

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, AUGUST 26, 2008

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

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

Absent: Council Members - Campos, Constant. (Excused)

Upon motion unanimously adopted, Council recessed at 9:31 a.m. to a Closed Session in Room W133, (A) to confer with Legal Counsel in respect to Potential Threat to Public Services or Facilities Pursuant to Government Code Section 54957(a): Consultation with Chief of Police; (B) to confer with Legal Counsel with respect to existing litigation pursuant to Government Code Subsection (a) of Section 54956.9: (1) Vietnamese American Community of Northern California v. City of San José, et al; Names of Parties Involved: Vietnamese American Community of Northern California, City of San José, City Council of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-107082; Amount of Money or other Relief Sought: For declaratory and injunctive relief according to proof; (2) Morgan v. City of San José, et al; Names of Parties Involved: Michael Morgan, City of San José, Tyler Kraul, Kirk Niemeyer; Court: United States District Court, Northern District of California, San José Division; Case No: C06-06315 HRL; Amount of Money or other Relief Sought: Damages according to proof; (3) Williamson v. City of San José; Names of Parties Involved: Barbara Williamson, City of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV-099380; Amount of Money or other Relief Sought: In excess of \$25,000, according to proof; (C) to confer with Legal Counsel with respect to anticipated litigation (Claim Not Filed) pursuant to Government Code subsection (b) of Section 54956.9 with significant exposure in one (1) matter. (D) to confer with Legal Counsel with respect to anticipated litigation pursuant to Government Code subsection (b) of Section 54956.9 in one (1) matter. (E) to confer with Real Property Designated Representatives pursuant to Government Code 54956.8: Property: WPCP site, northeast corner of Highway 237 and Zanker Road; APN: 015-44-011, 014, 015, 016, 017;

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

CLOSED SESSION Cont'd.)

Negotiating Parties: Chief Development Officer Paul Krutko for the City of San José and Ze'ev Drori, President/CEO for Tesla Motors; Under Negotiation: The direction will concern price and terms of payment; Likely Range of Value of Property: Negotiated price based on appraisal and comparable property values. (F) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) 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. (2) Confidential Employees' Organization, AFSME Local 101; Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement – Confidential Employees' Organization, AFSCME Local 101 and City of San José. 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 11:00 a.m. and reconvened at 1:33 p.m. in the Council Chambers.

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

Absent: Council Members - Campos, Constant. (Excused)

INVOCATION

Monsignor Dominic, Saint Maria Goretti Church, presented a prayer for the Invocation. (District 7)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Vice Mayor Cortese and carried unanimously, the Orders of the Day and the Amended Agenda were approved, Item 2.9 was deferred to September 16, 2008, Items 3.2, 3.6 and 5.1 were deferred to September 9, 2008, Item 4.6 was dropped per the Administration and Joint Redevelopment Item 8.3 was deferred to September 23, 2008. (8-0-3. Absent: Campos, Constant, Oliverio.)

CEREMONIAL ITEMS

- 1.2 Presentation of a commendation to Kerio Technologies for its innovation in software solutions and contributions to the global and local San José economies. (Mayor/Liccardo/Redevelopment Agency)
(Rules Committee referral 8/20/08)**

Action: Mayor Reed, Council Member Liccardo and Executive Director Harry Mavrogenes recognized and commended Kerio Technologies for its innovation in software solutions and contributions to the global and local San José economies.

- 1.3 Presentation of a commendation to San José State University Honor Students Chienfei Connie Chen, Kiran Sharma, and Rick Dexter for their great service in helping to create the Urban Forest of San José website for use by community residents and City staff. (Transportation)
(Rules Committee referral 8/20/08)**

Action: Mayor Reed and Director of Transportation James Helmer recognized and commended the San José State University Honor Students Chienfei Connie Chen, Kiran Sharma, and Rick Dexter for their great service in helping to create the Urban Forest of San José website for use by community residents and City Staff.

- 1.1 Presentation of a proclamation declaring September as Latino Health Awareness Month in the City of San José. (Mayor/Williams/Campos)
(Rules Committee referral 8/20/08)**

Action: Mayor Reed and Council Member Williams recognized September 2008 as “Latino Health Awareness Month” in the City of San José. Council Member Campos was not present.

CONSENT CALENDAR

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

- 2.2 Final adoption of ordinances.**
(a) ORD. NO. 28366 – Rezoning certain real property situated at the northeast corner of Zanker Road and River Oaks Parkway (199 River Oaks Parkway) to the A(PD) Planned Development Zoning District. PDC07-102

Documents Filed: Proof of Publication of the title of Ordinance No. 28366 executed on August 19, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28366](#) was adopted. (9-0-2. Absent: Campos, Constant.)

- 2.2 (b) **ORD. NO. 28367 – Rezoning certain real property situated on the north side of Elden Drive, approximately 500 feet easterly of South Bascom Avenue (679 and 681 Elden Drive) to A(PD) Planned Development Zoning District. PDC06-082**

Documents Filed: Proof of Publication of the title of Ordinance No. 28367 executed on August 19, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28367](#) was adopted. (9-0-2. Absent: Campos, Constant.)

- (c) **ORD. NO. 28368 – Rezoning certain real property situated on the southwest corner of San Felipe Road and Aborn Road (3303 San Felipe Road) to CN Commercial Neighborhood Zoning District. C08-026**

Documents Filed: Proof of Publication of the title of Ordinance No. 28368 executed on August 19, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28368](#) was adopted. (9-0-2. Absent: Campos, Constant.)

- (d) **ORD. NO. 28369 – Rezoning certain real property situated on the east side of Seaboard Avenue, approximately 300 feet southerly of Trimble Road (2586 Seaboard Avenue) to LI-Light Industrial Zoning District. C08-009**

Documents Filed: Proof of Publication of the title of Ordinance No. 28369 executed on August 19, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28369](#) was adopted. (9-0-2. Absent: Campos, Constant.)

