



## MINUTES OF THE CITY COUNCIL

**SAN JOSÉ, CALIFORNIA**

**TUESDAY, SEPTEMBER 23, 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, Oliverio, Pyle, Williams; Reed.

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

Upon motion unanimously adopted, Council recessed at 9:30 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) In Re Cavazos; Amount of Money or other Relief Sought: Administrative Appeal; (2) In Re Kepler; Amount of Money or other Relief Sought: Administrative Appeal; Fong, et al v. City of San José, et al; Names of Parties Involved: Richard E. De La Rosa, Dennis Fong, Jose Mendoza, City of San José, Avo Makdessian and DOES 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-03-CV-817097; Amount of Money or other Relief Sought: In excess of \$25,000, according to proof. (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 Claim of Bernal; City Department: CMO. (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 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, AFSCME Local 101; Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between Confidential Employees' Organization, AFSCME Local 101 and the 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.

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.)**

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

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

Absent: Council Members - Campos. (Excused)

## **INVOCATION**

Pastor Solomon Tolentino, The Filipino 7<sup>th</sup> Day Adventist Church presented an inspirational prayer. (District 8)

## **PLEDGE OF ALLEGIANCE**

Mayor Reed led the Pledge of Allegiance.

## **ORDERS OF THE DAY**

Upon motion by Council Member Pyle, seconded by Council Member Constant and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (10-0-1. Absent: Campos.)

## **CLOSED SESSION REPORT**

City Attorney Doyle disclosed the following Closed Session actions of September 23, 2008:

A. Authority to Pursue Appellate Review in a Litigation Case:

Case Name: Fong, et al. v. City of San José, et al.

Adverse Party or Parties: Richard E. De La Rosa, Dennis Fong and José Mendoza

Substance of Litigation: Defamation action.

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

Noes: None.

Disqualified: None.

Absent: Campos, Cortese, Nguyen. (Excused)

## CEREMONIAL ITEMS

- 1.3 Presentation of a commendation to SEMI for being an outstanding corporate citizen and a key contributor to the economy in San José and across the globe. (Mayor/Chu)  
(Orders of the Day)**

Action: Mayor Reed and Council Member Chu recognized and commended SEMI for being an exceptional corporate citizen and for its tremendous contributions to the economy of the City of San José and across the globe.

- 1.1 Presentation of a commendation to the Dr. Martin Luther King, Jr. Library in celebration of its fifth anniversary and unique status as a co-developed and co-managed facility between the City of San José and San José State University. (Liccardo)**

Action: Mayor Reed and Council Member Liccardo recognized the Dr. Martin Luther King, Jr. Library in celebration of its fifth anniversary and because of its unique status.

- 1.2 Presentation of gifts from the Dublin, Ireland Sister City Delegation. (Pyle/Williams)  
(Rules Committee referral 9/17/08)**

Action: Council Members Pyle and Williams presented gifts from the Dublin, Ireland Sister City Delegation to Mayor Reed, who accepted on behalf of the City of San José. Members of the delegation were present also.

## CONSENT CALENDAR

Upon motion by Council Member Pyle, seconded by Council Member Williams 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 10, 2008**  
**(b) Special Meeting Minutes of June 16, 2008**  
**(c) Regular Minutes of June 17, 2008**

Action: Deferred to September 30, 2008 per City Clerk.

- 2.2 Final adoption of ordinances:**  
**(a) ORD. NO. 28394 – Rezoning certain real property situated on the north side of Olsen Drive, approximately 100 feet west of Cypress Avenue (3315 Olsen Drive) to the R-2(PD) Planned Development Zoning District. PDC08-008**

2.2 (a) (Cont'd.)

Documents Filed: Proof of Publication of the title of Ordinance No. 28394 executed on September 17, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28394](#) was adopted. (10-0-1. Absent: Campos.)

- (b) **ORD. NO. 28395** – 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. PDC08-032

Documents Filed: Proof of Publication of the title of Ordinance No. 28395 executed on September 17, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28395](#) was adopted. (10-0-1. Absent: Campos.)

- (c) **ORD. NO. 28396** – Prezoning 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. C08-019

Documents Filed: Proof of Publication of the title of Ordinance No. 28396 executed on September 17, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28396](#) was adopted. (10-0-1. Absent: Campos.)

