



MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, DECEMBER 11, 2007

The Council of the City of San José convened in regular session at 9:00 a.m. in the Council Chambers at City Hall.

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

Absent: Council Members - None.

Upon motion unanimously adopted, Council recessed at 9:00 a.m. to a Closed Session in Room W133, (A) Public Employment/Public Employee Appointment Pursuant to Government Code Section 54957: Title: City Manager; (B) 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) Wandzia Grycz v. City of San José; (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI).

By unanimous consent, Council recessed from the Closed Session at 11:20 a.m. and reconvened at 1:35 p.m. in the Council Chambers.

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

Absent: Council Members - None.

INVOCATION

Delorme McKee-Stovall, Network for a Hate Free Community, presented the Invocation.
(Mayor)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

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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 1.2 deferred to December 18, 2007. (11-0.)

City Manager Debra Figone introduced the new City Manager, Christine Shippey.

CEREMONIAL ITEMS

1.1 Presentation of a commendation to Silver Creek High School student, Warda Ali, winner of the 2007-2008 Smith Barney/NFTE National Youth Entrepreneurship Challenge. (Cortese)

Action: Mayor Reed and Vice Mayor Cortese commended the winner of the “2007-2008 Smith Barney/NFTE National Youth Entrepreneurship Challenge” Silver Creek High School student, Warda Ali.

1.2 Presentation of a commendation honoring the selfless men and women of the San José Fire Department that donated their time and services to aid in the California Wildfires this past October. (Cortese/Pyle)

Action: Deferred to December 18, 2007 per Orders of the Day.

1.3 Presentation of a commendation marking the 40th anniversary of the Housing Authority of the County of Santa Clara. (Housing)

Action: Mayor Reed and Leslye Krutko recognized and commended members of the Housing Authority of the County of Santa Clara for their outstanding dedication and contributions to the community.

1.4 Presentation of a commendation to Kathy Muller for her years of service as Executive Director of Guadalupe River Park and Gardens. (Liccardo)

Action: Mayor Reed and Council Member Liccardo recognized and commended Kathy Muller, Executive Director of Guadalupe River Park and Gardens, for her significant contributions and years of service.

1.5 Presentation of a proclamation in honor of the 59th anniversary of the United Nations Declaration of Human Rights. (Chu)

Action: Mayor Reed and Council Member Chu recognized the 59th anniversary of the United Nations Declaration of Human Rights and commended members of the Church of Scientology for their work with Youth for Human Rights International.

CONSENT CALENDAR

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

2.1 Approval of minutes.

- (a) **Regular Minutes of October 2, 2007**
- (b) **Regular Minutes of October 16, 2007**
- (c) **Regular Minutes of October 23, 2007**
- (d) **Infrastructure Backlog Study Session Minutes of October 25, 2007**
- (e) **Regular Minutes of October 30, 2007**

Documents Filed: (1) Regular Minutes dated October 2, 2007. (2) Regular Minutes dated October 16, 2007. (3) Regular Minutes dated October 23, 2007. (4) Infrastructure Backlog Study Session Minutes dated October 25, 2007. (5) Regular Minutes dated October 30, 2007.

Action: The minutes were approved. (11-0.)

2.3 Request for an excused absence for Council Member Campos from the Regular Meeting of the Community and Economic Development Committee on November 26, 2007 due to illness. (Campos)

Documents Filed: Memorandum from Council Member Campos, dated November 26, 2007, requesting an excused absence due to illness.

Action: The excused absence for Council Member Campos was approved. (11-0.)

2.4 Acceptance of the Office of the City Auditor's Report of Activities and Findings for the Period September 16, through October 15, 2007. (City Auditor)

Documents Filed: Report of Activities for the Period September 16 through October 15, 2007 from the Office of the City Auditor.

Action: The report was accepted. (11-0.)

2.5 (a) Adoption of the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:

- (1) **Increase the Library Grants appropriation (2431) by \$47,819; and**
- (2) **Increase the estimate for Revenue from the State of California by \$47,819.**

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

- (1) **Increase the Library General Gifts appropriation (2382) by \$21,250; and**
- (2) **Increase the estimate for Earned Revenue by \$21,250.**

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

2.5 (Cont'd.)

Document Filed: Memorandum from Library Director Jane Light and Acting Budget Director Jennifer A. Maguire, dated November 20, 2007, recommending adoption of appropriation ordinance and funding sources resolution amendments and a resolution.

Action: [Ordinance No. 28198](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28071 to Appropriate Monies in the General Fund for the Library Grants Appropriation; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”, [Ordinance No. 28199](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28071 to Appropriate Monies in the Gift Trust Fund for the Library General Gifts; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”, [Resolution No. 74159](#), 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” and [Resolution No. 74160](#), 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 Gift Trust Fund” were adopted. (11-0.)

