

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, AUGUST 19, 2008

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 - Chirco, Constant, Chu, Cortese, Liccardo, Nguyen, Oliverio, Pyle, Williams; Reed.

Absent: Council Members - Campos. (Excused)

Upon motion unanimously adopted, Council recessed at 9:01 a.m. to a Closed Session in Room W133, (A) to confer with Legal Counsel with respect to existing litigation pursuant to Government Code Subsection (a) of Section 54956.9: (1) City of San José v. The Honorable Read Ambler; Sutter's Place, Inc., dba Bay 101, Real Party in Interest; Frederick S. Wyle as Trustee of Garden City, Inc., Real Party in Interest; Names of Parties Involved: Sutter's Place, Inc., dba Bay 101, Real Party in Interest; Frederick S. Wyle as Trustee of Garden City, Inc., City of San José, Honorable Read Ambler; Court: Court of Appeal, 6th Appellate District, Superior Court of California, County of Santa Clara; Case No: H031189 and H031226; Amount of Money or other Relief Sought: Appeal of Order sustaining demurrers to City's Writ of Administrative Mandamus without leave to amend. (2) Sutter's Place, Inc. v. City of San José, et al. and Consolidated Actions; Names of Parties Involved: Sutter's Place, Inc., dba Bay 101, Frederick S. Wyle as Trustee for Garden City, Inc., City of San José; Court: Superior Court of California, County of Santa Clara; Case No: CV1-02-810068 (Consolidated with 1-02-CV810548, 1-02-CV795974 and 1-02-CV812404; Amount of Money or other Relief Sought: Plaintiffs seek declaratory relief that the provisions of Title 16 eliminating backline betting, prohibiting gaming between 2:00 a.m. and 6:00 a.m. and requiring payment of hearing fees are unconstitutional. Plaintiffs further seek writs of Administrative Mandamus challenging the denial of hardship extensions under San José Municipal Code Section 16.20.010, et. seq. (3) Sutter's Place, Inc., dba Bay 101 v. City of San José; Names of Parties Involved: Sutter's Place, Inc., dba Bay 101, Garden City,

CLOSED SESSION Cont'd.)

Inc., City of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-06-CV-065644 (Consolidated with Case No. 1-06-CV-068034); Amount of Money or other Relief Sought: Plaintiffs seek declaratory relief regarding table fees. (B) to confer with Legal Counsel with respect to anticipated litigation pursuant to Government Code subsection (b) of Section 54956.9 with significant exposure: (1) Claimants: In re Claim of Ghenis; City Department: PRNS. (C) Public Employee Performance Evaluation Pursuant to Government Code Section 54957: Department: Information Technology. Title: Chief Information Officer. (D) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Organization or Name and Title of Unrepresented Employees: San José Police Officers' Association; Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. How to obtain a copy of existing contract or MOA: web: <http://www.sanjoseca.gov/employeerelations/moa.asp>; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 10:55 a.m. and reconvened at 1:33 p.m. in the Council Chambers.

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

Absent: Council Members - Campos. (Excused)

INVOCATION

Pastor Arnold, the Cry Out Christian Fellowship, presented an inspirational prayer. (District 7)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, the Orders of the day and the Amended Agenda were approved, Item 3.2 was deferred to August 26, 2008 and Item 4.3 was heard. (10-0-1. Absent: Campos.)

CLOSED SESSION REPORT

City Attorney Doyle disclosed the following Closed Session actions of August 19, 2008:

A. **Public Employment/Public Employee Appointment Pursuant to Government Code Section 54957:**

Title: Chief Information Officer
Name: Stephen R. Ferguson

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

Noes: None.
Disqualified: None.
Absent: Campos. (Excused)
Vacant: None.

CEREMONIAL ITEMS

1.1 Presentation of a proclamation to NVIDIA declaring August 25, 2008 – September 1, 2008 as “Visual Computing Week”. (Mayor/Liccardo/Pyle) (Deferred from 6/3/08 – Item 1.5)

Action: Mayor Reed and Council Members Liccardo and Pyle recognized August 25, 2008 through September 1, 2008 as “Visual Computing Week” and presented a plaque to NVIDIA.

1.2 Presentation of a commendation to Alberto Olmos in recognition of his many years of service as President of Los Bomberos of Northern California. (Campos)

Action: Mayor Reed recognized and commended Alberto Olmos for his years of service as President of Los Bomberos (Firefighters) of Northern California. Council Member Campos was not present.

