

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, SEPTEMBER 9, 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, Constant, Cortese, Liccardo, Nguyen, Oliverio, Pyle, Williams; Reed.

Absent: Council Members - Campos. (Excused)

Upon motion unanimously adopted, Council recessed at 9:32 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) Ibanez, et al. v. City of San José; Names of Parties Involved: Sarah Ibanez, a Minor, and through Aida Ibanez, her Guardian Ad Litem, City of San José, Alum Rock School District, Michelle Gilbert and DOES 1 through 30; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV-082048; Amount of Money or other Relief Sought: In excess of \$25,000, according to proof. (2) In Re Fazio; Amount of Money or other Relief Sought: Administrative Appeal. (B) to confer with Legal Counsel with respect to anticipated litigation (Claim Filed) pursuant to Government Code subsection (b) of Section 54956.9 with significant exposure: Claimants: In Re Safeco and Khosraviani; City Department: DOT. (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 (c) of Section 54956.9 in one (1) matter.

By unanimous consent, Council recessed from the Closed Session at 10:58 a.m. and reconvened at 1:31 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

The San José Fire Department presented a special tribute to heroes, survivors and lives lost on September 11, 2001. (District 8)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Vice Mayor Cortese, seconded by Council Member Pyle and carried unanimously, the Orders of the Day and the Amended Agenda were approved, and Ceremonial Item 1.1 was heard in the evening and Item 3.5 was deferred to September 16, 2008.

CLOSED SESSION REPORT

City Attorney Doyle disclosed the following Closed Session actions of September 9, 2008:

A. Authority to Enter Litigation Case as Amicus Curiae:

Case Name: Oakwood South Apartments v. Carver

Adverse Party or Parties: Oakwood South Apartments; Sondra Carver.

Substance of Litigation: Unlawful detainer action where applicability of provisions of San José’s rental dispute mediation and arbitration ordinance are at issue.

Council Vote: Ayes: Chirco, Chu, Cortese, Liccardo, Nguyen, Pyle, Williams.

Noes: Constant, Oliverio; Reed.
Disqualified: None.
Absent: Campos. (Excused)
Vacant: None.

CONSENT CALENDAR

Upon motion by Council Member Williams, seconded by Council Member Pyle, and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (10-0-1. Absent: Campos.)

2.1 Approval of minutes.

- (a) **Regular Minutes of June 3, 2008**
- (b) **San José Finance Authority Minutes of June 3, 2008**
- (c) **San José Parking Authority Minutes of June 3, 2008**

Documents Filed: (1) Regular Minutes dated June 3, 2008. (2) San José Finance Authority Minutes dated June 3, 2008. (3) San José Parking Authority Minutes dated June 3, 2008.

Action: The minutes were approved. (10-0-1. Absent: Campos.)

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 28391 – Rezoning certain real property situated at the southeast corner of North First Street and East Rosemary Street to the A(PD) Planned Development Zoning District. PDC07-101**

Documents Filed: Proof of Publication of the title of Ordinance No. 28391 executed on September 2, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28391](#) was adopted. (10-0-1. Absent: Campos.)

- (b) **ORD. NO. 28392 – 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 that are maintained outdoors.**

Documents Filed: Proof of Publication of the title of Ordinance No. 28392 executed on September 2, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28392](#) was adopted. (10-0-1. Absent: Campos.)

2.3 Accept Audit of City Funds for the Pune Sister City Committee. (Economic Development) [Community and Economic Development referral 8/25/08 – Item (k)]

Documents Filed: Memorandum from Senior Executive Analyst Vilcia Rodriguez, dated August 28, 2008, transmitting the audit of City Funds for the Pune Sister City Committee.

Action: The report was accepted. (10-0-1. Absent: Campos.)

2.4 Approve an award of open purchase orders for supplies, materials, equipment and services for FY 2008-2009 #3 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 August 18, 2008, recommending approval of award of open purchase orders and authorization for the Director of Finance to execute the purchase orders.

2.4 (Cont'd.)

Action: The award of open purchase orders for FY 2008-2009 #3 was approved and the Director of Finance was authorized to execute the purchase orders. (10-0-1. Absent: Campos.)

2.5 **Adopt a resolution authorizing the City Manager, or designee, to submit an application to the American Trails Organization in order to seek National Recreational Trail designation for San José's 100 mile Trail Network and to execute all necessary documents to accept the designation. CEQA: Not a Project. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated August 18, 2008, recommending adoption of a resolution.

Action: [Resolution No. 74571](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Submit an Application to the American Trails Organization in Order to Seek the National Recreational Trail Designation for San José's 100 Mile Trail Network and To Execute All Necessary Documents to Accept the Designation", was adopted. (10-0-1. Absent: Campos.)