2.6 **Approval of a seventh amendment to the agreement with Camp Dresser & McKee, Inc., for landfill and disposal consulting services, extending the term of the agreement one year to December 31, 2008, at no additional cost to the City. CEQA: Not a Project. (Environmental Services)**

Document Filed: Memorandum from Director of Environmental Services John Stufflebean, dated November 19, 2007 recommending approval of the seventh amendment of the agreement.

Action: The seventh amendment to the agreement with Camp Dresser & McKee, Inc., for landfill and disposal consulting services, extending the term of the agreement one year to December 31, 2008, at no additional cost to the City was approved. (11-0.)

2.7 **Approval of a third amendment to the agreement between the City of San José and Environmental Science Associates, Inc. for environmental services related to the proposed Monterey Highway Soccer Complex project extending the term of the agreement from December 31, 2007 to December 31, 2008 at no additional cost to the City. CEQA: Not a Project. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated November 19, 2007, recommending approval of the third amendment of the agreement.

Council Member Liccardo pulled Item 2.7 for clarification.

Division Manager of Parks, Recreation and Neighborhood Services Matt Cano, responded to Council questions regarding sites identified for the proposed soccer complex and offered to make the list available to Council.

2.7 (Cont'd.)

Brief Council discussion followed.

Action: Upon motion by Council Member Williams, seconded by Council Member Campos and carried unanimously, the third amendment to the agreement between the City of San José and Environmental Science Associates, Inc. for environmental services related to the proposed Monterey Highway Soccer Complex project extending the term of the agreement from December 31, 2007 to December 31, 2008 at no additional cost to the City was approved. (11-0.)

- 2.8 (a) **Approval of a Turnkey Park Agreement with DKB Homes, LLC, for Planned Development Permit PD04-082 (PT04-125) to construct park improvements on the San Antonio Street park site and to reimburse DKB Homes, LLC in an amount not to exceed \$238,900 for park and street improvements on the San Antonio park site that exceeds DKB Homes, LLC's Parkland Dedication Obligation.**
- (b) **Adoption of the following Appropriation Ordinance amendments in the Subdivision Park Trust Fund (Fund 375):**
- (1) **Establish an appropriation to the Parks, Recreation and Neighborhood Services Department in the amount of \$170,000 for the San Antonio Street Turnkey Park; and**
 - (2) **Decrease the Reserve: Future PDO/PIFO Projects by \$170,000.**
- (c) **Adoption of the following Appropriation Ordinance amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District 5:**
- (1) **Establish an appropriation to the Parks, Recreation and Neighborhood Services Department in the amount of \$69,000 for the San Antonio Street Turnkey Park; and**
 - (2) **Decrease the Ending Fund Balance by \$69,000.**

CEQA: Mitigated Negative Declaration, PDC04-040. Council District 5. SNI: Gateway-East. (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 A. Maguire, dated November 19, 2007, recommending adoption of appropriation ordinance amendments and approval of a Turnkey Agreement with DKS Homes, LLC.

Action: [Ordinance No. 28200](#), entitled: "An Ordinance of the **City of San José** Amending Ordinance No. 28071 to Appropriate Monies in the Subdivision Park Trust Fund for the San Antonio Street Turnkey Park Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption" and [Ordinance No. 28201](#), 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. 5 for the San Antonio Street Turnkey Park Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption" were adopted, and a Turnkey Park Agreement with DKB Homes, LLC, for Planned Development

2.8 (Cont'd.)

Permit PD04-082 (PT04-125) to construct park improvements on the San Antonio Street park site and to reimburse DKB Homes, LLC in an amount not to exceed \$238,900 for park and street improvements on the San Antonio park site that exceeds DKB Homes, LLC's Parkland Dedication Obligation was approved. (11-0.)

2.9 (a) Approval of the first amendment to Parkland agreement for Tentative Map PT00-11-152 with KB Home, South Bay, Inc., for Planned Development Permit PD03-022, associated with Tentative Map No. PT00-152 to add a play lot at Vieira Park, located at the corner of Adeline Ave. and Grassina Street (Communication Hill), and to reimburse KB Home, South Bay, Inc. in an amount not to exceed \$196,067.

(b) Adoption of the following Appropriation Ordinance Amendments in the Subdivision Park Trust Fund (Fund 375):

(1) Increase the appropriation to the Department of Public Works for the Tuscany Hills Parks and Neighborhood Trail Turnkey Project by \$22,000;

(2) Increase the appropriation to the Parks, Recreation and Neighborhood Services Department for the KB Home Reimbursement for Tuscany Hill Parkland Fees Project by \$174,000; and

(3) Decrease the Reserve: Communications Hill by \$196,000.

CEQA: Resolution No. 70194. Council District 7. (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 A. Maguire, dated November 19, 2007, recommending approval of the first amendment and adoption of the appropriation ordinance amendments.

Action: The first amendment to the agreement was approved, and [Ordinance No. 28202](#), entitled "An Ordinance of the City of San José Amending Ordinance No. 28071 to Appropriate Monies in the Subdivision Park Trust fund for the Tuscany Hills Parks & Neighborhood Trail Turnkey Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption" was adopted. (11-0.)