- (d) **ORD. NO. 28397** – Prezoning 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. C08-019

Documents Filed: Proof of Publication of the title of Ordinance No. 28397 executed on September 17, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28397](#) was adopted. (10-0-1. Absent: Campos.)

- (e) **ORD. NO. 28398** – Prezoning 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 Residence Zoning District. C08-019

Documents Filed: Proof of Publication of the title of Ordinance No. 28398 executed on September 17, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28398](#) was adopted. (10-0-1. Absent: Campos.)

- 2.2 (f) **ORD. NO. 28399** – 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. PDC06-126

Documents Filed: Proof of Publication of the title of Ordinance No. 28399 executed on September 17, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28399](#) was adopted. (10-0-1. Absent: Campos.)

- (g) **ORD. NO. 28400** – 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. PDC07-009

Documents Filed: Proof of Publication of the title of Ordinance No. 28400 executed on September 17, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28400](#) was adopted. (10-0-1. Absent: Campos.)

- 2.3 **As recommended by the Parks and Recreation Commission, name a new park located at the northeasterly corner of Piercy Road and Tennant Avenue as “Piercy Park”. (City Clerk)**

Documents Filed: Memorandum from City Clerk Lee Price, dated September 4, 2008, transmitting the recommendations of the Parks and Recreation Commission.

Action: The new park located at the northeasterly corner of Piercy Road and Tennant Avenue was named “Piercy Park”. (10-0-1. Absent: Campos.)

- 2.4 **As recommended by the Parks and Recreation Commission, name a new park located at North King Road and Dobbin Avenue as “Newbury Park”. (City Clerk)**

Action: Deferred for more outreach per District 3.

- 2.5 (a) **Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Subdivision Park Trust Fund (Fund 375):**

- (1) **Increase the Beginning Fund Balance by \$372,000; and**
- (2) **Increase the Hitachi Turnkey Project Design Review and Inspection appropriation to the Parks, Recreation and Neighborhood Services Department by \$372,000.**

- (b) **Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Construction Excise Tax Fund (Fund 465):**

- (1) **Increase the Beginning Fund Balance by \$30,000; and**
- (2) **Increase the Community Facilities District No. 14 Feasibility Study Project appropriation to the Department of Public Works by \$30,000.**

**CEQA: Not a Project. (City Manager’s Office/Public Works/Parks, Recreation and Neighborhood Services)**

2.5 (Cont'd.)

Documents Filed: Memorandum from Budget Director Jennifer Maguire, Director of Public Works Katy Allen and Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated September 2, 2008, recommending adoption of appropriation ordinance and funding sources resolution amendments.

Action: [Ordinance No. 28402](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Subdivision Park Trust Fund for the Hitachi Turnkey Project Design Review and Inspection; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”; [Resolution No. 74587](#), 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 Subdivision Park Trust Fund”; [Ordinance No. 28403](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Construction Excise Tax Fund for the Community Facilities District No. 14 Feasibility Study Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption” and [Resolution No. 74588](#), 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 Construction Excise Tax Fund”, were adopted. (10-0-1. Absent: Campos.)

- 2.6
- (a) **Approve an agreement with the Department of Energy to conduct the Solar America Cities activities, for the term of July 1, 2008 through June 30, 2010, and to accept a grant in an amount not-to-exceed \$200,000.**
  - (b) **Adopt a resolution authorizing the City Manager to negotiate and execute a First Amendment to the Department of Energy grant agreement to revise the total program cost over the two year term of the grant agreement of not-to-exceed \$463,464.**
  - (c) **Adopt the following Appropriation Ordinance and Funding Source Resolution amendments in the General Fund:**
    - (1) **Increase the estimate in the General Fund for Revenue from the Federal Government by \$110,606.**
    - (2) **Increase the Environmental Services Department’s personal services appropriation by \$40,311.**
    - (3) **Increase the Environmental Services Department’s non-personal/equipment appropriation by \$70,295.**

**CEQA: Not a Project. (Environmental Services/City Manager’s Office)**

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean and Budget Director Jennifer Maguire, dated September 2, 2008, recommending approval of a grant agreement, adoption of a resolution and appropriation ordinance and funding sources resolution amendments.