CONSENT CALENDAR

Upon motion by Council Member Pyle, seconded by Council Member Nguyen, and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (9-0-2. Absent: Campos, Cortese.)

2.1 Approval of minutes.

- (a) **Regular Minutes of May 6, 2008**
- (b) **Regular Minutes of May 13, 2008**
- (c) **Regular Minutes of May 20, 2008**
- (e) **Special Meeting Minutes of May 27, 2008**

2.1 (Cont'd.)

Documents Filed: (1) The Regular Minutes dated May 6, 2008, May 13, 2008 and May 20, 2008. (2) The Special Meeting Minutes dated May 27, 2008.

Action: The Minutes were approved. (9-0-2. Absent: Campos, Cortese.)

(d) **Regular Minutes of June 3, 2008**

Action: Deferred to September 9, 2008 per City Clerk.

2.2 (a) **ORD. NO. 28358 – Amending Chapters 22.04 and 22.08 of Title 22 of the San José Municipal Code to update and modify the art in public places requirements and the provisions regarding the operation of the convention and cultural facilities.**

Documents Filed: (1) Proof of Publication of the title of Ordinance No. 28358 executed on July 8, 2008, submitted by the City Clerk. (2) Letter from the Treatment Plant Advisory Committee, dated August 14, 2008, stating concurrence with the Staff recommendation.

Action: [Ordinance No. 28358](#) was adopted. (9-0-2. Absent: Campos, Cortese.)

(b) **ORD. NO. 28359 – Amending Section 4.04.020 of Chapter 4.04 of Title 4 of the San José Municipal Code to increase administrative contract authority for grant agreements, public art agreements and sponsorship agreements.**

Documents Filed: (1) Proof of Publication of the title of Ordinance No. 28359 executed on July 8, 2008, submitted by the City Clerk. (2) Letter from the Treatment Plant Advisory Committee, dated August 14, 2008, stating concurrence with the Staff recommendation.

Action: [Ordinance No. 28359](#) was adopted. (9-0-2. Absent: Campos, Cortese.)

2.3 (a) **Approve travel for City Clerk Lee Price to Montecito, California on August 14-22, 2008 to provide training services at Continuing Education for Public Officials. Source of Funds: Continuing Education for Public Officials.**

(b) **Approve travel for City Clerk Lee Price to Riverside, California on September 2-5, 2008 to provide training services at Technical Track for City Clerks. Source of Funds: Technical Track for City Clerks.**

(City Clerk)

(Rules Committee referral 8/6/08)

Documents Filed: Memorandum from City Clerk Lee Price, dated August 7, 2008, requesting approval of travel.

Action: The travel requests for City Clerk Lee Price were approved. (9-0-2. Absent: Campos, Cortese.)

- 2.4 Approve a change order for the project entitled, “San José/Santa Clara Water Pollution Control Plant Reliability Improvements Project,” for a total amount of \$301,300 with no change to the term of contract with Kiewit Pacific Company. CEQA: Exempt, File Nos. PP03-05-183 and PP04-07-217. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated July 28, 2008, recommending approval of a change order. (2) Letter from the Treatment Plant Advisory Committee, dated August 14, 2008, stating concurrence with the Staff recommendation.

Action: The change order for the San José/Santa Clara Water Pollution Control Plant Reliability Improvements Project, for a total amount of \$301,300 with no change to the term of contract with Kiewit Pacific Company was approved. (9-0-2. Absent: Campos, Cortese.)

- 2.5 (a) Approve a change order to extend the term of the contract with Anderson Pacific Engineering Construction, Inc. for the project entitled “San José/Santa Clara Water Pollution Control Plant, FY 2007/2008 Capital Improvement Program, East Primary Influent Channel Repair Project,” from June 18, 2008 to October 16, 2008.**
- (b) Approve an increase in the contingency for the project in the amount of \$70,000 for a total contingency amount of \$140,000.**
- CEQA: Exempt, File No. PP07-141. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated July 28, 2008, recommending approval of a change order and increase in the contingency. (2) Letter from the Treatment Plant Advisory Committee, dated August 14, 2008, stating concurrence with the Staff recommendation.

Action: The change order to extend the term of the contract with Anderson Pacific Engineering Construction, Inc. for the t San José/Santa Clara Water Pollution Control Plant, FY 2007/2008 Capital Improvement Program, East Primary Influent Channel Repair Project from June 18, 2008 to October 16, 2008, with related contingency increase, were approved. (9-0-2. Absent: Campos, Cortese.)