2.10 Adoption of a resolution authorizing the City Manager to execute an amendment to the agreement with the Law Enforcement Psychological Services, Inc. related to providing additional psychological services to the San José Police Department, extending the term for a two month period, through January 31, 2008 and increasing compensation in an amount not to exceed \$85,000, with a total amount of compensation not to exceed \$845,142. CEQA: Not a Project.

Documents Filed: Memorandum from Chief of Police Robert L. Davis, dated November 19, 2007, recommending adoption of a resolution to execute an amendment to the agreement.

2.10 (Cont'd.)

Action: [Resolution No. 74156](#), entitled “Resolution of the Council of the City of San José Authorizing the City Manager to Execute an Amendment to the Agreement with Law Enforcement Psychological Services, Inc. for Psychological Services to the San José Police Department, in an Additional Amount not to Exceed \$85,000, and Extending the Term through January 31, 2008”, was adopted. (11-0.)

2.11 Approval of a continuation agreement with Tetra Design, Inc. for Architectural Consultant Services for the Joyce Ellington Branch Library Project continuing the term retroactive for the period July 1, 2007 through December 31, 2008 at no additional cost to the City. CEQA: Exempt, PP05-167. Council District 3. SNI: 13th Street. (Public Works)

Document Filed: Memorandum from Director of Public Works Katy Allen, dated November 19, 2007, recommending approval of a continuation agreement with Tetra Design, Inc.

Action: A continuation agreement with Tetra Design, Inc. for Architectural Consultant Services for the Joyce Ellington Branch Library Project continuing the term retroactive for the period July 1, 2007 through December 31, 2008 at no additional cost to the City was approved. (11-0.)

2.12 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 \$767,600.**
- (b) **Increase the appropriation to the Department of Transportation for the Pedestrian Improvements project (PSM 431, Amendment #2) in the amount of \$83,390.**
- (c) **Increase the appropriation to the Department of Public Works for the Sanitary Sewer Improvements Phase II project (PSM 495, Amendment #2) in the amount of \$497,000.**
- (d) **Establish an appropriation to the Office of Cultural Affairs for the Edenvale Community Center Public Art project (PSM 508) in the amount of \$37,000.**
- (e) **Establish an appropriation to the Department of Public Works (DPW) for the DPW Real Estate Division – Third Party Services project (PSM 511) in the amount of \$50,000.**
- (f) **Increase the appropriation to the Office of Cultural Affairs for the Starbird Youth Center Public Art project (PSM 512) in the amount of \$28,210.**
- (g) **Establish an appropriation to the Department of General Services for The South Hall Convention Center – HVAC Systems project (PSM513) in the amount of \$72,000.**

CEQA: See Administration’s memo to Council for specific CEQA clearance determinations on each recommended action. Council Districts 1, 2, 3 and 5. SNI: Gateway East, Edenvale/Great Oaks/Blackford. (Public Works/Transportation/General Services/Economic Development/City Manager’s Office)

2.12 (Cont'd.)

Documents Filed: Memorandum from Director of Public Works Katy Allen, Director of Transportation James R. Helmer, Director of General Services Peter Jensen, Chief Development Officer Paul Krutko and Acting Budget Director Jennifer A. Maguire, dated November 19, 2007, recommending adoption of appropriation ordinance and funding sources resolution amendments and a resolution.

Action: [Ordinance No. 28203](#), entitled “An Ordinance of the City of San José Amending Ordinance No 28071 to Appropriate Monies in the Services for Redevelopment Capital Projects Fund for the Pedestrian Improvements Project, the Sanitary Sewer Improvements Phase II Project, the Edenvale Community Center Public Art Project, the Department of Public Works Real Estate Division – Third Party Services Project, the Starbird Youth Center Project, and the South Hall Convention Center – HVAC System Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption” and [Resolution No. 74161](#), 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 for Redevelopment Capital Projects Fund” were adopted. (11-0.)

2.13 **Approval of travel by Council Member Williams to Los Angeles, CA on November 28, 2007 to attend a meeting of Chairs of the various intercity rail services in the State of California at the Los Angeles County Metro Transportation Authority Office. Source of Funds: Capital Corridor Joint Powers Authority. (Williams) (Rules Committee referral 11/28/07)**

Documents Filed: Memorandum from Council Member Williams, dated November 27, 2007 requesting approval for business travel to attend a meeting of Chairs of the various intercity rail services in the State of California at the Los Angeles County Metro Transportation Authority Office.

Action: The travel request for Council Member Williams was approved. (11-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

3.1 Report of the Rules and Open Government Committee – November 28, 2007 Mayor Reed, Chair

Documents Filed: The Rules and Open Government Committee Report dated November 28, 2007.

Action: Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, the Rules and Open Government Committee Report and the actions of November 28, 2007 were accepted. (10-0-1. Absent: Constant.)