2.6 **Adopt a resolution:**

- (a) **Initiating proceedings to consider the single-family house located at 186 N. Fifteenth Street as a landmark of special historic, architectural, cultural, aesthetic or engineering interest or value of a historic nature.**
- (b) **Referring the matter back to the Historic Landmarks Commission for its consideration at a public hearing, report and recommendation.**
- (c) **Setting a public hearing on Tuesday, October 28, 2009 at 1:30 p.m. for Council consideration of City Landmark designation of the structures noted above.**

CEQA: Not a Project. Council District 3. SNI: 13th Street. (Planning, Building and Code Enforcement)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated August 18, 2008, recommending adoption of a resolution.

Action: [Resolution No. 74572](#), entitled: "A Resolution of the Council of the City of San José Initiating Proceedings on Its Own Motion, Pursuant to the Provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, To Designate the Ames House, Presently Located at 186 North Fifteenth Street, as a City Landmark of Special Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of an Historic Nature", was adopted. (10-0-1. Absent: Campos.)

2.7 Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the Services for Redevelopment Capital Projects Fund (City-side Redevelopment Fund) for 2008-2009:

- (a) Increase the estimate for Earned Revenue by \$149,055.
- (b) Establish an appropriation to the Department of Public Works for the McLaughlin Park Project Phase II Environmental Site Assessment in the amount of \$75,000. Increase the appropriation to the Department of Transportation for the Traffic Calming Improvements Project in the amount of \$74,055.

CEQA: McLaughlin Park Project – Phase II Environmental Site Assessment: Not a Project; Traffic Calming Improvements: Exempt, File No. PP05-155. Council Districts 5 and 7. SNI: Mayfair, Tully/Senter. (Public Works/Transportation/City Manager’s Office)

Documents Filed: Memorandum from Director of Public Works Katy Allen, Director of Transportation James Helmer and Budget Director Jennifer Maguire, dated August 18, 2008, recommending adoption of appropriation ordinance and funding sources resolution amendments.

Action: [Ordinance No. 28393](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Services for Redevelopment Capital Projects Fund for the McLaughlin Park Project Phase II Environmental Site Assessment Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption” and [Resolution No. 74573](#), 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 Redevelopment Capital Projects Fund”, were adopted. (10-0-1. Absent: Campos.)

**2.8 Approve travel by Council Member Chirco to Long Beach, California on September 23-27, 2008 to attend the League of California Cities Annual Conference. Source of Funds: Mayor/Council Travel Fund. (Chirco)
(Rules Committee referral 08/27/08)**

Documents Filed: Memorandum from Council Member Chirco, dated August 15, 2008, requesting approval of travel.

Action: The travel request for Council Member Chirco was approved. (10-0-1. Absent: Campos.)

**2.9 Approve travel by Council Member Pyle to Chicago, Illinois on October 1-3, 2008 to gather information on its success in downtown revitalization with the Millennium Park development, the “Green Roofs” demonstration project for Green building practices and the role of high design in the public realm as well as arts and culture. Source of Funds: Mayor/Council Travel Fund. (Pyle)
(Rules Committee referral 08/27/08)**

2.9 (Cont'd.)

Documents Filed: (1) Memorandum from Vice Mayor Cortese, dated September 3, 2008, canceling the October 1-3, 2008 trip. (2) Memorandum from Council Member Pyle, dated October 1, 2008, requesting approval of travel.

Action: The travel request for Council Member Pyle was approved. (10-0-1. Absent: Campos.)

2.10 Approve travel by Council Member Williams to San Diego, California on October 6-8, 2008 to attend the American Public Transportation Agency (APTA) Annual Meeting. Source of Funds: Santa Clara Valley Transportation Agency. (Williams) (Rules Committee referral 08/27/08)

Documents Filed: Memorandum from Council Member Williams, dated August 22, 2008, requesting approval of travel.

Action: The travel request for Council Member Williams was approved. (10-0-1. Absent: Campos.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

Action: City Manager Debra Figone presented a brief update about the damage to the Joyce Ellington Library when a car drove into the southeast corner of the library on 9/8/08. She added that the Library was closed at the time and no one was hurt.

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

Documents Filed: The Rules and Open Government Committee Report dated August 6, 2008.

Action: Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, the Report of the Rules and Open Government Committee and the actions of August 6, 2008 were accepted. (10-0-1. Absent: Campos.)

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

Documents Filed: The Rules and Open Government Committee Report dated August 13, 2008.

3.3 (Cont'd.)

Action: Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, the Report of the Rules and Open Government Committee and the actions of August 13, 2008 were accepted. (10-0-1. Absent: Campos.)