- 2.6 Adopt a resolution authorizing the City Manager to negotiate and execute a grant agreement with Mansion Grove Apartments in an amount not-to-exceed \$220,000 for retrofit of recycled water facilities. CEQA: Resolution No. 64667 (SCH92-01-3071) and Addenda thereto including No. 1, “San José Nonpotable Reclamation Project (November, 1995)”. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated July 28, 2008, recommending adoption of a resolution. (2) Letter from the Treatment Plant Advisory Committee, dated August 14, 2008, stating concurrence with the Staff recommendation.

2.6 (Cont'd.)

Action: [Resolution No. 74548](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute to Provide a Grant for Recycled Water Retrofit Improvements to Mansion Grove Apartments in an Amount Not To Exceed \$220,000", was adopted. (9-0-2. Absent: Campos, Cortese.)

2.7 Approve San José Municipal Water System's Water Supply Assessment for the Gavilan College Coyote Campus. CEQA: Exempt, File No. PP08-151. Council District 2. (Environmental Services)

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated July 21, 2008, recommending approval of the water supply assessment.

Council Member Williams asked if the San José Municipal Water System's water supply assessment included all of Coyote Valley. Director of Environmental Services John Stufflebean replied that this particular report was solely for the Gavilan College Coyote Valley Campos and added there is a separate assessment for the entire Coyote Valley.

Action: Upon motion by Council Member Williams, seconded by Vice Mayor Cortese and carried unanimously, the San José Municipal Water System's Water Supply Assessment for the Gavilan College Coyote Campus was approved. (9-0-2. Absent: Campos, Cortese.)

2.8 Adopt a resolution authorizing the City Manager to negotiate and execute amendments to agreements among the cities of San José, Santa Clara and Milpitas and Cupertino Sanitary District to reflect the transfer of 0.75 million gallons of capacity in the San José/Santa Clara Water Pollution Plant from Cupertino Sanitary District to the City of Milpitas. CEQA: Not a Project. (Environmental Services)

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated July 28, 2008, recommending adoption of a resolution. (2) Letter from the Treatment Plant Advisory Committee, dated August 14, 2008, stating concurrence with the Staff recommendation.

Action: [Resolution No. 74549](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute Amendments to Agreements Among Cities of San José, Santa Clara and Milpitas and the Cupertino Sanitary District to Reflect the Transfer of 0.75 Million Gallons of Capacity in the San José/Santa Clara Water Pollution Plant from the Cupertino Sanitary District to the City of Milpitas", was adopted. (9-0-2. Absent: Campos, Cortese.)

- 2.9 Approve award of open purchase orders for supplies, materials, equipment and services for FY 2008-2009 #2 and authorization for the Director of Finance to execute the purchase orders. CEQA: See Administration’s memo to Council for specific CEQA clearance determinations on each recommended action. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated July 28, 2008, recommending award of open purchase orders.

Action: The open purchase orders for supplies, materials, equipment and services for FY 2008-2009 #2 was approved and the Director of Finance was authorized to execute the purchase orders. (9-0-2. Absent: Campos, Cortese.)

- 2.10 (a) Approve a Second Amendment to an Agreement with Winzler & Kelly for consultant services to design engineering solutions to repair Upper Penitencia Creek bridges and stream damage in Alum Rock Park by increasing the scope of work, extending the term of the contract to June 30, 2009, increasing compensation by \$37,000 to an amount not-to-exceed \$337,000, and reflecting the current name of the consultant that has changed since execution of the original Agreement and First Amendment.**
- (b) Adopt the following Appropriation Ordinance Amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District 4 (Fund 381) to:**
- (1) Increase the appropriation to the Parks, Recreation and Neighborhood Services Department for the Capital Maintenance Projects by \$37,000.**
 - (2) Decrease the Ending Fund Balance by \$37,000.**

CEQA: Not a Project. Council District 4. (Parks, Recreation and Neighborhood Services/ City Manager’s Office)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso and Budget Director Jennifer Maguire, dated July 28, 2008, recommending approval of a second amendment to the agreement and adoption of appropriation ordinance amendments.

Action: The second amendment to an agreement with Winzler & Kelly for consultant services to design engineering solutions to repair Upper Penitencia Creek bridges and stream damage in Alum Rock Park by increasing the scope of work, extending the term of the contract to June 30, 2009, increasing compensation by \$37,000 to an amount not-to-exceed \$337,000, and reflecting the current name of the consultant that has changed since execution of the original agreement and first amendment was approved, and [Ordinance No. 28386](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District No. 4 for the Capital Maintenance Projects; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”, was adopted. (9-0-2. Absent: Campos, Cortese.)