**3.3 Approval of an ordinance amending Title 12 of the San José Municipal Code by adding a new Chapter 12.20 to establish rules prohibiting nepotism and rules regarding consensual personal relationships in the workplace for the Mayor and Members of the City Council. CEQA: Not a project. (City Attorney's Office)
(Deferred from 11/20/07 – Item 3.6)**

Documents Filed: Memorandum from City Attorney Doyle, dated November 29, 2007, recommending approval of an ordinance adding a new Chapter 12.20 to the San José Municipal Code.

Action: Upon motion by Council Member Chirco, seconded by Vice Mayor Cortese and carried unanimously, [Ordinance No. 28204](#), entitled “An Ordinance of the City of San José Amending Title 12 of the San José Municipal Code by Adding a New Chapter 12.20 to Establish Rules Prohibiting Nepotism and to Establish Rules Regarding Consensual Personal Relationships in the Workplace for the Mayor and Members of the City Council” was passed for publication. (10-0-1. Absent: Constant.)

3.4 Approval of an ordinance amending Section 1.08.020 of Chapter 1.08 of Title 1 of the San José Municipal Code to update the list of infractions. CEQA: Not a Project. (City Attorney's Office)

Documents Filed: Memorandum from City Attorney Doyle, dated November 29, 2007, recommending approval of an ordinance amending Section 1.08.020 of Chapter 1.08 of Title 1 of the San José Municipal Code to update the list of infractions.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, [Ordinance No. 28205](#), entitled “An Ordinance of the City of San José Amending Section 1.08.020 of Chapter 1.08 of Title 1 of the San José Municipal Code, which Lists all Infractions, to update the List of Infractions” was passed for publication. (10-0-1. Absent: Constant.)

3.5 Approval of an ordinance amending Title 1 of the San José Municipal Code to add a new Chapter 1.20 to establish uniform requirements and procedures applicable to the presentation and processing of claims for money or damages with the City of San José where the claim is exempt from the filing requirements of the California Government Claims Act and there are no other applicable requirements or procedures for the filing of such claim under State law or the Municipal Code, to require the filing of a claim as a prerequisite to filing suit against the City, and to establish a transition period for the presentation of claims that would be untimely under the new procedures and requirements. CEQA: Not a Project. (City Attorney's Office)

Documents Filed: Memorandum from City Attorney Doyle, dated November 29, 2007, recommending approval of an ordinance amending Title 1 of the San José Municipal Code.

3.5 (Cont'd.)

Action: Upon motion by Councilmember Williams, seconded by Council Member Chirco and carried unanimously, [Ordinance No. 28206](#), entitled “An Ordinance of the City of San José Amending Title 1 of the San José Municipal Code to Add a New Chapter 1.20 to Establish Uniform Requirements and Procedures Applicable to the Presentation and Processing of Claims for Money or Damages with the City of San José, where the Claim is excepted from the Filing Requirements of the California Government Claims Act and there are no other Applicable Requirements or Procedures for the Filing of such Claim, to Require the Filing of a Claim as a Prerequisite to Filing Suit against the City, and to Establish a Transition Period for the Presentation of Claims that would be Untimely under the New Procedures and Requirements” was passed for publication. (10-0-1. Absent: Constant.)

3.6 Action for 3.6 may be found on page 12.

3.7 **Report of the Rules and Open Government Committee – November 7, 2007** **Mayor Reed, Chair**

Documents Filed: The Rules and Open Government Committee Report dated November 7, 2007.

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Pyle and carried unanimously, the Rules and Open Government Committee Report and Actions of November 7, 2007 were accepted. (10-0-1. Absent: Constant.)

3.8 **Report of the Rules and Open Government Committee – November 14, 2007** **Mayor Reed, Chair**

Documents Filed: The Rules and Open Government Committee Report dated November 14, 2007.

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Pyle and carried unanimously, the Rules and Open Government Committee Report and Actions of November 14, 2007 were accepted. (10-0-1. Absent: Constant.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.1 **Report of the Community & Economic Development Committee – November 26 2007** **Council Member Pyle, Chair**

Documents Filed: The Community & Economic Development Committee Report, dated November 26, 2007.

4.1 (Cont'd.)

Action: Upon motion by Council Member Pyle, seconded by Council Member Campos and carried unanimously, the Report of the Community & Economic Development Committee and the Actions of November 26, 2007 were accepted. (10-0-1. Absent: Constant.)

4.3 **Consideration of an ordinance rezoning the real property located on the northwest corner of Orchard Parkway and Atmel Way from the IP(PD) – Planned Development Zoning District to the IP(PD) – Planned Development Zoning District to allow office/research and development uses and modifications to the development standards to change the height and setbacks to conform to the IP – Industrial Park Zoning District on a 16.35 gross acre site (Legacy Partners Commercial, Owner). CEQA: Resolution No. 72768 and Addenda thereto. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required. PDC07-091 - District 4 [Deferred from 12/4/07 – Item 11.1(c)]**

Documents Filed: Supplemental memorandum from Director, Planning, Building and Code Enforcement, Joseph Horwedel, dated December 7, 2007, providing an addendum to the North San José Final Program EIR adopted on December 7, 2007.