- (e) **ORD. NO. 28370 – Rezoning certain real property situated on the southeast corner of Monterey Road and Old Tully Road (2400 Monterey Road) to CN Commercial Neighborhood Zoning District. C08-027**

Documents Filed: Proof of Publication of the title of Ordinance No. 28370 executed on August 19, 2008, submitted by the City Clerk.

Action: Ordinance No. 28370 was adopted. (9-0-2. Absent: Campos, Constant.)

- (f) **ORD. NO. 28371 – Rezoning certain real property situated on the southeast corner of South Second Street and Keyes Street (1140 South 2nd Street) to A(PD) Planned Development Zoning District. PDC07-086**

Documents Filed: Proof of Publication of the title of Ordinance No. 28371 executed on August 19, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28371](#) was adopted. (9-0-2. Absent: Campos, Constant.)

- 2.2 (g) **ORD. NO. 28372** – Rezoning certain real property situated on both sides of Norman Avenue, Willow Street, Santa Lucia Drive, Santa Inez Drive, and St. Anthony Drive, as well as the area bounded by these streets to the north of Keesling Avenue from County of Santa Clara to R-1-5 Single-Family Residence Zoning District. C08-021

Documents Filed: Proof of Publication of the title of Ordinance No. 28372 executed on August 19, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28372](#) was adopted. (9-0-2. Absent: Campos, Constant.)

- (h) **ORD. NO. 28373** – Rezoning certain real property situated on the south side of Keesling Avenue, on both sides of Grace Avenue south of Keesling Avenue, west of Phantom Avenue, approximately 100 feet northerly of Hamilton Avenue, and west of Meridian Avenue, on both sides of Isabel Drive and north of Blackford Lane from County of Santa Clara to R-2 Single-Family Residence Zoning District. C08-021

Documents Filed: Proof of Publication of the title of Ordinance No. 28373 executed on August 19, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28373](#) was adopted. (9-0-2. Absent: Campos, Constant.)

- (i) **ORD. NO. 28374** – Rezoning certain real property situated on the west side of Meridian Avenue, between Hamilton Avenue and Blackford Lane from County of Santa Clara to CN Commercial Neighborhood Zoning District. C08-021

Documents Filed: Proof of Publication of the title of Ordinance No. 28374 executed on August 19, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28374](#) was adopted. (9-0-2. Absent: Campos, Constant.)

- (j) **ORD. NO. 28375** – Rezoning certain real property situated on the north side of Hamilton Avenue, from approximately 350 feet west of Meridian Avenue to the west side of Norman Avenue, and west of Meridian Avenue, approximately 100 feet north of Isabel Drive from County of Santa Clara to CO Commercial Office Zoning District. C08-021

Documents Filed: Proof of Publication of the title of Ordinance No. 28375 executed on August 19, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28375](#) was adopted. (9-0-2. Absent: Campos, Constant.)

- 2.2 (k) **ORD. NO. 28376** – Rezoning certain real property situated along and within the area generally bounded by **Ciro Avenue, Di Salvo Avenue, Bailey Avenue, and Bellerose Drive, north of Stevens Creek Boulevard, from County of Santa Clara to R-1-8 Single-Family Residence Zoning District. C08-025**

Documents Filed: Proof of Publication of the title of Ordinance No. 28376 executed on August 19, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28376](#) was adopted. (9-0-2. Absent: Campos, Constant.)

- (l) **ORD. NO. 28377** – Rezoning certain real property situated on the east side of **Bellerose Drive, approximately 150 feet northerly of Stevens Creek Boulevard from County of Santa Clara to R-2 Two-Family Residence Zoning District. C08-025**

Documents Filed: Proof of Publication of the title of Ordinance No. 28377 executed on August 19, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28377](#) was adopted. (9-0-2. Absent: Campos, Constant.)

- (m) **ORD. NO. 28378** – Rezoning certain real property situated on the east side of **Di Salvo Avenue, approximately 300 feet northerly of Steven Creek Boulevard, from County of Santa Clara to R-M Multiple Family Residence Zoning District. C08-025**

Documents Filed: Proof of Publication of the title of Ordinance No. 28378 executed on August 19, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28378](#) was adopted. (9-0-2. Absent: Campos, Constant.)

- (n) **ORD. NO. 28379** – Rezoning certain real property situated on the northwest corner of **Stevens Creek Boulevard and Revey Avenue from County of Santa Clara to CP Commercial Pedestrian Zoning District. C08-025**

Documents Filed: Proof of Publication of the title of Ordinance No. 28379 executed on August 19, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28379](#) was adopted. (9-0-2. Absent: Campos, Constant.)

- (o) **ORD. NO. 28380** – Rezoning certain real property situated north of **O'Connor Drive on both sides of Di Salvo Avenue from County of Santa Clara to CO Commercial Office Zoning District. C08-025**

Documents Filed: Proof of Publication of the title of Ordinance No. 28380 executed on August 19, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28380](#) was adopted. (9-0-2. Absent: Campos, Constant.)

- 2.2 (p) **ORD. NO. 28381** – Rezoning certain real property situated north of Dry Creek Road and south of Campbell Avenue, westerly of Meridian Avenue from County of Santa Clara to R-1-2 Single-Family Residence Zoning District. C08-020

Documents Filed: Proof of Publication of the title of Ordinance No. 28381 executed on August 19, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28381](#) was adopted. (9-0-2. Absent: Campos, Constant.)