## 2.6 (Cont'd.)

Action: An agreement with the Department of Energy to conduct the Solar America Cities activities, for the term of July 1, 2008 through June 30, 2010, and to accept a grant in an amount not-to-exceed \$200,000 was approved; [Resolution No. 74589](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a First Amendment to the Grant Agreement with the United States Department of Energy to Revise the Total Program Cost Over the Two Year Term in an Amount Not To Exceed \$463,464”; [Ordinance No. 28404](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the General Fund for the Environmental Services Department’s Personal Services and Non-Personal/Equipment; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption” and [Resolution No. 74590](#), 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. (10-0-1. Absent: Campos.)

## 2.7 **Approve a Contract Change Order No. 1 for the Switchgear M5, Interim Ring Bus, and Medium Voltage Cables Replacement Design-Build Project with Rosendin Electric, Inc., for a credit in the amount of \$300,000. CEQA: Exempt, File No. PP04-03-079. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated September 2, 2008, recommending approval of contract change order no. 1. (2) Letter from the Treatment Plant Advisory Committee, dated September 11, 2008, stating concurrence with the Staff recommendation.

Action: The Contract Change Order No. 1 for the Switchgear M5, Interim Ring Bus, and Medium Voltage Cables Replacement Design-Build Project with Rosendin Electric, Inc., for a credit in the amount of \$300,000 was approved. (10-0-1. Absent: Campos.)

## 2.8 (a) **Adopt a resolution initiating proceedings and setting a public hearing on Tuesday, October 21, 2008 at 7:00 p.m. for the reorganization/annexation of the territory designated as Winchester No. 42, which involves the annexation to the City of San José of approximately 85 gross acres of land located west of Winchester Boulevard between Stevens Creek Boulevard and Highway 280 and the detachment of the same from the appropriate special districts including Central Fire Protection, County Lighting, West Valley Sanitation, and Area No. 01 (Library Services) County Service. CEQA: Resolution No.65459. Council District 1. (Planning, Building and Code Enforcement)**

- 2.8 (b) **Adopt a resolution initiating proceedings and setting a public hearing on Tuesday, October 21, 2008 at 7:00 p.m. for the reorganization/annexation of the territory designated as Buena Vista No. 2, which involves the annexation to the City of San José of approximately 40 gross acres of land located south of West San Carlos Street, west of Meridian Avenue and the detachment of the same from the appropriate special districts including Central Fire Protection, County Lighting, Burbank Sanitary District, Sunol Sanitary District, and Area No. 01 (Library Services). CEQA: Resolution No.65459. Council District 6. (Planning, Building and Code Enforcement)**
- (c) **Adopt a resolution initiating proceedings and setting a public hearing on Tuesday, October 21, 2008 at 7:00 p.m. for the reorganization/annexation of the territory designated as Riverside No. 51 which involves the detachment of 3.4 gross acres of land located along Santa Teresa Boulevard, 100 feet southeast of Bayliss Drive from the South Santa Clara Fire Protection District. CEQA: Resolution No. 65459. Council District 2. (Planning, Building and Code Enforcement)**

Documents Filed: (1) Memoranda from Director of Planning, Building and Code Enforcement Joseph Horwedel, all three dated September 2, 2008, recommending adoption of resolutions. (2) Proof of Publication of Notice of Public Hearing, executed on September 9, 2008, submitted by the City Clerk.

Action: [Resolution No. 74591](#), entitled: "A Resolution of the Council of the City of San José Initiating the Reorganization Proceedings for the Annexation and Detachment of Certain Inhabited Territory Designated as Winchester No. 42, Described Herein and Setting the Date, Time and Place for Consideration of Such Reorganization;" [Resolution No. 74592](#) Resolution, entitled: "A Resolution of the Council of the City of San José Initiating the Reorganization Proceedings for the Annexation and Detachment of Certain Inhabited Territory Designated as Buena Vista No. 2, Described Herein and Setting the Date, Time and Place for Consideration of Such Reorganization" and [Resolution No. 74593](#), entitled: "A Resolution of the Council of the City of San José Initiating the Reorganization Proceedings for the Annexation and Detachment of Certain Inhabited Territory Designated as Riverside No. 51, Described Herein and Setting the Date, Time and Place for Consideration of Such Reorganization", were adopted. (10-0-1. Absent: Campos.)

- 2.9 **Report on bids and award of contract for the Roundtable Drive Pedestrian Lighting Improvements Project to the low bidder, San José Signal Electric Construction, Inc., in the amount of \$180,752, and approval of a contingency in the amount of \$18,000. CEQA: Exempt, File No. PP06-105. Council District 2. SNI: Edenvale/ Great Oaks. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated September 9, 2008, recommending award of the contract to the low bidder.