Action: Upon motion by Council Member Chu, seconded by Council Member Campos and carried unanimously, [Ordinance No. 28207](#), entitled “An Ordinance of the City of San José Rezoning Certain Real Properties Situated at the Northwest Corner of Orchard Parkway and Atmel Way to the IP(PD) Planned Development Zoning District” was passed for publication. (11-0.)

4.2 **Approval of the revised draft work plan for a comprehensive update of the entire Sign Ordinance. CEQA: Not a Project. (Planning, Building and Code Enforcement) [Community and Economic Development Committee referral 11/26/07 – Item (h)]**

Documents Filed: (1) Memorandum from Agenda Service Manager Nadine Nader, dated November 30, 2007, providing additional information on the draft workplan, (2) Memorandum from Council Member Constant and Council Member Chu, dated December 7, 2007, recommending Policy Alternative 1 as outlined in the staff report and recommending an expedited timeline, and (3) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated December 5, 2007, providing a comprehensive update of the sign ordinance.

Deputy Director of Planning John Poindexter presented the Staff report and responded to Council questions.

Extensive Council discussion ensued. Council Members Constant and Chu spoke in favor of a comprehensive sign ordinance update as recommended by Staff, and further, that the update take no longer than one year. Council Member Chirco concurred, adding concern about amending an already complicated ordinance.

4.2 (Cont'd.)

Motion: Council Member Liccardo moved approval of Staff's Alternative #2 (pursue a partial update of the Sign Ordinance not limited to the Downtown), as outlined in the Supplemental Staff Report of December 5, 2007. Council Member Nguyen seconded the motion.

Council debate followed.

Public Comments: Bob Kiede encouraged a more expeditious sign ordinance process for all districts. Mark Trout spoke off topic. David Wall spoke in favor of improved traffic control and infrastructure.

Action: On a call for the question, the motion carried with Staff directed to implement Alternative #2 as outlined in the Supplemental Staff Report of December 5, 2007. (8-3. Noes: Chirco, Chu, Constant.)

- 3.6 (a) **Authorizing the issuance of subordinate tax-exempt multifamily housing revenue bonds designated as "City of San José Subordinate Multifamily Housing Revenue Bonds (Almaden Family Apartments Project) Series 2007D" in an aggregate principal amount not to exceed \$7,000,000 (the "Subordinate Bonds");**
- (b) **Approving the Subordinate Bonds, Subordinate Trust Indenture, First Amendment to Regulatory Agreement and Declaration of Restrictive Covenants, Subordinate Bond Purchase Agreement, First Supplemental Trust Indenture and other related documents;**
- (c) **Approving a loan of Subordinate Bond proceeds to Almaden Family Housing Partners, L.P., a California limited partnership, for providing a portion of the permanent financing for the Almaden Family Apartments located at 1525-1541 Almaden Road; and,**
- (d) **Authorizing the Deputy Director of Finance and Director of Housing to execute and, as appropriate, to negotiate, execute and deliver these documents and other related documents as necessary.**

CEQA: Negative Declaration, File No. PDC-SH-98-089. Council District 7. (Housing/Finance)

Documents Filed: (1) Memorandum from Deputy Director of Finance Julia H. Cooper and Director of Housing Leslye Krutko, dated November 19, 2007, recommending approval of the issuance of subordinate bonds, loan of subordinate bond proceeds and related documents for the Almaden Family Apartments Project. (2) Supplemental Memorandum from Deputy Director of Finance Julia H. Cooper and Director of Housing Leslye Krutko, dated November 30, 2007, informing Council of a change in the bond issuance series designation, the addition of language in the Investor Letter and the transmittal of documents on file in the City Clerk's Office. (3) Memorandum from Deputy Director of Finance Julia H. Cooper, dated November 30, 2007, submitting financing documents for the City of San José Multifamily Housing Bonds, Series 2007B, on file in the City Clerk's Office as follows: (a) First Supplemental Trust Indenture, (b) First Amendment to Regulatory Agreement and Declaration of Restrictive Covenants,

3.6 (Cont'd.)

(c) Subordinate Trust Indenture, (d) Subordinate Loan Agreement, and (e) Subordinate Bond Purchase Agreement.

City Attorney Doyle read changes to the Subordinate Bond Indenture into the record as follows:

- (1) Change from 70%/30% split on the payment of bonds and developer fee to a 75%/25% split.
- (2) Eliminate need to pay off the developer fee before subordinate bonds are paid.
- (3) Provision to require the payment of the City Loan from Bond Fund if all bonds and related fees are paid.