- (q) **ORD. NO. 28382** – Rezoning certain real property situated north of Dry Creek Road, west of Meridian Avenue, east of Leigh Avenue, and south from the properties along the north side of McBain Avenue from County of Santa Clara to R-1-5 Single-Family Residence Zoning District. C08-020

Documents Filed: Proof of Publication of the title of Ordinance No. 28382 executed on August 19, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28382](#) was adopted. (9-0-2. Absent: Campos, Constant.)

- (r) **ORD. NO. 28383** – Rezoning certain real property situated east of Hurst Avenue, west of Meridian Avenue, north from the properties along the south side of Montemar Avenue, and south from the properties along the north side of Willowhurst Avenue from County of Santa Clara to R-1-8 Single-Family Residence Zoning District. C08-020

Documents Filed: Proof of Publication of the title of Ordinance No. 28383 executed on August 19, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28383](#) was adopted. (9-0-2. Absent: Campos, Constant.)

- (s) **ORD. NO. 28384** – Rezoning certain real property situated on the southwest corner of Meridian Avenue and Willowhurst Avenue from County of Santa Clara to CN Commercial Neighborhood Zoning District. C08-020

Documents Filed: Proof of Publication of the title of Ordinance No. 28384 executed on August 19, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28384](#) was adopted. (9-0-2. Absent: Campos, Constant.)

- 2.2 (t) **ORD. NO. 28385** – Rezoning certain real property situated west of Meridian Avenue, approximately 120 feet southerly of Willowhurst Avenue and south of Willowhurst Avenue, approximately 180 feet westerly of Meridian Avenue from County of Santa Clara to CO Commercial Office Zoning District. C08-020

Documents Filed: Proof of Publication of the title of Ordinance No. 28385 executed on August 19, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28385](#) was adopted. (9-0-2. Absent: Campos, Constant.)

- (u) **ORD. NO. 28387** – 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.

Documents Filed: Proof of Publication of the title of Ordinance No. 28387 executed on August 22, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28387](#) was adopted. (9-0-2. Absent: Campos, Constant.)

- 2.3 **Adopt a resolution authorizing the City Attorney to negotiate and execute a Continuation Agreement with Bartel Associates LLC for additional consultant actuarial services related to labor negotiations concerning police retirement benefits, continuing the term through June 30, 2009 and increasing compensation by \$150,000, for a total maximum compensation not to exceed \$330,000. CEQA: Not a Project. (City Attorney's Office)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated August 14, 2008, recommending adoption of a resolution.

Action: [Resolution No. 74560](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Continuation Agreement for Actuarial Consultant Services Related to Labor Negotiations”, was adopted. (9-0-2. Absent: Campos, Constant.)

- 2.4 **Accept the Office of the City Auditor’s Report of Activities and Findings for the Period June 16 through June 30, 2008. (City Auditor)**

Documents Filed: Report of Activities for the Period June 16 through June 230, 2008 from the Office of the City Auditor.

Action: The report was accepted. (9-0-2. Absent: Campos, Constant.)

2.5 Accept the finding reports from Kafoury, Armstrong & Company, LLP relating to the Bay 101 Conditional Approval of Stock Transfer, quarter ending March 31, 2008. (City Auditor)

Documents Filed: Memorandum from City Auditor Sharon Erickson, dated August 11, 2008, recommending acceptance of the finding reports.

Action: The finding reports from Kafoury, Armstrong & Company, LLP relating to the Bay 101 Conditional Approval of Stock Transfer, Quarter ending March 31, 2008 was accepted. (9-0-2. Absent: Campos, Constant.)

2.6 Adopt an Appropriation Ordinance and Funding Sources Resolution amendments in the Workforce Investment Act Fund to:

(a) Establish an appropriation to the Office of Economic Development for the State Employment Training Panel Grant project in the amount of \$385,000.

(b) Increase the estimate for Earned Revenue by \$385,000.

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

Documents Filed: Memorandum from Chief Development Officer Paul Krutko and Budget Director Jennifer Maguire, dated August 4, 2008, recommending adoption of appropriation ordinance and funding sources resolution amendments.

Action: [Ordinance No. 28388](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Workforce Investment Act Fund for the State Employment Training Panel Grant Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" and [Resolution No. 74561](#), entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 74461 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2008-2009 to Adjust Revenues in the Workforce Investment Act Fund", were adopted. (9-0-2. Absent: Campos, Constant.)

2.7 Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the Workforce Investment Act Fund:

(a) Establish an appropriation to the Office of Economic Development for the Department of Health & Human Services for New Americans Job Program in the amount of \$191,593.

(b) Increase the estimate for Earned Revenue by \$191,593.

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

Documents Filed: Memorandum from Chief Development Officer Paul Krutko and Budget Director Jennifer Maguire, dated August 4, 2008, recommending adoption of appropriation ordinance and funding sources resolution amendments.

2.7 (Cont'd.)

Action: [Ordinance No. 28389](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Workforce Investment Act Fund for the Department of Health and Human Services for New American Job Program; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption” and [Resolution No. 74562](#), entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 74461 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2008-2009 to Adjust Revenues in the Workforce Investment Act Fund”, were adopted. (9-0-2. Absent: Campos, Constant.)

- 2.8 (a) **Adopt a resolution authorizing the City Manager to execute an amendment to the agreement with VeriSign, Inc. to extend the term of the agreement from May 21, 2008 through June 30, 2009 and increase maximum compensation from \$249,760, by \$100,000, to \$349,760.**
- (b) **Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendment in the General Fund:**
- (1) **Increase the Beginning Fund Balance by \$250,000;**
 - (2) **Increase the Information Technology Department Non-Personal/ Equipment appropriation in the amount of \$250,000.**

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

Documents Filed: Memorandum from Director of Information Technology Randall Murphy and Budget Director Jennifer Maguire, dated August 13, 2008, recommending adoption of resolution and appropriation ordinance and funding sources resolution amendments.

