred to 9/21/04.

8 AVIATION SERVICES

9 PUBLIC SAFETY SERVICES

9.1 Review and acceptance of the Independent Police Auditor's response to the 2003-2004 Santa Clara County Civil Grand Jury's report.

Recommendation: Review and acceptance of the Independent Police Auditor's response to the 2003-2004 Santa Clara County Civil Grand Jury's report entitled, "Inquiry into the City of San José Office of the Independent Police Auditor." CEQA: Not a Project.

(Independent Police Auditor)

Accepted.

10 JOINT COUNCIL/REDEVELOPMENT AGENCY

- **Closed Session Report**
No Report.

- **Notice of City Engineer’s Pending Decision on Final Maps**
In accordance with Sec. 19.16.140d of the San Jose 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>
9527	Northwest corner of Cunningham Ave & Cunningham Court	8	Bao D. Pham & Jordan Ky Pham	6 lots	SFD	Approve

Dropped.

- **Open Forum**
 - (1) **James Rowen asked that Council work with the Airport Commission to keep the San José State University Aeronautics Program at the Airport.**
 - (2) **Marc Boyd presented his views on the closure of San José Medical Center.**
 - (3) **Deborah Grant spoke of violent crimes and military issues.**

- **Adjournment**
The Council of the City of San José was adjourned in memory of Danith Harkness, mother of Kip Harkness, Redevelopment Agency; in memory of Tony Santos, lifelong resident of Alviso, serving as it’s last Mayor; and in memory of James McEntee, long-time valley human rights leader who championed for the homeless and the poor.

The Council of the City of San José was adjourned at 5:12 p.m.