Public Comments: Tim Camacho (Pacific Electric Company) spoke in protest to the bid award.

## **2.9 (Cont'd.)**

Director of Public Works Katy Allen responded to Council questions.

Action: Upon motion by Council Member Williams, seconded by Council Member Chirco and carried unanimously, the motion carried unanimously, and the award of contract for the Roundtable Drive Pedestrian Lighting Improvements Project to the low bidder, San José Signal Electric Construction, Inc., in the amount of \$180,752, with related contingency was approved. (10-0-1. Absent: Campos.)

## **2.10 Approve travel by Redevelopment Agency Executive Director Harry Mavrogenes to Chicago, IL on October 1-3, 2008 to attend the San José Silicon Valley Chamber of Commerce “City-to-City” trip. Source of Funds: Redevelopment Agency. (Redevelopment Agency) (Rules Committee referral 9/10/08)**

Documents Filed: Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated September 5, 2008, requesting approval of travel.

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

### **END OF CONSENT CALENDAR**

## **STRATEGIC SUPPORT SERVICES**

### **3.2 Report of the Special Rules and Open Government Committee – August 29, 2008 Mayor Reed, Chair**

Documents Filed: The Special Rules and Open Government Committee Report dated August 29, 2008.

Action: Upon motion by Constant, seconded by Chirco and carried unanimously, the Special Rules and Open Government Committee Report and the actions of August 29, 2008 were accepted. (10-0-1. Absent: Campos.)

### **3.3 Report of the Rules and Open Government Committee – September 10, 2008 Mayor Reed, Chair**

Documents Filed: The Rules and Open Government Committee Report dated September 10, 2008.

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

- 3.5 Approve the purchase of certain City and Redevelopment Agency insurance policies (property and liability for City; property only for Redevelopment Agency) for the period October 1, 2008 to October 1, 2009 at a cost not-to-exceed \$2,000,000 from Factory Mutual Insurance Company, ACE Property & Casualty Insurance Company and Lloyds of London, Indian Harbor Insurance Company, Travelers Property Casualty Insurance Company, and Westchester Fire Insurance Company. CEQA: Not a Project. (HR)**

Action: Item 3.5 was renumbered to Item 9.3.

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

Documents Filed: The Rules and Open Government Committee Report dated August 27, 2008.

Action: Upon motion by Constant, seconded by Chirco and carried unanimously, the Rules and Open Government Committee Report and the actions of August 27, 2008 were accepted. (10-0-1. Absent: Campos.)

- 3.7 Report of the Rules and Open Government Committee – September 3, 2008  
Mayor Reed, Chair**

Documents Filed: The Rules and Open Government Committee Report dated September 3, 2008.

Action: Upon motion by Constant, seconded by Chirco and carried unanimously, the Rules and Open Government Committee Report and the actions of September 3, 2008 were accepted. (10-0-1. Absent: Campos.)

- 3.8 As referred by the Rules and Open Government Committee of September 17, 2008, consider a position of support for AB 31 (De Leon) – Statewide Park Development and Community Revitalization Act of 2008. (City Clerk)  
[Rules Committee referral 9/17/08 – Item C(1)(b)]**

Documents Filed: Memorandum from City Clerk Lee Price, dated September 19, 2008, transmitting the recommendations of the Rules and Open Government Committee.

Action: Upon motion by Council Member Chirco, seconded by Council Member Oliverio and carried unanimously, a position of support for AB31 (De Leon) – Statewide Park Development and Community Revitalization Act of 2008 was accepted. (10-0-1. Absent: Campos.)

**3.9 As referred by the Rules and Open Government Committee of September 17, 2008, consider a position of support for Measure A – Hospital Seismic Safety and Medical Facilities. (City Clerk)**

**[Rules Committee referral 9/17/08 – Items G(2) and G(1)]**

Documents Filed: Memorandum from City Clerk Lee Price, dated September 19, 2008, transmitting the recommendations of the Rules and Open Government Committee.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Liccardo and carried unanimously, a position of support for Measure A – Hospital Seismic Safety and Medical Facilities was accepted. (10-0-1. Absent: Campos.)