- 2.11 Adopt a resolution initiating proceedings and setting a public hearing on September 23, 2008 at 7:00 p.m. for the reorganization/annexation of the territory designated as Burbank No. 41 which involves the annexation to the City of San José of approximately 16 gross acres of land located on the north side of Stevens Creek Boulevard, west of Revey Avenue, including additional properties along Bellerose Drive, Di Salvo Avenue, Ciro Avenue, O'Connor Drive and Bailey Avenue, and the detachment of the same from the appropriate special districts including Central Fire District, County Lighting, West Valley Sanitation, and Area No. 01 (Library Service) County Service. CEQA: Resolution No. 65459. Council District 6. (Planning, Building, Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated July 28, 2008, recommending adoption of a resolution.

Director of Planning, Building and Code Enforcement Joseph Horwedel provided an overview of the County Island annexation program.

Public Comments: Richard Zappelli (Willow Glen Neighborhood Association) supports the annexation but expressed concern about adding an extra burden to the San José Police and Fire Departments with an average 8 minute response time. Jerry Bleeg (Citizens for Annexation to Campbell) stated he collected 30 signatures of residents wanting to be annexed to Campbell and requested the boundaries to be made in respect to the resident's wishes.

Motion: Council Member Oliverio moved approval of the Staff recommendations for Items 2.11, 2.12 and 2.13. Council Member Liccardo seconded the motion.

Council Member Constant stated he is a Chairman of LAFCO and agrees with the comments of the residents to review the policies and requested to vote separately on Item 2.13. The request to vote on Item 2.13 separately was accepted by Council Members Oliverio and Liccardo.

Action: On a call for the question, the motion carried unanimously, [Resolution No. 74550](#), entitled: "A Resolution of the Council of the City of San José Initiating the Reorganization Proceedings for Annexation and Detachment of Certain Inhabited Territory Designated as Burbank No. 41, Described Herein and Setting the Date, Time and Place for Consideration of Such Reorganization", was adopted. (10-0-1. Absent: Campos.)

- 2.12 Adopt a resolution initiating proceedings and setting a public hearing on September 23, 2008 at 7:00 p.m. for the reorganization of territory designated as Hamilton No. 59 which involves the annexation to the City of San José of approximately 131 gross acres of land located between Meridian Avenue and Leigh Avenue, north of Hamilton Avenue, and the detachment of the same from the appropriate special districts including Central Fire Protection, County Lighting, West Valley Sanitation, and Area No. 01 (Library Services) County Service. CEQA: Resolution No. 65459. Council District 6. (Planning, Building and Code Enforcement)**

2.12 (Cont'd.)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated July 28, 2008, recommending adoption of a resolution.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Liccardo and carried unanimously, [Resolution No. 74551](#), entitled: "A Resolution of the Council of the City of San José Initiating the Reorganization Proceedings for Annexation and Detachment of Certain Inhabited Territory Designated as Hamilton No. 59, Described Herein and Setting the Date, Time and Place for Consideration of Such Reorganization", was adopted. (10-0-1. Absent: Campos.)

2.13 **Adopt a resolution initiating proceedings and setting a public hearing on September 23, 2008 at 7:00 p.m. for the reorganization of territory designated as Meridian No. 73 which involves the annexation to the City of San José of approximately 147 gross acres of land located between Hamilton Avenue and Dry Creek Road, west of Meridian Avenue and east of the City of Campbell boundary, and the detachment of the same from the appropriate special districts including Central Fire Protection, County Lighting, West Valley Sanitation, and Area No. 01 (Library Services) County Service. CEQA: Resolution No. 65459. Council District 6. (Planning, Building and Code Enforcement)**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated July 28, 2008, recommending adoption of a resolution. (2) Letter from Mayor Burr, City of Campbell, dated August 5, 2008, regarding the annexation of Meridian No. 73. (3) Thirty two letters from the public, dated August 19, 2008, regarding the reorganization and annexation of Meridian No. 73.

Public Comments: See Item 2.11 on the Page 8.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Nguyen and carried, [Resolution No. 74552](#), entitled: "A Resolution of the Council of the City of San José Initiating the Reorganization Proceedings for Annexation and Detachment of Certain Inhabited Territory Designated as Meridian No. 73, Described Herein and Setting the Date, Time and Place for Consideration of Such Reorganization", was adopted. (8-1-2. Noes: Constant. Absent: Campos, Pyle.)