**3.4 Report of the Rules and Open Government Committee – August 20, 2008
Mayor Reed, Chair**

Documents Filed: The Rules and Open Government Committee Report dated August 20, 2008.

Action: Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, the Report of the Rules and Open Government Committee and the actions of August 20, 2008 were accepted. (10-0-1. Absent: Campos.)

**3.5 Report of the Rules and Open Government Committee – August 27, 2008
Mayor Reed, Chair**

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

**3.6 Report of the Public Safety, Finance and Strategic Support Committee –
August 21, 2008 - Council Member Nguyen, Chair**

Documents Filed: The Public Safety, Finance and Strategic Support Committee Report dated August 21, 2008.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried unanimously, the Report of the Public Safety, Finance and Strategic Support Committee and the actions of August 21, 2008 were accepted. (10-0-1. Absent: Campos.)

**3.7 As referred by the Rules and Open Government Committee of August 20, 2008,
consider the adoption of a resolution promoting health awareness and recognizing
that the City Council is empowered to encourage and be a role model for fitness,
physical activity, nutrition and wellness to the residents and employees of the City of
San José. (Williams)
[Rules Committee referral 8/20/08 – Item G(3)]**

Action: Deferred to September 16, 2008 per Mayor's Office.

**3.9 Adopt a resolution amending the Rules for the Conduct of City Council and City
Council Committee meetings, superseding Resolution No. 74312, to add a provision
that all who attend a closed session be required to sign a confidentiality notice.
(Mayor)
[Rules Committee referral 8/27/08 – Item G(2)]**

Documents Filed: Memorandum from City Clerk Lee Price, dated August 28, 2008, transmitting the recommendations of the Rules and Open Government Committee.

3.9 (Cont'd.)

Action: Upon motion by Council Member Constant, seconded by Council Member Chirco and carried unanimously, [Resolution No. 74574](#), entitled: “A Resolution of the Council of the City of San José Amending the Rules for the Conduct of Its Meetings, Superseding Resolution No. 74312”, was adopted. (10-0-1. Absent: Campos.)f

COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Report of the Community & Economic Development Committee – August 25, 2008 Council Member Pyle, Chair

Documents Filed: The Community and Economic Development Committee Report dated August 25, 2008.

Action: Upon motion by Council Member Pyle, seconded by Council Member Williams and carried unanimously, the Report of the Community and Economic Development Committee and the actions of August 25, 2008 were accepted. (10-0-1. Absent: Campos.)

4.2 The Historic Landmarks Commission voted (6-0-0-1, Commissioner Colombe abstained) to recommend that the City Council adopt resolutions designating each of the following properties as a Historic Landmark and approving an associated Historical Property Contract as follows:

- (a) The Slettedahl House as Historic Landmark No. 167 and associated Historical Property Contract File No. MA08-001.
- (b) The Foster House as Historic Landmark No. 168 and associated Historical Property Contract File No. MA08-002.

CEQA: Exempt, File Nos. HL08-167/MA08-001 and HL08-168/MA08-002. Council District 3. SNI: University. (Planning, Building and Code Enforcement)

Documents Filed: (1) Memorandum from Historic Landmarks Commission Secretary Joseph Horwedel, dated August 18, 2008, recommending adoption of resolutions. (2) Affidavits of Routings both executed on September 9, 2008 and distributed by the City Clerk. (3) Proof of Publication of Notice of Public Hearing, executed on July 18, 2008, submitted by the City Clerk.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Oliverio and carried unanimously, [Resolution No. 74575](#), entitled: “A Resolution of the Council of the City of San José Approving a Historic Landmark Preservation Agreement with André and Lani Luthard for the Slettedahl House (City Landmark No. H108-167)” and [Resolution No. 74576](#), entitled: entitled: “A Resolution of the Council of the City of San José Designating, Pursuant to the Provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, the Slettedahl House located at 202 Fourteenth Street as a City Landmark of Special Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of

4.2 (a)(b) (Cont'd.)

a Historic Nature”; [Resolution No. 74577](#), entitled: “A Resolution of the Council of the City of San José Approving a Historic Landmark Preservation Agreement with Michael and Gwendolyn Jennings for the Foster House (City Landmark No. HL08-168) and [Resolution No. 74578](#), entitled: entitled: “A Resolution of the Council of the City of San José Designating, Pursuant to the Provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, the Foster House Located at 198 S. Thirteenth Street as a City Landmark of Special Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of an Historic Nature”, were adopted. (10-0-1. Absent: Campos.)

NEIGHBORHOOD SERVICES

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

Documents Filed: The Neighborhood Services and Education Committee Report dated August 14, 2008.