**3.10 As referred by the Rules and Open Government Committee of September 17, 2008, approve the recommended City positions for four (4) resolutions to be considered at the Annual League of California Cities Conference to be held in Long Beach on September 24 – 27, 2008. (City Clerk)**

**[Rules Committee referral 9/17/08 – Items G(3)]**

Documents Filed: Memorandum from City Clerk Lee Price, dated September 19, 2008, transmitting the recommendations of the Rules and Open Government Committee.

Director of Intergovernmental Relations Betsy Shotwell responded to Council questions.

Action: Upon motion by Council Member Chirco, seconded by Council Member Oliverio and carried unanimously, the recommended City positions for four resolutions to be considered at the Annual League of California Cities Conference to be held in Long Beach on September 24 through 27, 2008 were approved. (10-0-1. Absent: Campos.)

## **NEIGHBORHOOD SERVICES**

**5.1 Report of the Neighborhood Services and Education Committee – September 11, 2008  
Council Member Chirco, Chair**

Documents Filed: The Neighborhood Services and Education Committee Report dated September 11, 2008.

Action: Upon motion by Council Member Chirco, seconded by Council Member Pyle and carried unanimously, the Neighborhood Services and Education Committee Report and the actions of September 11, 2008 were accepted. (10-0-1. Absent: Campos.)

- 5.2 **Approve the Watson Park Master Plan and adopt a resolution incorporating environmental mitigation measures as set forth in the Mitigation Monitoring and Reporting Program for the project. CEQA: Mitigated Negative Declaration, File No. PP07-130. Council District 3. SNI: 13<sup>th</sup> Street. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated September 2, 2008, transmitting the master plan report of Watson Park and recommending approval of the master plan and adoption of a resolution.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Oliverio and carried unanimously, [Resolution No. 74599](#), entitled: “A Resolution of the Council of the City of San José Approving the Watson Park Remediation Action Plan and Master Plan Project, For Which an Initial Study/Mitigated Negative Declaration was Prepared in Accordance with the California Environmental Quality Act and Adopting a Mitigation Monitoring and Reporting Program”, was adopted. (10-0-1. Absent: Campos.)

## **TRANSPORTATION & AVIATION SERVICES**

- 6.1 **Report of the Transportation and Environment Committee – September 8, 2008  
Council Member Williams, Chair**

Documents Filed: The Transportation and Environment Committee Report dated September 8, 2008.

Action: Upon motion by Council Member Williams, seconded by Council Member Pyle and carried unanimously, the Transportation and Environment Committee Report and the actions of September 8, 2008 were accepted. (10-0-1. Absent: Campos.)

## **ENVIRONMENTAL & UTILITY SERVICES**

- 7.1 (a) **Adopt a “Cities Keep It Clean Resolution” expressing the City’s commitment to work cooperatively with Save the Bay and other program participants in the *Cities Keep It Clean* Program and to strive to implement a majority of the *Cities Keep It Clean* Program Actions to improve water quality in our creeks, rivers, and the San Francisco Bay.**
- (b) **Direct staff to continue developing strategies to protect Bay from trash by:**
- (1) **Requiring local retail stores to dramatically decrease the use of plastic grocery bags, requiring or encouraging reusable bags through ban or fee programs.**
  - (2) **Requiring local food establishments to dramatically reduce the use of non-biodegradable/non-compostable take out food containers through ban or fee programs.**
  - (3) **Establishing green waste/composting programs to facilitate proper disposal of bio-plastic alternatives to Styrofoam and plastic bags.**
  - (4) **Establishing a fee based fund for clean up of litter hot spots.**

- 7.1 (c) **Reduce Pharmaceutical contamination from the Bay by establishing permanent medicine disposal sites that are easy and convenient for individuals to use to reduce flushing medications into local waterways.**

**CEQA: Not a Project. (Environmental Services)**

Action: Deferred to October 7, 2008 per Administration.

- 7.2 **Approve the City Water Conservation Plan, which will be used by City staff as a guidance document to implement water conservation efforts through Fiscal Year 2010-11. CEQA: Not a Project. (Environmental Services)**

**[Transportation and Environment Committee 9/8/08 – Item (e)]**

Documents Filed: Memorandum from Senior Executive Analyst Vilcia Rodriguez, dated September 9, 2008, transmitting the Water Conservation Plan.

Director of Environmental Services John Stufflebean introduced Deputy Director of Environmental Services Mansour Nasser, who summarized the Staff report.