- ## 2.14 (a) **Adopt a resolution:**
- (1) **Declaring the .119 acre City-owned property, a portion of North Ninth Street, surplus to the needs of the City;**
 - (2) **Approving the sale agreement with an adjacent property owner, DAK, a California General Partnership, in the amount of \$311,000; and**
 - (3) **Delegating authority to the Director of Public Works to execute all documents necessary to complete the transfer of the property.**

- 2.14 (b) Direct the City Manager to return with appropriation actions to allocate proceeds from this sale to address the City's Deferred Maintenance and Infrastructure Backlog.**

CEQA: Mitigated Negative Declaration PDC05-059. Council District 3. SNI: 13th Street. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated July 28, 2008, recommending adoption of a resolution.

Action: [Resolution No. 74553](#), entitled: "A Resolution of the Council of the City of San José Declaring Certain City-Owned Property Located at 9th Street as Surplus to the Needs of the City and Authorizing the Director of Public Works to Execute an Agreement to Sell and All Necessary Documents Necessary for the Transfer of Such Property to the Adjacent Property Owner, DAK, A California General Partnership", was adopted. (9-0-2. Absent: Campos, Cortese.)

- 2.15 Adopt a resolution approving an agreement with Collins & Constant Investments, LLC, for the donation of an approximate 956 square foot public street right-of-way easement on, under, over and through a portion of the property at 1000 South Winchester Boulevard and authorizing the Director of Public Works to execute any additional documents necessary to complete the transaction. CEQA: Exempt, File No. PP06-210. Council Districts 1 and 6. SNI: Winchester. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated July 28, 2008, recommending adoption of a resolution.

Action: [Resolution No. 74554](#), entitled: "A Resolution of the Council of the City of San José Approving an Agreement with Collins & Constant Investments, LLC, for the Donation of an Approximate 956 Square Foot Public Street Right of Way Easement through a Portion of the Property at 1000 South Winchester Boulevard and Authorizing the Director of Public Works to Execute any Additional Documents Necessary to Complete the Transaction", was adopted. (9-0-2. Absent: Campos, Cortese.)

- 2.16 Adopt a resolution summarily vacating a portion of McKee Road located in front of 2740 McKee Road. CEQA: Exempt, File No. PDC03-082. Council District 5. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated July 28, 2008, recommending adoption of a resolution.

Action: [Resolution No. 74555](#), entitled: "A Resolution of the Council of the City of San José Summarily Vacating a Portion of McKee Road in Front of 2740 McKee Road", was adopted. (9-0-2. Absent: Campos, Cortese.)

- 2.17 Approve the First Amendment to the Master Agreement with Kleinfelder West Inc. for the special inspections and material testing for the Terminal Area Improvement Program (TAIP) at the Norman Y. Mineta San José International Airport, increasing compensation by \$250,000 for a total amount not-to-exceed \$750,000. CEQA: Not a Project. (Public Works/Airport)**

Documents Filed: Memorandum from Director of Public Works Katy Allen and Director of Aviation William Sherry, dated July 28, 2008, recommending approval of the first amendment to the master agreement.

Action: The first amendment to the master agreement with Kleinfelder West Inc. for the special inspections and material testing for the Terminal Area Improvement Program at the Norman Y. Mineta San José International Airport, increasing compensation by \$250,000 for a total amount not-to-exceed \$750,000 was approved. (9-0-2. Absent: Campos, Cortese.)

- 2.18 Request for excused absences for Council Member Campos from all City Council meetings, Council Committee meetings, and other boards, committees or agencies on which Council Member Campos serves as a member or representative for the City beginning August 27 through November 11, 2008, to be adjusted as necessary by request, due to maternity leave. (Campos)
(Rules Committee referral 8/13/08)**

Documents Filed: Memorandum from Council Member Campos, dated August 5, 2008, requesting excused absences from August 27, 2008 through November 11, 2008, to be adjusted as necessary by request, due to maternity leave.

Action: The absences for Council Member Campos were excused. (9-0-2. Absent: Campos, Cortese.)

- 2.19 Request for excused absences for Council Member Constant.**
- (a) Request for an excused absence from the Regular Meeting of the Community & Economic Development Committee of August 25, 2008 due to Authorized City Business: Federated City Employees' Retirement Services Education Training in San Francisco, CA.**
 - (b) Request for an excused absence from the Closed Session and City Council Meeting on August 26, 2008 due to Authorized City Business: Federated City Employees' Retirement Services Education Training in San Francisco, CA.**
- (Constant)
(Rules Committee referral 8/13/08)**

Documents Filed: Memoranda from Council Member Constant, both dated August 12, 2008, requesting excused absences due to City business.