Action: [Resolution No. 74563](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Execute an Amendment to the Agreement with VeriSign, Inc. For Services Relating to Information Security”; [Ordinance No. 28390](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the General Fund for the Information Technology Department Non/Personal Equipment; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption” and [Resolution No. 74564](#), entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 74461 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2008-2009 to Adjust Revenues in the General Fund”, were adopted. (9-0-2. Absent: Campos, Constant.)

2.9 **Approve travel for Independent Police Auditor Barbara Attard, for two business-related trips:**

- (a) **To conduct training in investigations and oversight of police misconduct cases for the Police Service Commission in Abuja, Nigeria on September 15-19, 2008. Source of Funds: CLEEN Foundation and the Open Society Justice Initiative.**
- (b) **To attend the NACOLE Annual Conference in Cincinnati, Ohio on October 27-30, 2008. Source of Funds: IPA General Fund Budget.**

(Independent Police Auditor)

2.9 (Cont'd.)

Action: Deferred to September 16, 2008 per Orders of the Day.

2.10 Approve the City of San Jose's Sewer System Management Plan that is required by State Water Resources Control Board Order No. 2006-0003 - Statewide General Waste Discharge Requirements for Sanitary Sewer Systems. CEQA: Not a Project. (Transportation/Public Works/Environmental Services)

Documents Filed: Memorandum from Director of Transportation James Helmer, Director of Public Works Katy Allen and Director of Environmental Services John Stufflebean, dated August 4, 2008, recommending approval of the plan.

Action: The City of San Jose's Sewer System Management Plan that is required by State Water Resources Control Board Order No. 2006-0003 - Statewide General Waste Discharge Requirements for Sanitary Sewer Systems was approved. (9-0-2. Absent: Campos, Constant.)

2.11 Approve travel by Council Member Chu to Long Beach, CA on September 24-27, 2008 to participate in the League of California Cities' Annual Conference. Source of Funds: Mayor/Council Travel Fund. (Chu) (Rules Committee referral 8/13/08)

Documents Filed: Memorandum from Council Member Chu, dated August 11, 2008, requesting travel to Long Beach, CA.

Action: The travel request from Council Member Chu to Long Beach, CA on September 24-27, 2008 to participate in the League of California Cities' Annual Conference was approved. (9-0-2. Absent: Campos, Constant.)

2.12 Request excused absences for Council Member Campos from the following regularly scheduled meetings due to maternity leave:

- (a) **Closed Session and Regular City Council Meeting of August 19, 2008.**
 - (b) **Healthy Neighborhood Venture Fund Advisory Committee Meeting of August 21, 2008.**
 - (c) **Regular Meeting of the Community and Economic Development Committee of August 25, 2008.**
 - (d) **Closed Session and Regular City Council Meeting of August 26, 2008.**
- (Campos)**
(Rules Committee referral 8/20/08)

Documents Filed: Memorandum from Council Member Campos, dated August 20, 2008, requesting excused absences.

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

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone provided an update on State Budget issues and noted that the State is 57 days into the new Fiscal Year without an adopted budget. She noted that there has been limited progress in solving the State's \$15.2 billion dollar deficit and added that the Governor has a compromise plan under discussion which includes a 1 cent sales tax increase for 3 years.

3.2 Report of the Rules and Open Government Committee – August 13, 2008 Mayor Reed, Chair

Action: Deferred to September 9, 2008 per Orders of the Day.

3.4 Accept the staff response to the Civil Grand Jury Report entitled, “City Fails to Hold History San José Accountable”. CEQA: Not a Project. Council District 7. (General Services)

Documents Filed: Memorandum from Director of General Services Peter Jensen, dated August 5, 2008, recommending acceptance of the staff response.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried unanimously, the staff response to the Civil Grand Jury Report entitled, “City Fails to Hold History San José Accountable”, was accepted. (9-0-2. Absent: Campos, Constant.)

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

Action: Deferred to September 9, 2008 per Orders of the Day.

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.2 (a) Approve an ordinance amending Chapter 5.06 of Title 5 of the San José Municipal Code – “Contract Authority of the Director of Housing, City Manager and Director of Finance” – to modify the Director of Housing’s delegated authority by: eliminating the maximum amount of predevelopment loans that can be made to nonprofit housing developers by the Director; and authorizing the Director to make commitments of project-based second mortgages.

- 4.2 (b) **Adopt a resolution to increase the maximum amount of predevelopment loans that can be approved by the Director of Housing from \$100,000 to \$500,000; and set a \$500,000 limit on the amount of project-based second mortgages that can be committed by the Director of Housing to any one for-sale development.**

CEQA: Not a Project. (Housing)

(Deferred from 5/20/08 – Item 4.3, 6/3/08 – Item 4.4, and 8/5/08 – Item 4.2)

Action: Deferred to September 2008.

- 4.3 (a) **Accept the report presented to the Community & Economic Development Committee on June 23, 2008 regarding the Mexican Heritage Plaza transition update.**
- (b) **Adopt a resolution authorizing 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 and 8/19/08 – Item 4.2)

Documents Filed: (1) Memorandum from Senior Executive Analyst Vilcia Rodriguez, transmitting the report of the Community & Economic Development Committee. (2) Memorandum from Chief Development Officer Paul Krutko and Director of General Services Peter Jensen, dated August 12, 2008, recommending acceptance of the report and adoption of a resolution.

Director of General Services Peter Jensen presented an update on the Mexican Heritage Plaza Transition Plan.

Motion: Council Member Chu moved approval of the Staff recommendations. Council Member Chirco seconded the motion.

Director of General Services Peter Jensen responded to Council questions.