Director of Housing Leslye Krutko recommended immediate action on this item.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried unanimously, [Resolution No. 74157](#), entitled “A Resolution of the City Council of the City of San José Authorizing the Issuance of Subordinate Multifamily Housing Revenue Bonds and the Loan of the Proceeds thereof for the Refunding of a Portion of the Bonds Previously Issued to Finance the Almaden Family Apartments Project and Approving other Related Documents and Actions”, was adopted as amended, and Subordinate Trust Indenture changes were read into the record. (11-0.)

TRANSPORTATION & AVIATION SERVICES

6.2 Approval of the preferred design recommendation to the Santa Clara Valley Transportation Authority (VTA) regarding the BART Extension to San José/Silicon Valley as follows:

- (a) **Select the “Northern Offset” for the BART tunnel alignment in the vicinity of Santa Clara Street and Coyote Creek, for the continuation of project design work, and with the condition that a subsequent environmental review process demonstrates the option to be preferred based on environmental and cost effectiveness issues.**

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

[Deferred from 10/16/07 – Item 6.4(b) and 11/20/07 – Item 6.2]

Director of Transportation James R. Helmer and Deputy Director of Transportation Hans Larsen offered an overview of BART extension design issues.

Documents Filed: (1) Memorandum from Director of Transportation James R. Helmer dated October 3, 2007, recommending approval of the Bart Extension design. (2) Supplemental Memorandum #1 from Director of Transportation James R. Helmer, dated November 13, 2007, providing supplemental information regarding the BART extension to San Jose/Silicon Valley. (3) Memorandum from Council Member Liccardo, dated November 29, 2007, recommending the “northern offset” for the BART tunnel alignment. (4) Supplemental Memorandum #2 from Director of Transportation James R. Helmer, Director, Planning, Building and Code Enforcement Joseph Horwedel, Chief

6.2 (Cont'd.)

Development Officer Paul Krutko, and Deputy Executive Director of the Redevelopment Agency John Weis, dated December 4, 2007, providing supplemental information and analysis pertaining to Bart Design Issues at Coyote Creek. (5) Letter from William Gilbert, Chief Executive Officer, Regional Medical Center of San Jose, dated December 10, 2007, expressing concerns regarding the proposed BART Tunnel Alignment.

Public Comments: Gary Schoennauer, representing HCA (former owners of the San Jose Medical Center site) explained that the property owners would prefer that the alignment not be on the property, but are willing to support the Staff recommendation. Ross Signorino offered suggestions for a feasibility study to route BART directly to the airport.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, the Council selected the “northern offset” for the BART tunnel alignment beneath Coyote Creek, and moved continuation of project design work with the condition that a subsequent environmental review process demonstrates this option to be preferred. (11-0.)

ENVIRONMENTAL & UTILITY SERVICES

7.1 **Approval of a Memorandum of Agreement with the Santa Clara Valley Water District for Trash Prevention and Removal to supersede the agreement executed in 2004 and include City support for cleanup of illegal creekside encampments within City boundaries. CEQA: Exempt, File No. PP04-248. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated November 19, 2007, recommending approval of Memorandum of Agreement with the Santa Clara Valley Water District for trash prevention and removal.

Action: Item was dropped.

7.2 **Approval of the following policy direction for Neighborhood Clean-Up services:**

- (a) **Release a Request for Proposal for Neighborhood Clean-Up Bin Services for Districts A and C in February 2008, and direction to staff to return to Council in June 2008, and with a full cost analysis of service options and recommendations for service providers.**
- (b) **Implement a phased City-wide rotational approach to Neighborhood Clean-Up scheduling that would serve all City neighborhoods uniformly and efficiently:**
 - (1) **Phase I – Serve all San José neighborhoods once every three years, beginning July 1, 2008 through June 30, 2011. Increase the service level of each clean-up from 22 to 25 bins, at the current schedule of 50 clean-up events per year, resulting in a 14% bin capacity increase.**

7.2 (Cont'd)

- (2) **Phase II – Based on proposal costs and parameters, direct staff to evaluate an optional Phase II rotation that would serve all San José neighborhoods every two years, beginning July 1, 2011. This approach would expand the number of Clean-Ups per year from 50 to 75 with 25 bins at each event, resulting in an additional 50% service level increase over the three year rotational plan.**
- (c) **Establish a four-and-a-half year contract term, from January 1, 2009 through June 30, 2013, with an option for a two-year extension to be consistent with the two new Recycle Plus agreements with California Waste Solutions and Garden City Sanitation.**
- (d) **Increase the City diversion requirement to 75% to comply with adopted Zero Waste goals.**

CEQA: Negative Declaration, File No. PP06-119.

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated November 19, 2007, recommending approval of the Proposal for Neighborhood Clean-Up Bin Services. (2) Supplemental memorandum from Director of Environmental Services John Stufflebean, dated December 4, 2007, providing additional information regarding Staff's recommendation regarding a Request for Proposal for Neighborhood Clean-Up Bin Services.