Action: The absences for Council Member Constant were excused. (9-0-2. Absent: Campos, Cortese.)

- 2.20 As recommended by the Rules and Open Government Committee, appoint two former members of the Advisory Commission on Rents, Larry Hull and Dan Wagner, to the Mobilehome Advisory Commission through December 31, 2008. (Nguyen)**
[Rules Committee referral 8/6/08 – Item F(1)]

Documents Filed: Memorandum from City Clerk Lee Price, dated August 15, 2008, transmitting the recommendations of the Rules and Open Government Committee.

Council Member Nguyen pulled Item 2.20 to thank former members of the Advisory Commission on Rents, Larry Hull and Dan Wagner for agreeing to serve on the Mobilehome Advisory Commission and asked for her colleague's support.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried unanimously, Larry Hull and Dan Wagner were appointed to serve to the Mobilehome Advisory Commission. (10-0-1. Absent: Campos.)

- 2.21 As recommended by the Rules and Open Government Committee, reappoint Caroline Martin to the Library Commission. (Oliverio)**
[Rules Committee referral 8/6/08 – Item F(2)]

Documents Filed: Memorandum from City Clerk Lee Price, dated August 15, 2008, transmitting the recommendations of the Rules and Open Government Committee.

Action: Carol Martin was reappointed to serve to the Library Commission. (9-0-2. Absent: Campos, Cortese.)

- 2.22 As recommended by the Rules and Open Government Committee, appoint Richard Holden to the Arts Commission. (Williams)**
[Rules Committee referral 8/6/08 – Item F(3)]

Documents Filed: Memorandum from City Clerk Lee Price, dated August 15, 2008, transmitting the recommendations of the Rules and Open Government Committee.

Action: Richard Holden was appointed to serve to the Arts Commission. (9-0-2. Absent: Campos, Cortese.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

- 3.2 Report of the Rules and Open Government Committee – August 6, 2008**
Mayor Reed, Chair

Action: Deferred to August 26, 2008 per Orders of the Day.

**3.3 Report of the Public Safety, Finance and Strategic Support Committee – June 19, 2008
Council Member Nguyen, Chair**

Documents Filed: The Public Safety, Finance and Strategic Support Committee Report dated June 19, 2008.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Constant and carried unanimously, the Public Safety, Finance and Strategic Support Committee Report and the actions of June 19, 2008 were accepted. (10-0-1. Absent: Campos.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.2 (a) Accept the report presented to the Community & Economic Development Committee on June 23, 2008 regarding the Mexican Heritage Plaza transition update.**
- (b) Authorize the City Manager to negotiate and execute a cooperation agreement with the Hispanic Foundation of Silicon Valley to join the City in managing the business planning process for the Mexican Heritage Plaza transition to community cultural center.**

CEQA: Not a Project. Council District 5. (City Manager’s Office/General Services) [Community and Economic Development Committee referral 06/23/08 – Item (h)] (Deferred from 8/5/08 – Item 4.3)

Action: Deferred to August 26, 2008 per Administration.

- 4.3 Approve an ordinance amending Title 14 of the San José Municipal Code to add a new Chapter 14.32 to establish a procedure for the financing of certain public capital facilities through the establishment of Convention Center Facilities Districts, the levy of special taxes and the issuance of bonds secured by such special taxes. CEQA: Not a Project. (City Attorney’s Office)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated August 8, 2008, recommending approval of an ordinance.

Action: Upon motion by Council Member Constant, seconded by Council Member Chirco and carried unanimously, [Ordinance No. 28387](#), entitled: “An Ordinance of the City of San José Amending Title 14 of the San José Municipal Code to Add a New Chapter 14.32 to Establish a Procedure for the Financing of Certain Public Capital Facilities Through the Establishment of Convention Center Facilities Districts, the Levy of Special Taxes and the Issuance of Bonds Secured by Such Special Taxes”, was passed for publication. (10-0-1. Absent: Campos.)

4.4 Authorize the City Manager or her designee to initiate discussion with Tesla Motors regarding the potential use of a portion of the buffer lands associated with the Water Pollution Control Plant and other privately held sites in San José for a future manufacturing, research and development site. CEQA: Not a Project. Council District 4. (Economic Development)

Documents Filed: (1) Memorandum from Chief Development Officer Paul Krutko, dated July 28, 2008, recommending authorization for the City Manager or her designee to initiate discussion with Tesla Motors about a potential use of a portion of the buffer lands. (2) Letter from the Treatment Plant Advisory Committee, dated August 14, 2008, stating concurrence with the Staff recommendation.