Vice Mayor Cortese requested that Staff report back on the Plaza’s “Donor Wall”. Council Member Oliverio noted he would not vote in support of the recommendations because the Plaza is not a core City service.

Action: On a call for the question, the motion carried, the Mexican Heritage Plaza transition update was received and [Resolution No. 74565](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Cooperation Agreement with the Hispanic Foundation of Silicon Valley Relating to the Transition of the Mexican Heritage Plaza to a Community Cultural Center”, was adopted. Staff was directed to report back on the Plaza’s “Donor Wall”. (8-1-2. Noes: Oliverio. Absent: Campos, Constant.)

STRATEGIC SUPPORT SERVICES

- 3.5 As referred by the Rules and Open Government Committee, consider a position of support for SB1420 (Padilla) – Food Facilities: Nutritional Information. (Williams) [Rules Committee referral 8/13/08 – Item c(1)(a)]**

Documents Filed: (1) Supplemental memorandum from Council Member Williams, dated August 21, 2008, informing Council of a recent study which indicates that displaying caloric information has an impact on food choices, resulting in healthier good choices. (2) Supplemental memorandum from Director of Intergovernmental Relations Betsy Shotwell, dated August 20, 2008, forwarding AB1420 for discussion and consideration of a City position. (3) Handout from the Santa Clara County Public Health Department “Nutrition & Wellness”.

Council Member Williams provided a brief video showing community reaction concerning the handouts of nutritional and caloric information.

Public Comments: Speaking in support of SB1420 (Padilla), Food Facilities Nutritional Information were: Joanne Seavey-Hultquist (First 5 Santa Clara County), Dr. Douglas Metz (Diabetes Society), Mr. Bortz, Francisco Dominguez (California Center for Public Health Advocacy), Susan Stuart (Santa Clara County Public Health) and Kerri Hamilton (Healthy Silicon Valley).

Council discussion followed.

Action: Upon motion by Council Member Williams, seconded by Council Member Pyle and carried unanimously, a position of support for SB1420 (Padilla), Food Facilities Nutritional Information was accepted. (9-0-2. Absent: Campos, Constant.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.4 Consideration of an ordinance rezoning the real property located on the southeast corner of North First Street and East Rosemary Street from CN-Commercial Neighborhood, CG-Commercial General, and LI-Light Industrial Zoning Districts to A(PD) Planned Development Zoning District to allow 290 multi-family residential units on a 4.045 gross acre site (Metro Eight Properties, LLC, Owner; ROEM Development Corporation, Developer). CEQA: Resolution No. 72768 and addendum thereto. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0).
PDC07-101 – District 3
(Deferred from 8/12/08 – Item 11.3)**

4.4 (Cont'd.)

Documents Filed: (1) Memorandum from Council Member Liccardo, dated August 22, 2008, recommending approval of the staff recommendations with conditions as outlined below in "Action". (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC07-101, dated May 20, 2008, recommending approval. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated July 21, 2008, transmitting the Planning Commission recommendation of approval.

Motion: Council Member Liccardo moved approval of the Staff recommendations and his memorandum dated August 22, 2008. Council Member Williams seconded the motion.

Public Comment: Mayor Reed opened the public hearing. Jonathan Emami, Vice President and Robert Emami, CEO (Roem Development Corporation) spoke about the merits of the project.

Council Member Liccardo added that he has received emails from constituents in his District and read an email sent by Katherine Staff (Rosemary Gardens) who stated she was glad there was a park planned but added that more grocery stores and restaurants are needed. Mayor Reed closed the public hearing.

Council Member Oliverio objected and stated he prefers smaller footprint projects with more parks and retail.

Council disclosures were made by Vice Mayor Cortese and Council Members Liccardo and Chu.

Action: On a call for the question, the motion carried, the memorandum from Council Member Liccardo, dated August 22, 2008, was approved, with the following conditions: (1) The developer shall pay an amount to assist in the acquisition of the parcel located on the northeast corner of Rosemary and Kerley for a possible park. The Agency has budget \$1.5 million to be used for the down payment to purchase the parcel. In addition, the City has indicated that it will have PDO fees that will be used for the purchase, however, it is anticipated there will still be a shortfall. The total assistance paid by the developer will be the residual amount between the asking price and the total of the Agency and PDO contributions. (2) The developer shall provide Eco Passes to all residents of the project for the first year of their residence, in conformity with commitments that the developer has chosen to make, to alleviate the parking and traffic situation on surrounding residents. (3) The developer has offered to build in a manner consistent with green building principles. (4) The developer shall comply with proposed Development Standards articulated on pages 4 and 5 of the June 17, 2008 Staff report; the recommendation of the Planning Commission and the Planning Director was approved and [Ordinance No. 28391](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Southeast Corner of North First Street and East Rosemary Street to A(PD) Planned Development Zoning District", was passed for publication. (8-1-2. Noes: Oliverio. Absent: Campos, Constant.)

**4.5 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 (14381 Bercaw Lane) (Beck, Diaz and Menendez, LLC, Owner). CEQA: Exempt.
CP07-092 – District 9
(Deferred from 8/19/08 – Item 11.2)**

Documents Filed: (1) Memorandum from Council Member Chirco, dated August 22, 2008, recommending approval of the Staff recommendations with conditions as outlined on Page 16 in "Action". (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated August 1, 2008, recommending upholding the Planning Commissioner's decision to approve the subject Conditional Use Permit and transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP07-092, dated May 20, 2008. (3) Three emails from the public dated August 2008, expressing opposition to the daycare center.

As part of the Administrative Hearing, Council Member Chirco disclosed she had met with the Appellant and the Applicant.

Director of Planning, Building and Code Enforcement Joseph Horwedel provided the Staff Report.