Director of Environmental Services John Stufflebean presented an overview of the current clean-up program, recommendations and next steps to be taken. Deputy Director of Planning, Building and Code Enforcement Mike Hannon responded to questions regarding community clean-ups.

Public Comments: David Wall spoke in support of the program and suggested additional roving hazardous waste collection.

Action: Upon motion by Council Member Cortese, seconded by Council Member Pyle and carried unanimously, policy direction for neighborhood clean-up services was approved; Staff was directed to analyze costs for a two year rotation and further, to provide status updates to the Transportation and Environment Committee. (11-0.)

PUBLIC SAFETY SERVICES

- 8.1 (a) **Report on bids and award of contract for the South San José Police Substation project to the low bidder, S.J. Amoroso, to include the base bid and none of the Add Alternates in the amount of \$59,997,000 and the approval of a contingency in the amount of \$2,710,000.**
- (b) **Adoption of the following 2007-2008 Appropriation Ordinance amendments in the Neighborhood Security Bond Fund (Fund 475):**
 - (1) **Increase the South San José Police Substation appropriation by \$5,416,000;**

8.1 (Cont'd.)

- (2) Decrease the Reserve: East San José Community Policing Center by \$1,677,000;
 - (3) Decrease the Reserve: South San José Community Policing Center by \$1,739,000;
 - (4) Decrease the Contingency Reserve by \$500,000; and
 - (5) Decrease the Ending Fund Balance by \$1,500,000.
- (c) Adoption of a resolution authorizing the expenditure of Construction Tax and Property Conveyance Tax funds currently allocated for “Service Yards” purposes for the South San José Police Substation project pursuant to Municipal Code 4.55.300.
- (d) Adoption of the following 2007-2008 Appropriation Ordinance amendments in the Construction Tax and Property Conveyance Tax Fund: Service Yards Purposes (Fund 395):
- (1) Establish a Transfer to the General Fund for the South San José Police Substation project in the amount of \$400,000; and
 - (2) Decrease the Ending Fund Balance by \$400,000.
- (e) Adoption of the following 2007-2008 Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund (Fund 001):
- (1) Increase the estimate for Other Revenue by \$2,329,250;
 - (2) Increase the estimate for Transfers and Reimbursements by \$400,000;
 - (3) Establish an appropriation to the Police Department for the South San José Police Substation in the amount of \$4,996,976; and
 - (4) Decrease the Earmarked Reserve for Future Capital Projects (FF&E) by \$2,267,726.
- (f) Adoption of the following 2007-2008 Appropriation Ordinance and Funding Sources Resolution amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District #10 (Fund 389):
- (1) Increase the estimate for Earned Revenue by \$70,750; and
 - (2) Increase the Ending Fund Balance by \$70,750.
- (g) Approval of an ordinance amending Chapter 22.08 of Title 22 of the San José Municipal Code to provide that the City Council at its discretion may adjust the Public Art allocation for capital projects outside the annual capital budget approval, and Direction to the City Manager to prepare a recommendation to the City Council in conjunction with the 2007-2008 Mid-Year Budget Review report, that the General Fund Future Capital Projects (FF&E) Reserve be partially replenished by reallocating, in the Neighborhood Security Bond Fund, Public Art – Police Bond Projects funding to the South San José Police Substation project in the amount of \$1,100,000.

CEQA: Mitigated Negative Declaration, File No. PP04-304. (Public Works/Police/City Manager’s Office)

Action. Item was deferred to December 18, 2007 per Administration.

- 8.2 (a) **Adoption of a resolution authorizing the City Manager to:**
- (1) **Execute the Fourth Amendment to the Agreement with Harris Stratex Networks Operating Corporation (Harris Stratex) to furnish the equipment system and installation services for the E-Comm microwave interoperability communications project, including the first year of warranty and maintenance services; to increase the maximum compensation from \$277,365 to \$7,777,118; and to extend the term of the Agreement from December 31, 2007, to December 31, 2008,**
 - (2) **Execute a Notice to Proceed for additional work and to increase the compensation by \$1,282,985, upon appropriation of additional funding;**
 - (3) **Execute change orders in an additional contingency amount of \$700,000, upon appropriation of additional funding.**
- (b) **Adoption of the following amendments to the Annual Appropriation Ordinance and Funding Sources Resolution in the General Fund for Fiscal Year 2007-08:**
- (1) **Increase the City-wide appropriation to the Police Department for the 2006 Super Urban Area Security Initiative (SUASI) Interoperable Communications Grant in the amount of \$3,000,000;**
 - (2) **Increase the Earned Revenue Estimate from the Federal Government by \$3,000,000;**
 - (3) **Decrease the Simulcast Sites Appropriation in the Construction Tax and Property Conveyance (C&C) Tax Fund: Communications Purposes by \$500,000; and**
 - (4) **Establish an appropriation in the C&C Tax Fund: Communications Purposes in the amount of \$500,000 for the COPS 2003-2004 Interoperable Communications Grant.**
- (c) **Adoption of a Resolution authorizing the City Manager to negotiate and execute site license agreements between the City of San José and certain other Silicon Valley Regional Interoperability Project (SVRIP) member jurisdictions, providing for the installation of E-Comm microwave equipment at each site.**
- (d) **Adoption of a resolution authorizing the City Manager to negotiate and execute a Memorandum of Understanding between the City of San José and the State of California providing for the installation of E-Comm microwave equipment at the CAL FIRE Morgan Hill site.**
- (e) **Adoption of a resolution incorporating the environmental mitigation measures as set forth in the Mitigation Monitoring and Reporting Program for the project.**