Action: Upon motion by Council Member Chirco, seconded by Council Member Pyle and carried unanimously, the Report of the Neighborhood Services and Education Committee and the actions of August 14, 2008 were accepted. (10-0-1. Absent: Campos.)

5.2 Approve the Master Plan for the new Del Monte Park. CEQA: Exempt, File No. PP08-094. Council District 6. SNI: Burbank/Del Monte. (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated August 18, 2008, recommending approval of the master plan.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Pyle and carried unanimously, the master plan for the new Del Monte Park was approved. (10-0-1. Absent: Campos.)

TRANSPORTATION & AVIATION SERVICES

**6.1 Report of the Transportation and Environment Committee – August 18, 2008
Council Member Williams, Chair**

Documents Filed: The Report of the Transportation and Environment Committee dated August 18, 2008.

Action: Upon motion by Council Member Williams, seconded by Council Member Chirco and carried unanimously, the Report of the Transportation and Environment Committee and the actions of August 18, 2008 were accepted. (10-0-1. Absent: Campos.)

6.2 Receive verbal status report and provide direction to staff on extending the Living Wage at Norman Y. Mineta San José International Airport. CEQA: Not a Project. (Airport)

[Transportation and Environment Committee 8/18/08 – Item (d)]

Documents Filed: Memorandum from Senior Executive Analyst Vilcia Rodriguez, dated August 20, 2008, transmitting the report on Extending Living Wage to Airlines at the Norman Mineta Y. San José International Airport.

City Manager Debra Figone provided a brief introduction. Director of Aviation William Sherry presented and Director of Public Works Katy Allen presented the Staff report and responded to Council questions.

Public Comments: Speaking in favor of extending the living wage at Norman Y. Mineta San José International Airport were: Patrick Jack, Augusto Gutierrez, Lydia Bonifacio, Tiffany Melendez (G-2 Secure Staff, San Francisco Airport), Mary Creasman (South Bay Labor Council), Everlisto Quebral, Reverend Debbie Weatherspoon (The Interfaith Council), Whitfield Mateo, Clark Williams, Sarah Muller (Working Partnerships), Father Eduardo Samaniego (Holy Trinity Church), Skyler Porics, Jazmin Sagura and Jody Hansen (San José Silicon Valley Chamber of Commerce).

Motion: Council Member Williams moved to accept the status report and to include the actions contained in his memorandum dated August 15, 2008, as revised (Staff was directed to distribute a draft ordinance prior to September 15, 2008 for consideration by the Transportation & Environment (T&E) Committee on October 6, 2008). Council Member Nguyen seconded the motion.

Mayor Reed and Council Member Liccardo expressed concerns regarding timing but voiced support for cautiously extending the living wage at the Airport.

Council Member Oliverio stated that this is not the right time to extend the living wage at the Airport.

Amendment to the Motion: Council Member Williams requested to amend his motion to add that Staff return with a breakdown of employees, costs per company, costs to airlines under the San José, San Francisco and Oakland ordinances, cost of turnover and provide more information on other airlines, nationwide, that offer a living wage. Council Member Nguyen accepted the amendment.

Council disclosures were provided by Council Member Williams, Chu, Oliverio, Constant, Pyle

6.2 (Cont'd.)

Action: On a call for the question, the motion carried, the verbal report was received and Staff was directed to include the actions contained in the memorandum from Council Member Williams, dated August 15, 2008, as revised (Staff directed to distribute a draft ordinance prior to September 15, 2008 for consideration by the Transportation & Environment (T&E) Committee on October 6, 2008). In addition, Staff was directed to provide the following information to T&E: (1) Breakdown of employees and costs per company; (2) Costs to airlines under the San José, San Francisco and Oakland ordinances; (3) The cost of turnover; (4) More information on other airlines, nationwide, that offer a living wage. (9-1-1. Noes: Oliverio. Absent: Campos.)

JOINT COUNCIL/REDEVELOPMENT AGENCY

- 9.1 (a) **Adopt a resolution by the City Council making determinations consistent with the Health and Safety Code Section 33445.**
- (b) **Approve a Cooperation Agreement by the City Council and Redevelopment Agency Board providing for the design, construction and transfer of the Edenvale Community Center, for the City's occupation and maintenance of the Center and for the transfer of all the Agency's rights, title and interest in the Center at the time of the City's occupation.**
- (c) **Adopt a resolution by the Redevelopment Agency Board approving a budget adjustment related to construction of the Edenvale Community Center.**
- (d) **Award a construction contract for the Edenvale Community Center by the Redevelopment Agency Board to the lowest responsive bidder and establishment of a 10% contingency.**
- (e) **Approve the second amendment to the agreement by the Redevelopment Agency Board with Carrier Johnson Architects, amending the terms to include construction administration and project closeout and extending the term of the agreement and schedule of performance through June 30, 2010.**
- (f) **Approve the second amendment to the agreement by the Redevelopment Agency Board with Gilbane Building Company for construction administration and project closeout, and extending the term of the agreement and schedule of performance through June 30, 2010.**

CEQA: Mitigated Negative Declaration, File No PP08-003. (City Manager's Office/ Redevelopment Agency)

Action: Deferred to September 23, 2008 per Redevelopment Agency.