Public Comment: Mayor Reed opened the public hearing. Jim Dequine (Appellant) presented concerns about the proposed daycare center on Bercaw Lane including impacts on parking, litter and noise. Lisa Beck, representing the Applicants Beck, Diaz and Menendez, argued that the litter and noise concerns have been addressed. Allen Beck, co-applicant, spoke about the parking concerns.

Objecting to the daycare center and preschool use because of parking, traffic and noise were Robyn Davini, Rich Barbaccia, Greg Simpson, Karen Dequine, Sandra Allen, Sharon Barbaccia and Dave Wilson.

Speaking to the merits of the daycare center and preschool use were: David Meyer (Remax Commercial) and Shara Morishige.

Mayor Reed closed the public hearing.

Motion: Council Member Chirco moved approval of the Staff recommendations and her memorandum dated August 22, 2008. Council Member Nguyen seconded the motion.

Council Member Chirco clarified that the subject address is 14381 Bercaw Lane.

Director of Planning, Building and Code Enforcement Joseph Horwedel and Deputy Director of Public Works Timm Borden responded to Council questions. Discussion followed.

4.5 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, the memorandum from Council Member Chirco, dated August 22, 2008, was approved, with the following modifications and a clarification that the property address is 14381 Bercaw Lane. (1) Include a condition that implements the use described in the permit in two phases: (a) Phase 1 operation is limited to 45 children. Once the 45 child enrollment is reached and no sooner than 1 year from approval of the permit, the applicant may notify the Director of Planning, Building and Code Enforcement (PBCE) that the applicant desires to expand enrollment under the permit. (b) Upon receipt of that notice, the Director of PBCE shall initiate an Operational Confirmation Review. Under this review, the Director of PBCE shall gather all information necessary to assess the operational history of the daycare, including input from the community and relevant information held by other City Departments. Based on the assessment of this information, the Director of PBCE shall determine whether the expansion of enrollment under Phase II at that time would be appropriate in that it would not create undue adverse impacts upon the neighborhood. If the Director of PBCE does not allow the expansion, the applicant may reapply no more frequently than once every two years. (2) The applicant shall manage the subject facility in such a manner that the arrival time of clients are staggered so that no more than 65% arrive within the same morning peak hour and afternoon peak hour. (3) The fence surrounding the proposed play area shall be set back at least 10 feet from the property line and shall be of a height and design compatible with the surrounding neighborhood and [Resolution No. 74566](#), entitled: "A Resolution of the Council of the City of San José Granting, Subject to Conditions, a Conditional use Permit to Convert an Existing Bookstore Location to a Daycare Center and Preschool for Use by Up to 80 Children on the Property Located on the Northwest Corner of Bercaw Lane and Wyrick Avenue (14381 Bercaw Lane) on a 0.40 Gross Acre Site", was adopted. (9-0-2. Absent: Campos, Constant.)

4.6 **Adopt a resolution approving an acquisition and predevelopment funding commitment of up to \$11,400,000 to BRIDGE Housing Corporation, or its designated affiliate, for the 200-unit Airport Parkway Apartments project located at 40 and 50 Airport Parkway which will include units for residents at extremely low-income, very low-income, and low-income levels as well as households with higher incomes. CEQA: Resolution No. 72768 and Addendum thereto, PDC06-130. Council District 3. (Housing)**

Documents Filed: Memorandum from Director of Housing Leslye Krutko, dated August 7, 2008, recommending adoption of a resolution.

Action: Dropped per the Administration under Orders of the Day.

4.7 **Adopt a resolution to decline to designate the former Main Library building as a landmark of special historic, architectural, cultural, aesthetic or engineering interest or value of a historic nature. CEQA: Not a Project. Council District 3. (Planning, Building and Code Enforcement)**

4.7 (Cont'd.)

Documents Filed: (1) Memorandum from Historic Landmarks Commission Secretary Joseph Horwedel, dated August 12, 2008, recommending adoption of a resolution to decline the designation. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement dated July 30, 2008. (3) Proof of Publication of Notice of Public Hearing, executed on July 18, 2008, submitted by the City Clerk.

Public Comment: Mayor Reed opened the public hearing. Brian Grayson (Preservation Action Council) spoke in favor of designating the building as historic. John Pastier spoke in support of the staff recommendations and argued the building should not be designated historic.

Action: Upon motion by Council Member Liccardo, seconded by Vice Mayor Cortese and carried unanimously, [Resolution No. 74567](#), entitled: "A Resolution of the Council of the City of San José Memorializing a Decision to Decline to Designate the Former Main Library of the City of San José Located at 180 West San Carlos Street as a Historic City Landmark Structure of Special Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of an Historic Nature, all Pursuant to the Provisions of Chapter 13.48 of Title 13 of the San José Municipal Code", was adopted. (9-0-2. Absent: Campos, Constant.)

NEIGHBORHOOD SERVICES

5.1 Report of the Neighborhood Services and Education Committee – August 14, 2008 Council Member Chirco, Chair

Action: Deferred to September 9, 2008 per the Administration, under Orders of the Day.

- 5.2 (a) Conduct a hearing to determine whether the low bid submitted by Zolman Construction & Development, Inc. for the Bascom Library and Community Center Project should be rejected on the ground that Zolman was not qualified to submit a bid.
- (b) Award the construction contract for the project to the low bidder, John Plane Construction, Inc., to include the base bid and add alternative Nos. 1 and 3, in the amount of \$17,974,000 and approve a contingency in the amount of \$1,797,000.