Chief Development Officer Paul Krutko provided a report about Tesla Motors in San José regarding the potential use of a portion of the buffer lands associated with the Water Pollution Control Plant and other privately held sites in San José for a future manufacturing, research and development site.

Mayor Reed and Council Member Liccardo expressed their support.

Motion: Council Member Chu moved approval of the Staff recommendation with Staff requested to work with the District 4 Office to accomplish initial outreach in Alviso and involve them in the process. Council Member Pyle seconded the motion.

Council Member Pyle added that her office has received emails of encouragement from District 10 residents.

Public Comments: Marc Boyd spoke in support to the Staff recommendations.

Action: On a call for the question, the motion carried unanimously, the City Manager or her designee was authorized to initiate discussion with Tesla Motors regarding the potential use of a portion of the buffer lands associated with the Water Pollution Control Plant and other privately held sites in San José for a future manufacturing, research and development site, with Staff requested to work with the District 4 Office to accomplish initial outreach in Alviso and involve them in the process. (10-0-1. Absent: Campos.)

TRANSPORTATION & AVIATION SERVICES

**6.2 Accept a presentation by the City of San José Director of Aviation regarding the current status of the airline industry. CEQA: Not a Project. (Airport)
(Deferred from 8/5/08 – Item 6.2)**

Documents Filed: Memorandum from Director of Aviation William Sherry, dated July 23, 2008, transmitting the current status of the airline industry.

6.2 (Cont'd.)

Director of Aviation William Sherry provided an overview of the current status of the airline industry and responded to Council questions. Discussion followed.

Action: Status report was received. No Council action was necessary.

6.3 **Adopt a resolution authorizing the City Manager to negotiate and execute amendments to the Airline-Airport Lease and Operating Agreements with all passenger airlines operating at the Norman Y. Mineta San José International Airport and First Amendments to the Airline-Airport Cargo Operating Agreements with all cargo airlines operating at the Airport, to use a portion of the City's Airline Rate Stabilization Fund in an amount not-to-exceed \$2,172,000 to reduce projected 2008-2009 terminal rents below the projected terminal rental rates included in the Adopted 2008-2009 Airport budget, retroactive to July 1, 2008. CEQA: Resolution Nos. 67380 and 71451, File No. PP 08-142. (Airport)**

Documents Filed: Memorandum from Director of Aviation William Sherry, dated July 28, 2008, recommending adoption of a resolution.

Action: Upon motion by Council Member Williams, seconded by Council Member Pyle and carried unanimously, [Resolution No. 74556](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute Amendments to the Airline-Airport Lease and Operating Agreements with All Passenger Airlines Operating at the Norman Y. Mineta San José International Airport and First Amendments to the Airline-Airport Cargo Operating Agreements with All Cargo Airlines Operating at the Airport", was adopted. (10-0-1. Absent: Campos.)

6.4 **Adopt a resolution authorizing the City Manager to:**

- (a) **Submit an application to the Federal Aviation Administration to impose and use Passenger Facility Charges (PFC's) for the Terminal B, Phase 1 and Roadway Improvements – Grade Separations Projects in the amount of \$120,933,000.**
- (b) **Amend the approved PFC Noise Attenuation project by more than 25% of the original approved amount with an increase in the total cost of \$621,121.**
- (c) **Amend seven completed PFC projects by less than 25% of the original approved amounts with an increase in the total cost of \$525,609, for a net increase in the total PFC authority in the amount of \$122,079,730, and with a total approved PFC collection authority in the amount of \$1,094,317,121, through an estimated charge expiration date of September 1, 2030.**

CEQA: Resolution Nos. 63780 and 71451, File No. PP08-145. (Airport)

6.4 (Cont'd.)

Documents Filed: Memorandum from Director of Aviation William Sherry, dated July 28, 2008, recommending adoption of a resolution.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and carried unanimously, [Resolution No. 74557](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Submit Applications to the Federal Aviation Administration to Impose and Use Passenger Facility Charges for the Terminal B, Phase 1 and Roadway Improvements – Grade Separations Projects in the Amount of \$120,933,000, to Amend the Approved PFC Noise Attenuation Project and to Amend Various Completed PFC Projects”, was adopted. (10-0-1. Absent: Campos.)