- 9.2 **Adopt the Downtown Public Art Focus Plan. CEQA: Exempt, File No. PP05-184. (City Manager's Office/Redevelopment Agency)**

Documents Filed: Memorandum from City Manager Debra Figone and Redevelopment Agency Executive Director Harry S. Mavrogenes, dated August 20, 2008, recommending apportion of the Downtown Public Art Focus Flan and transmitting the document.

9.2 (Cont'd.)

Motion: Council Member Williams moved approval of the Downtown Public Art Focus Plan. Council Member Chirco seconded the motion.

Barbara Goldstein presented the Downtown Public Art Focus Plan and responded to Council questions and comments followed.

Public Comments: Tamara Alvarado (1st Act) spoke in support to Downtown Public Art Focus Plan.

Action: On a call for the question, the motion carried unanimously, the Downtown Public Art Focus Plan was accepted. (10-0-1. Absent: Campos.)

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 (a) **Direct staff to prepare a procurement strategy for Council consideration to solicit proposals for commercial solid waste collection with two or three haulers awarded exclusive franchise agreements for services within geographical districts.**
- (b) **Approve the scope of the franchise system, with certain exemptions, to include collection of solid waste, recyclables, and organics in bags, carts, front-load bins, roll-off boxes, and compactors.**
- (c) **Return to the Transportation and Environment Committee in December 2008 with a procurement strategy and final recommendation for the commercial solid waste system redesign, including an implementation plan, terms of an exclusive franchise, an implementation plan for securing processing and disposal capacity, and related policy issues for Council consideration.**

CEQA: Not a Project. (Environmental Services)
[Transportation and Environment Committee – Item (c)]

Action: Deferred to September 16, 2008 per District 4.

OPEN FORUM

- (1) Gregory Ryan requested more funding for zero emission buses.
- (2) Pat Puzzo stated that the Santa Clara County Fairgrounds property is an ideal site for a park.
- (3) Jaime Alvarado reported about violence in the Mayfair community.
- (4) Mark Trout expressed religious viewpoints.

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 3:55 p.m.

RECESS/RECONVENE

The City Council recessed at 3:55 p.m. from the afternoon Council Session and reconvened at 7:00 p.m. in the Council Chambers, City Hall.

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

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

City Clerk Lee Price read the requests for continuance of the applications. Upon motion by Vice Mayor Cortese, seconded by Council Member Williams, and carried unanimously, the below noted continuances and actions were taken as indicated. (9-0-2. Absent: Campos, Constant.)

CEREMONIAL ITEMS

- 1.1 Presentation of a commendation to the Youth Academy for Leadership and Excellence (YALE) for serving as prime example of an organization dedicated to the training and education of our youth about the criminal justice system and public safety through creative and effective means. (Cortese)**

Action: Mayor Reed and Vice Mayor Cortese recognized and commended the Youth Academy for Leadership and Excellence for their dedication to the training and education of youth about the criminal justice system and public safety.

PUBLIC HEARINGS

- 11.7 (a) Accept the Strong Neighborhoods Initiative (SNI) *Tully-Senter Neighborhood Improvement Plan Amendment* as the renewed community vision for the future of the Tully-Senter SNI Planning Area.**
- (b) Encourage Tully-Senter area residents, property owners and community members to continue to dedicate their time, energy, and resources towards the *Plan* and this *Amendment* while continuing with their community-building activities.**

CEQA: Resolution No. 71045. Council District 7. SNI: Tully-Senter. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0). (City Manager's Office/Redevelopment Agency)

Documents Filed: (1) Memorandum from Planning Commission Secretary Joseph Horwedel, dated August 18, 2008, transmitting the recommendation of the Planning Commission. (2) Strong Neighborhoods Initiative Neighborhood Improvement Plan Amendment for Tully-Senter dated September 2008. (3) Strong Neighborhoods Initiative Neighborhood Improvement Plan for Tully-Senter dated June 2002.

11.7 (Cont'd.)

Public Comments: Speaking in support of the Strong Neighborhoods Initiative Neighborhood Improvement Plan Amendment for Tully-Senter were: Max Uvalles, Phal Sek-Taxi Khek, Wayland Shih, Martin Rentenia and Maria Neri (SNI Tully-Senter).