CEQA: Exempt, File No. PP07-081. Council District 6. SNI: Burbank/Del Monte. (Parks, Recreation and Neighborhood Services/Library/Public Works)
(Deferred from 6/10/08 – Item 5.3 and et. al., and 8/12/08 – Item 5.2)

5.2 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, Director of Library Department Jane Light and Director of Public Works Katy Allen, dated May 19, 2008, recommending taking appropriate action based on the evaluation of bids. (2) Supplemental memorandum from Director of Public Works Katy Allen, dated July 24, 2008, responding to the letter submitted on behalf of Zolman Construction & Development, Inc. (3) Supplemental memorandum from Director Balagso, Director Light and Director Allen, dated July 28, 2008, providing additional information obtained after bids were opening for the Bascom Library and Community Center Project. (4) Supplemental memorandum from Director of Public Works Katy Allen, dated August 22, 2008, responding to additional letters submitted by, or on behalf of Zolman Construction & Development, Inc. in opposition to Staff's recommendation that the Council reject Zolman's bid. (5) Four letters from the public dated August 2008, regarding the Bascom Library and Community Center Project.

Director of Public Works Katy Allen and Assistant Director of Public Works David Sykes provided the Staff Report.

The hearing was opened to determine whether the low bid submitted by Zolman Construction & Development, Inc. should be rejected on the grounds that Zolman is not qualified.

Christopher Hersey, Attorney, representing Zolman Construction & Development, Inc., urged the Council to look closely at the staff report and reject the prequalification rating for Zolman because it was only a minor irregularity in the bidding process.

Director of Public Works Katy Allen clarified that this issue is not a minor irregularity.

City Attorney Richard Doyle responded to Council question and discussion followed.

Public Comment on the hearing and award recommendations: Speaking in support of the staff recommendations were Mel Sakata (South Bay Piping Industry), John Plane, Chris McKay (John Plane Construction), Bill Guthrie (Local Union 393, Plumbers and Fitters) and David Collins (Carpenters Local 405).

Speaking in favor of Zolman Construction & Development, Inc. and to reconsider rejection of the bid were: Mike Cook (Dasco Construction & Drywall Inc.), Jody Hansen (San José Silicon Valley Chamber of Commerce) and Reza Zolfaghari (Zolman Construction & Development, Inc.).

Assistant Director of Public Works David Sykes responded to Council questions.

Vice Mayor Cortese provide meeting disclosures.

5.2 (Cont'd.)

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Liccardo and carried unanimously, the bid submitted by Zolman Construction & Development, Inc. for the Bascom Library and Community Center Project was rejected. (9-0-2. Absent: Campos, Constant.)

Action: Upon motion by Council Member Williams, seconded by Council Member Chirco and carried unanimously, the award of the construction contract to the low bidder, John Plane Construction, Inc., for the project and including the base bid and add alternative Nos. 1 and 3, in the amount of \$17,974,000, with related contingency, were approved. (9-0-2. Absent: Campos, Constant.)

5.3 Adopt a resolution authorizing the Director of Finance to:

- (a) Execute a three and a half year agreement with Green Waste Recovery, Inc. (San José, CA) with a not-to-exceed compensation of \$1,357,950 for the first 18 months (January 1, 2009 through June 30, 2010).
- (b) Exercise a compensation adjustment after the first 18 months of the term subject to the Refuse Rate Index, an index based on a combination of the Consumer Price and Producer Price Indexes, and appropriation of funds.
- (c) Execute change orders as required to add or delete Neighborhood Clean-Up bin services based on changing program requirements.
- (d) Exercise one two-year option to extend the term of the agreement, from July 1, 2013 through June 30, 2015, subject to the Refuse Rate Index and annual appropriation of funds.

CEQA: Negative Declaration, File No. PP06-119. (Finance)

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated August 4, 2008, recommending adoption of a resolution.

Action: Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, [Resolution No. 74568](#), entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Finance to Execute an Agreement with Green Waste Recovery, Inc. for Neighborhood Clean Up Bin Services for Recycle Plus Collection Districts A and C", was adopted. (9-0-2. Absent: Campos, Constant.)

5.4 Approve an ordinance amending Section 7.20.020 of Chapter 7.20 of Title 7 of the San José Municipal Code to require both shade and shelter for animals maintained outdoors. CEQA: Not a Project. (General Services)

Documents Filed: Memorandum from Director of General Services Peter Jensen, dated August 14, 2008, recommending approval of an ordinance.

Action: Upon motion by Council Member Pyle, seconded by Council Member Oliverio and carried unanimously, [Ordinance No. 28392](#), entitled: "An Ordinance of the City of San José Amending Section 7.20.020 of Chapter 7.20 of Title 7 of the San José Municipal Code to Require Both Shade and Shelter for Animals Who Are Maintained Outdoors", was passed for publication. (9-0-2. Absent: Campos, Constant.)

ENVIRONMENTAL & UTILITY SERVICES

7.1 Authorize submittal of the 2007-2008 Urban Runoff Management Plan Annual Report and certification to the San Francisco Bay Regional Water Quality Control Board in conformance with the City’s Municipal Separate Storm Sewer System National Pollutant Discharge Elimination System permit requirements, pursuant to the Federal Clean Water Act. CEQA: Not a Project. (Environmental Services)

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated July 28, 2008, transmitting the Urban Runoff Management Plan Annual Report 2007-2008 and requesting acceptance of submittal to the San Francisco Bay Regional Water Quality Control Board.

Director of Environmental Services John Stufflebean provided a brief update on the Urban Runoff Management Plan 2007-2008 Annual Report.

Action: Upon motion by Council Member Williams, seconded by Council Member Chirco and carried unanimously, the submittal of the 2007-2008 Urban Runoff Management Plan Annual Report and certification to the San Francisco Bay Regional Water Quality Control Board in conformance with the City’s Municipal Separate Storm Sewer System National Pollutant Discharge Elimination System permit requirements, pursuant to the Federal Clean Water Act was accepted. (9-0-2. Absent: Campos, Constant.)