6.5 **Adopt a resolution authorizing the City Manager to negotiate and execute an Other Transaction Agreement with the Transportation Security Administration (TSA), an agency of the United States Department of Homeland Security, to establish the respective obligations and other responsibilities of the City and the TSA regarding the Terminal A In-Line Checked Baggage Explosive Detection System, and to provide for funding by the TSA of ninety percent (90%) of allowable costs of the baggage screening system not to exceed a total reimbursement of \$20,300,000, for a term from the date of execution through completion and acceptance of the project. CEQA: Resolution Nos. 67380 and 71451, File No. PP 08-149. (Airport)**

Documents Filed: Memorandum from Director of Aviation William Sherry, dated July 28, 2008, recommending adoption of a resolution.

Director of Aviation William Sherry provided a brief update about the transaction agreement with the Transportation Security Administration and responded to Council questions. .

Action: Upon motion by Council Member Pyle, seconded by Council Member Chirco and carried unanimously, [Resolution No. 74558](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Other Transaction Agreement with the Transportation Security Administration (TSA) to Establish the Respective Obligations and Other Responsibilities of the Parties Regarding the Terminal A In-Line Checked Baggage Explosive Detection System and to Provide for Funding by the TSA of Ninety Percent (90%) of Allowable Costs of the Baggage Screening System Not To Exceed a Total Reimbursement of \$20,300,000, for a Term from the Date of Execution through Completion and Acceptance of the Report”, was adopted. (10-0-1. Absent: Campos.)

- 6.6 Increase the contingency budget for the Norman Y. Mineta San José International Airport North Concourse General Building, Package 4 in the total amount of \$1,699,975, utilizing unspent allowances for Bid Items 2 and 3, at no increase in the total contract amount. CEQA: Resolution Nos. 67380 and 71451, File No. PP08-135. (Public Works/Airport)**

Documents Filed: Memorandum from Director of Aviation William Sherry and Director of Public Works Katy Allen, dated July 28, 2008, recommending increasing the contingency budget.

Action: Upon motion by Council Member Williams, seconded by Council Member Pyle and carried unanimously, the contingency budget for the Norman Y. Mineta San José International Airport North Concourse General Building, Package 4 in the total amount of \$1,699,975, utilizing unspent allowances for Bid Items 2 and 3, at no increase in the total contract amount was approved. (10-0-1. Absent: Campos.)

JOINT COUNCIL/REDEVELOPMENT AGENCY

9.1 Approve an ordinance:

- (a) Placing a moratorium of the installation and relocation of freestanding news racks within the Downtown Core and the Civic Plaza Redevelopment Project Area.**
- (b) Establishing a consolidated pedestal mounted news rack pilot program within the Downtown Core and the Civic Plaza Redevelopment Project Area for a period of September 30, 2008 to August 31, 2010.**

CEQA: Exempt, File No. PP08-104. Council District 3. (City Manager's Office/ Redevelopment Agency)

(Deferred from 6/17/08 – Item 9.3 and 8/12/08 – Item 9.1)

Documents Filed: (1) Memorandum from City Manager Debra Figone and Redevelopment Agency Executive Director Harry S. Mavrogenes, dated June 4, 2008, recommending approval of an ordinance. (2) Letter from El Observador, dated August 11, 2008, regarding the beautification of Downtown San José.

Action: Dropped to be renoticed.

OPEN FORUM

- (1) Ernesto Salazar noted his support for the improvements planned for the shopping center on Monterey Highway and Roeder Road but expressed concern that the driveways were not being repaired.

PUBLIC HEARINGS

- 11.2 Conduct an Administrative Hearing and consider an appeal of the Planning Commission's decision to approve a Conditional Use Permit to convert an existing bookstore for daycare center and preschool use on a 0.40 gross acre site, in the CO Office Commercial Zoning District, located on the northwest corner of Bercaw Lane and Wyrick Avenue (14831 Bercaw Lane) (Beck, Diaz and Menendez, LLC, Owner). CEQA: Exempt.
CP07-092 – District 9**

Action: Rescheduled to August 26, 2008 (afternoon) due to cancellation of the evening Council Meeting per Rules and Open Government Committee.

ADJOURNMENT

The Council of the City of San José was adjourned at 3:38 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

smd/8-19-08 MIN

Access the video, the agenda and related reports for this meeting by visiting the City's website at <http://www.sanjoseca.gov/clerk/agenda.asp> or <http://www.sanjoseca.gov/clerk/MeetingArchive.asp>. For information on any ordinance that is not hyperlinked to this document, please contact the Office of the City Clerk at (408) 535-1266.