Action: Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, the Strong Neighborhoods Initiative (SNI) *Tully-Senter Neighborhood Improvement Plan Amendment* as the renewed community vision for the future of the Tully-Senter SNI Planning Area was accepted. (9-0-2. Absent: Campos, Constant.)

PUBLIC HEARINGS ON CONSENT CALENDAR

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

- 11.1 (a) **Consider an ordinance rezoning the real property located on the north side of Olsen Drive, approximately 100 feet west of Cypress Avenue from County to R-2(PD) Planned Development Zoning District to allow three single family detached residences on 0.24 acres (3315 Olsen Drive) (Tom Ronning, Owner). CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0). PDC08-008 – District 1**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC08-008, dated August 11, 2008, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated August 21, 2008, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on August 1, 2008 submitted by the City Clerk.

Public Comment: Mayor Reed opened the public hearing. There was no testimony from the floor. Mayor Reed closed the public hearing.

Action: The recommendation of the Planning Commission and the Planning Director was approved, and [Ordinance No. 28394](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the North Side of Olsen Drive, Approximately 100 Feet West of Cypress Avenue (3315 Olsen Drive) to R-2(PD) Planned Development Zoning District”, was passed for publication. (9-0-2. Absent: Campos, Constant.)

- 11.1 (b) Consider an ordinance rezoning the real property located on the south east side of Montecito Vista Drive, 660 feet southwest of Monterey Road from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to amend development standards of previous zoning (File No. PDC06-034) to allow a reduction in required parking for senior housing, to modify setbacks to allow underground parking to extend to a minimum 5 foot setback at the southern and eastern property lines, and to allow a minimum retail square footage of 17,500 square feet on a 29.5 gross acre site (2745 Monterey Road) (Roem Development Corporation, Owner/Developer). CEQA: Resolution No. 72877. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0). **PDC08-032 – District 7**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC08-032, dated August 13, 2008, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated August 21, 2008, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on August 8, 2008 submitted by the City Clerk.

Public Comment: Mayor Reed opened the public hearing. There was no testimony from the floor. Mayor Reed closed the public hearing.

Action: The recommendation of the Planning Commission and the Planning Director was approved, and [Ordinance No. 28395](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Southeast Side of Montecito Vista Drive, 660 Feet Southwest of Monterey Road (2745 Monterey Road) to A(PD) Planned Development Zoning District”, was passed for publication. (9-0-2. Absent: Campos, Constant.)

END OF PUBLIC HEARINGS ON CONSENT CALENDAR

PUBLIC HEARINGS

- 11.2 Consider a Director Initiated rezoning from County of Santa Clara to R-1-8 Single-Family Residence Zoning as to approximately 82.4 gross acres, R-2 Two-Family Residence Zoning as to approximately 1.4 gross acres, and CO Commercial Office Zoning as to approximately 0.8 gross acres (all as more specifically set forth in the Staff Report) on an approximately 85 gross acre County island consisting of 319 parcels located west of Winchester Boulevard between Stevens Creek Boulevard and Highway 280 (Multiple Owners). CEQA: EIR Resolution No. 65459 (Related Annexation Winchester No. 42). Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0).**

C08-019 – District 1

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C08-019, dated July 30, 2008, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated August 20, 2008, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on July 25, 2008 submitted by the City Clerk.

Public Comment: Mayor Reed opened the public hearing. There was no testimony from the floor. Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Oliverio and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and [Ordinance No. 28396](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on Both Sides of Olsen Drive Between South Cypress Avenue and Doma Drive and East of South Cypress Avenue, Approximately 300 Feet Southerly of Kirkwood Drive from County of Santa Clara to R-2 Two Family Residence Zoning District”; [Ordinance No. 28397](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the North Side of Olin Avenue, Approximately 400 Feet Westerly of Winchester Boulevard from County of Santa Clara to CO Commercial Office Zoning District” and [Ordinance No. 28398](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated West of Winchester Boulevard Between Stevens Creek Boulevard and Highway 280 from County of Santa Clara to R-1-8 Single Family Residential Zoning District”, were passed for publication. (9-0-2. Absent: Campos, Constant.)

11.3 Conduct an Administrative Hearing and consider an appeal of the Planning Commission’s decision to deny a Conditional Use Permit and Determination of Public Convenience or Necessity to allow off-sale of alcoholic beverages in an existing commercial use on a 1.33 gross acre site in the DC Downtown Primary Commercial Zoning District, located at the southeast corner of 2nd Street and San Fernando Street (100 S 2nd STREET) (Block 3 Development Partners, LLC, Owner; Wilson Meany Sullivan, LLC Seth Bland, Developer). Council District 3. SNI: None. CEQA: Exempt. Director of Planning, Building and Code Enforcement recommends adoption of a resolution making the appropriate findings to approve the subject Conditional Use Permit and make a Determination of Public Convenience or Necessity.