NOTICE OF CITY ENGINEER’S PENDING DECISION ON FINAL MAPS

In accordance with Sec. 19.16.140d of the San José Municipal Code, this is notice of the City Engineer's pending decision on the following Final Maps:

| <u>Tract</u> | <u>Location</u> | <u>Council District</u> | <u>Developer</u> | <u>Lots/ Units</u> | <u>Type</u> | <u>Proposed Decision</u> |
|--------------|---|-------------------------|------------------------|--------------------|-------------|--------------------------|
| 9978 | NW corner of E Taylor St & N 6 th St | 3 | Todd and Maureen Zeman | 5 Lots / 5 Units | SFD | Approve |

OPEN FORUM

- (1) Mark Trout expressed religious viewpoints.
- (2) David Wall commented about garbage issues, public art, the elimination of an Office Specialist for the Office of the Independent Police Auditor and the need for more handicapped parking spaces at Ryland Park.

ADJOURNMENT

The Council of the City of San José adjourned the meeting at 4:43 p.m. in memory of David Allard, Sr., a City employee for over 13 years, who passed away June 17, 2008; In memory of Henry Schiro, a significant philanthropist and community leader, who sadly passed on August 26, 2008 (Cortese).

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

smd/8-26-08 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.

JOINT REDEVELOPMENT AGENCY ITEM

The Joint Redevelopment Agency Board convened at 4:49 p.m. to consider Items 8.1, 8.2, 8.3 and 8.4 in a Joint Session.

- 8.1**
- (a) Adoption of a resolution by the City Council making certain determinations required by Redevelopment Law, Health and Safety Code Section 33445, for Agency funding of the proposed improvements to the SoFA Sidewalk Demonstration Project; and,**
 - (b) Approval by the Redevelopment Agency Board to award a contract to the lowest responsive bidder and authorize a construction contingency in an amount not to exceed 10% of the contract amount for construction of the SoFA Sidewalk Demonstration Project, for a total construction cost not to exceed \$600,000 including the contingency.**

CEQA: Resolution No 72767, File No. PP08-119. [MARKET GATEWAY] (Deferred from 6/24/08 - Item 8.3)

Action: Deferred to September 23, 2008.

- 8.2**
- (a) Adoption of a resolution by the City Council making certain determinations required by Redevelopment Law, Health and Safety Code Section 33445, for Redevelopment Agency funding of City-owned improvements.**
 - (b) Approval by the Redevelopment Agency Board for the award of a construction contract to Joseph J. Albanese, Inc., the low bidder, for construction of improvements on the site surrounding the South Hall, in the amount of \$294,000, and authorizing a construction contingency in the amount of \$44,100 or 15% of the contract amount, for a total funding authorization of \$338,100.**

CEQA: Exempt, File No. PP08-167. [MERGED]

Documents Filed: Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated August 14, 2008, recommending adoption of a resolution and award of the contract to the low bidder.

Action: Upon motion by Council Member Pyle, seconded by Vice Mayor Cortese and carried unanimously, [Resolution No. 74569](#), entitled: "A Resolution of the Council of the City of San José Making Certain Determinations Required by Redevelopment Law, Health and Safety Code Section 33445, for Agency Funding of Public Improvements at the San José McEnery Convention Center South Hall", was adopted and the award of a construction contract to Joseph J. Albanese, Inc., the low bidder, for construction of improvements on the site surrounding the South Hall, in the amount of \$294,000, with related contingency was approved. (8-0-3. Absent: Campos, Constant, Williams.)

- 8.3 Acceptance of the update on the schematic design for the renovation and expansion of the San Jose McEnery Convention Center. CEQA: Not a Project. [MERGED]**

Action: Deferred to September 23, 2008 per Orders of the Day.

- 8.4 (a) **Adoption of a resolution by the City Council accepting the 33433 Summary Report and Reuse Valuation and finding that the sale of the property located at 1696 Story Road and 1101 South King Road will assist in the elimination of blight, is consistent with the Implementation Plan for the Story Road Redevelopment Project Area, and that the consideration for the property is not less than the fair reuse value for the proposed use, with the covenants and conditions and development costs authorized by the Disposition and Development Agreement (DDA).**
- (b) **Approval by the Redevelopment Agency Board of the first amendment to the DDA with Imwalle Properties for the properties located at 1696 Story Road and 1101 South King Road to assist with unexpected environmental costs, in an amount not to exceed \$800,000 and to provide for cost sharing related to unexpected environmental remediation costs.**

CEQA: Mitigated Negative Declaration. File No, PP02-017 and Addenda thereto, File No. PP08-163. [STORY ROAD]

Documents Filed: Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated August 14, 2008, recommending adoption of a resolution and approval of the first amendment to the Disposition and Development Agreement.

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

Public Comments: Don Imwalle (Imwalle Properties) spoke in support to the Staff recommendations.

Council Member Liccardo provided meeting disclosures.

Action: On a call for the question, the motion carried unanimously, [Resolution No. 74570](#), entitled: “A Resolution of the Council of the City of San José Accepting a Revised Summary of Costs and Findings of the 33433 Report Pursuant to the California Health and Safety Code Section 33433 for the Sale and Development of Property Located at 1696 Story Road and 1101 South King Road, Under the Terms and Conditions of the Disposition and Development Agreement as Amended with Imwalle Properties”, was adopted, and the first amendment to the DDA with Imwalle Properties for the properties located at 1696 Story Road and 1101 South King Road to assist with unexpected environmental costs, in an amount not to exceed \$800,000 and to provide for cost sharing related to unexpected environmental remediation costs was approved. (8-0-3. Absent: Campos, Constant, Williams.)

The Council of the City of San José and Redevelopment Agency Board was adjourned at 4:54 p.m.