CEQA/NEPA: Mitigated Negative Declaration, File No. PP07-055. An Initial Study was prepared pursuant to CEQA and an Environmental Assessment was prepared pursuant to NEPA. Based on the Initial Study, the Director of Planning has circulated for public review and adopted a Mitigated Negative Declaration. Based on the Environmental Assessment, the United States Department of Justice has circulated for public review and adopted a Finding of No Significant Impact (FONSI). (Police/City Manager's Office)

8.2 (Cont'd.)

Documents Filed: Memorandum from Chief of Police Robert L. Davis and Acting Budget Director Jennifer A. Maguire, dated November 19, 2007, recommending approval of the fourth amendment to the agreement with Harris Stratex Networks, authorization of site licensing and maintenance agreements, and adoption of amendments to the appropriation ordinance.

A presentation on the communications project was provided by Captain Chris Moore, Technical Services Specialist from the San José Police Department.

E-Comm Project Manager Steve Jones presented an overview of the E-Comm microwave communications project.

Public Comments: Ross Signorino spoke in support of an improved communication system. William Garbett expressed concern about system failure and suggested a redundant system.

Action: Upon motion by Council Member Pyle, seconded by Council Member Williams and carried unanimously, [Resolution No. 74158](#), entitled “A Resolution of the Council of the City of San Jose Authorizing the City Manager to Execute the Fourth Amendment to the Agreement with Harris Stratex Networks Operating Corporation for the E-Comm Microwave Interoperability Communications Project to Furnish Equipment Systems and Installation Services, to Execute a Notice to Proceed for Additional work and to Increase Compensation, and to Execute Change Orders in the Additional Contingency Amount”; [Ordinance No. 28208](#); entitled “An Ordinance of the City of San José Amending Ordinance No. 28071 to Appropriate Monies in the General Fund for the 2006 Super Urban Area Security Initiative (SUASI) Interoperable Communications Grant, and in the Construction Tax and Property Conveyance Tax Fund: Communications Purposes for the COPS 2003-2004 Interoperable Communications Grant; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”, [Resolution No. 74162](#); 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”, and [Resolution No. 74163](#), entitled “A Resolution of the Council of the City of San Jose Authorizing the City Manager to Negotiate and Execute Site License Agreements between the City and other Silicon Valley Regional Interoperability Project Member Jurisdictions for the Installation of E-Comm Microwave Equipment at Each site”; [Resolution No. 74164](#), entitled “A Resolution of the Council of the City of San Jose Authorizing the City Manager to Negotiate and Execute a Memorandum of Understanding between the City and the State of California for the Installation of E-Comm Microwave Equipment at the Cal Fire Morgan Hill Site”; [Resolution No. 74165](#), entitled “A Resolution of the City Council of the City of San Jose Approving the E-Comm Interoperability Microwave Project, for which an Initial Study/Mitigated Negative Declaration was Prepared in Accordance with the California Environmental Quality Act, and Adopting a Mitigation Monitoring and Reporting Program” were adopted. (11-0.)

JOINT COUNCIL/REDEVELOPMENT AGENCY

- 9.1**
- (a) Direct the City Manager and Redevelopment Agency Director to jointly develop new Entertainment Zone Planning Guidelines for the Downtown; and**
 - (b) Return to City Council with specific recommendations no later than June 24, 2008.**
 - (c) Reaffirm support for Council Policy 6-23.**
 - (d) Direct the City Manager to fully implement the intent of Council Policy 6-23 for both new applications and existing Conditional Use Permits (CUPs) in the Downtown.**
 - (e) Direct the City Manager to limit the length of time for CUPs in the Downtown to a term of two years.**

(Rules Committee referral 11/14/07)

Deferred to 12/18/07 per the Administration.

OPEN FORUM

- (1) Donald Ivans spoke on handicap access to light rail for the disabled. The speaker was referred to the Disability Advisory Committee.
- (2) David Wall chastised Council Member Campos for use of a City library as an office during a labor strike.
- (3) Mark Trout voiced religious viewpoints.
- (4) Jason Ross and Riana St. Classis spoke in support of the Bank Protection Act.
- (5) Ross Signorino offered personal observations about the naming of the Vietnamese Business District.

ADJOURNMENT

The Council of the City of San José was adjourned at 4:13 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

rmk/12-11-07MIN

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