CP08-056 & ABC08-007 – District 3

Documents Filed: (1) Memorandum from Council Member Liccardo, dated September 4, 2008, recommending approval of the Conditional Use Permit (CUP) with conditions. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP08-056 and ABC08-007, dated July 28, 2008, recommending approval. (3) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated August 18, 2008, recommending adoption of a resolution to approve the CUP. (4) Proof of Publication of Notice of Public Hearing, executed on August 19, 2008 submitted by the City Clerk. (5) Letter from Wilson Meany Sullivan, dated September 9, 2008, regarding the Conditional Use Permit for Item 11.3.

Public Comment: Mayor Reed opened the public hearing. Kymberli Brady spoke in support of the Staff recommendations. Mayor Reed closed the public hearing.

Motion: Council Member Liccardo moved approval of his memorandum dated September 4, 2008, approving the Staff recommendations with conditions as described below in “Action”. Council Member Oliverio seconded the motion.

Director of Planning, Building and Code Enforcement Joseph Horwedel responded to Council questions.

Action: On a call for the question, the motion carried unanimously, the memorandum from Council Member Liccardo, dated September 4, 2008 was approved, supporting the Staff recommendation to approve the proposed Conditional Use Permit and adopting a resolution making a Determination of Public Convenience or Necessity that significant or overriding public benefits will be served by the proposed use, specifically: (1) The proposed off-sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant impact on public health and safety. (2) The proposed off-sale of alcohol is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience; and [Resolution No. 74579](#), entitled: “A Resolution of the Council of the City of San José Approving a Conditional Use Permit and Determination of Public Convenience or Necessity to Use Certain Real Property Described Herein for the Purpose of the Off-Sale of Alcoholic Beverages in an Existing Commercial Use on a 1.33 Gross Acre Site Located on the Southeast Corner of South Second and East San Fernando Streets (100 South Second Street”, was adopted. (9-0-2. Absent: Campos, Constant.)

- 11.4 Consider an ordinance rezoning the real property located on the south side of West San Carlos Street between Meridian Avenue and Page Street from County and CP Commercial Pedestrian Zoning District Commercial Pedestrian Zoning to A(PD) Planned Development Zoning District to allow up to 218 attached single family residences and 22,600 square feet for commercial uses on a 3.59 gross acres site (Dubrovnik Properties, LLC & Nicholas Gera, Owner). SNI: Burbank/Del Monte. CEQA: Mitigated Negative Declaration.
PDC07-096 – District 6**

Action: Continued to September 23, 2008.

- 11.5 Consider an ordinance rezoning the real property located on the west side of O'Brien Court approximately 120 feet southerly of Campbell Avenue from LI Industrial Zoning District to A(PD) Residential Zoning District to allow the construction of one new single family detached residence on a 0.22 gross acre site (1001-1015 O'Brien Ct.) (Patrick Hadnett, Owner). CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0).
PDC06-126 – District 6**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC06-128, dated August 12, 2008, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated August 21, 2008, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on August 8, 2008 submitted by the City Clerk.

Public Comment: Mayor Reed opened the public hearing. There was no testimony from the floor. Mayor Reed closed the public hearing.

Motion: Council Member Oliverio moved approval of the Staff recommendations and requested that Staff work with the applicant to ensure that the new residence blends with others in the neighborhood in terms of square footage and height. Council Member Liccardo seconded the motion.

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, [Ordinance No. 28399](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated at the West Side O'Brien Court, Extending Southerly Approximately 120 Feet from the Southwest Corner of Campbell Avenue (1001-1015 O'Brien Court) to A(PD) Planned Development Zoning District", was passed for publication. Staff was requested to work with the applicant to ensure that the new residence blends with others in the neighborhood in terms of square footage and height. (9-0-2. Absent: Campos, Constant.)

- 11.6 Consider an ordinance rezoning the real property located on the southeast corner of The Alameda and Bush Street from LI Light Industrial Zoning District to A(PD) Planned Development Zoning District to allow 2,800 square feet of commercial uses and up to eight residential units in a mixed use configuration on a 0.24 gross acre site (746 The Alameda) (Klifo Family Investment LLC, Owner). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0).
PDC07-009 – District 6**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC07-009, dated August 11, 2008, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated August 21, 2008, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on August 1, 2008 submitted by the City Clerk.

Public Comment: Mayor Reed opened the public hearing. There was no testimony from the floor. Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Nguyen and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and [Ordinance No. 28400](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Southeast Corner of the Intersection of the Alameda and Bush Street (746 The Alameda) to A(PD) Planned Development Zoning District”, was passed for publication. (9-0-2. Absent: Campos, Constant.)

STRATEGIC SUPPORT SERVICES

- 3.8 As referred by the Rules and Open Government Committee of August 20, 2008, consider the following:**
- (a) Direct the Administration to remove the postponed sale of Fire House 6 (in its entirety/including reallocation of staff) from the 2008-2009 Budget and from the 5-Year Capital Improvement Program (CIP 2009-2013) forecast.**
 - (b) Adopt a budget principle that prohibits inclusion of the closure, sale or relocation of a fire station as part of the City Budget without prior assessment, community outreach, and City Council approval on the matter.**
 - (c) Adopt a City-Wide Outreach Policy regarding the closure, sale and/or relocation of Fire Stations in San José that will include the following criteria:**
 - (1) Any proposed closure, sale, and/or relocation of a fire station will be shared with the Mayor and all Council Members via an information memorandum (regardless of within which Council District the fire station in question lies);**
 - (2) The information memorandum will be listed on the City website and the San José Fire Department website;**
 - (3) The City will have at least two public community evening meetings at least two weeks apart;**

- 3.8 (c) (4) **The City will mail notices of the community meetings to all businesses and residences located within the primary service area of the fire station in question;**
- (5) **Agendize the matter to be heard on the Public Safety Committee agenda;**
- (6) **Agendize the matter for Council consideration at an evening meeting prior to inclusion in any City Budget document.**
- (d) **Direct the Administration to adopt a method of assessing the impact of proposed fire station closures, relocations, consolidations or new construction by comparing projected service level impacts relative to adopted performance objectives, which at a minimum should include the projected impacts to the assemble or “mustering” of an effective response force, as defined within the Fire Department Strategic Plan following its adoption by Council. The Council shall be provided the opportunity to review response times and other quantitative data used with the Standards of Response Cover Methodology to evaluate service level impacts both within the subject fire station service area and City-Wide. The City will follow this policy when considering changes to staffed and planned fire stations within the City of San José.**

(Mayor/Oliverio/Chirco)

[Rules Committee referral 8/20/08 – Item G(4)]

Documents Filed: Memorandum from City Clerk Lee Price, dated August 28, 2008, transmitting the recommendations of the Rules and Open Government Committee.

Motion: Council Member Oliverio moved approval of the recommendations of the Rules and Open Government Committee as outlined above. Council Member Pyle seconded the motion.

Public Comments: Speaking in support of the recommendations and in favor of keeping the Fire Station open were Patrick McAtee, Jose Guerrero (San José Firefighters), Susan Espinoza, Art Burkhard, Joseph DiSalvo, Audrey Tracy, Kristan Kelly, John Tweten, Christopher Kelly, Karen Briger, Richard Zappelli, Chris Schwab, Lawrence Ames and Robin Feinman-Marino.

Fire Chief Darryl Von Raesfeld responded to Council questions and comments. Discussion followed.

Action: On a call for the question, the motion carried unanimously, the Administration was directed to remove the postponed sale of Fire House 6 (in its entirety/including reallocation of staff) from the 2008-2009 Budget and from the 5-Year Capital Improvement Program (CIP 2009-2013) forecast; the budget principle that prohibits inclusion of the closure, sale or relocation of a fire station as part of the City Budget without prior assessment, community outreach, and City Council approval on the matter was accepted; [Resolution No. 74580](#) was adopted and Administration was directed to adopt a method of assessing the impact of proposed fire station closures, relocations,

3.8 (Cont'd.)

consolidations or new construction by comparing projected service level impacts relative to adopted performance objectives, which at a minimum should include the projected impacts to the assemble or “mustering” of an effective response force, as defined within the Fire Department Strategic Plan following its adoption by Council. The Council shall be provided the opportunity to review response times and other quantitative data used with the Standards of Response Cover Methodology to evaluate service level impacts both within the subject fire station service area and City-Wide. The City will follow this policy when considering changes to staffed and planned fire stations within the City of San José. (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 receipt of the following Final Maps for review:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>
9994	S/S Hillsdale Ave, 600’ E of Pearl Ave	6	Hamid Abtahi	7 Lots / 6 Units	SFA

OPEN FORUM

- (1) Tita Nichols, California Youth Outreach, thanked the City Council for the youth programs and presented a collage of the various groups of children to Mayor Reed in appreciation.

ADJOURNMENT

The Council of the City of San José adjourned the meeting at 8:07 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

smd/9-9-08 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.