Mayor Reed expressed support for the plan and added that short and long term efforts for water are needed because water conservation is a priority of the City of San José.

Director of Environmental Services John Stufflebean responded to Council questions and comments.

Vice Mayor Cortese requested that the City Attorney analyze the issue of tiered rates to promote conservation concerns for water.

Action: Upon motion by Council Member Williams, seconded by Council Member Pyle and carried unanimously, the City Water Conservation Plan was approved, and the City Attorney was requested to analyze the issue of tiered rates to promote conservation. (10-0-1. Absent: Campos.)

- 7.3 (a) **Adopt a resolution approving a new Council Policy entitled “Private Sector Green Building Policy” for new construction.**

- (b) **Direct staff to draft an ordinance establishing mandatory green building Standards for private sector development for Council adoption.**

**CEQA: Exempt. Planning Commission recommends approval (7-0-0). (Planning, Building and Code Enforcement)**

**[Transportation and Environment Committee 9/8/08 – Item (h)]**

Action: Deferred to October 7, 2008 per Mayor.

## JOINT COUNCIL/REDEVELOPMENT AGENCY

The Joint Council Redevelopment Agency convened at 2:26 p.m. to consider Items 9.1, 9.2 and 9.3 in a Joint Session.

- 9.1 (a) **Approve a joint use agreement among the City of San José, San José Redevelopment Agency and the Oak Grove School District for the design, construction and joint use of a Community Center and parking lot on the Caroline Davis Intermediate School campus.**
- (b) **City Council certification that (1) funding strategies will be pursued so that the projected funding for operation and maintenance of the Community Center will be made available in fiscal year 2010-2011, the first year of operation and (2) appropriate efforts will be undertaken so that those funding strategies cover the entire cost of the Community Center project, including operation and maintenance costs, as to not require a decrease in existing basic neighborhood services.**

**CEQA: Mitigated Negative Declaration, File No. PP08-003. Council District 2. SNI: Edenvale/Great Oaks. (City Manager's Office/Redevelopment Agency)**

Documents Filed: Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes and City Manager Debra Figone, dated September 8, 2008, recommending approval of a joint use agreement and Council certification.

Note: Item 9.1 and 9.2 were heard together. See Item 9.2 for discussion and further action.

Action: Upon motion by Council Member Williams, seconded by Council Member Pyle and carried unanimously, a joint use agreement among the City of San José, San José Redevelopment Agency and the Oak Grove School District for the design, construction and joint use of a Community Center and parking lot on the Caroline Davis Intermediate School campus was approved and the City Council certified that: (1) Funding strategies will be pursued so that the projected funding for operation and maintenance of the Community Center will be made available in fiscal year 2010-2011, the first year of operation. (2) Appropriate efforts will be undertaken so that those funding strategies cover the entire cost of the Community Center project, including operation and maintenance costs, as to not require a decrease in existing basic neighborhood services. (10-0-1. Absent: Campos.)

- 9.2 (a) **Conduct a public hearing as required by Health and Safety Code Section 33679 and adopt a resolution by the City Council making certain determinations required by Health and Safety Code Section 33445 for Agency funding of the Edenvale Community Center ("Center").**
- (b) **Approve a Cooperation Agreement by the City Council and Redevelopment Agency Board providing for the Agency's construction of the Center, the City's occupation and maintenance of the Center, for the transfer of City funds in the amount of \$5,307,000 to Agency for construction of the Center, and the transfer of all the Agency's rights, title and interest in the Center following its completion.**

- 9.2 (c) **Adopt a resolution by the Redevelopment Agency Board:**
- (1) **Approve the proposed increase of \$5,307,000 to the FY 2008-09 Adopted Capital Budget, Miscellaneous Revenue line item from City San José.**
  - (2) **Approve an adjustment to the FY 2008-09 Adopted Capital Budget adding \$9,628,153 to the Edenvale/Great Oaks – Edenvale Community Center project line in the Strong Neighborhood Initiative (SNI) Redevelopment Area.**
  - (3) **Amend the FY 2008-09 Agency Appropriations Resolution.**
- (d) **Adopt the following 2008-2009 Appropriation Ordinance amendments in the General Fund (Fund 001):**
- (1) **Establish a Transfer to the Redevelopment Agency for the Edenvale Community Center in the amount of \$1,435,000.**
  - (2) **Decrease in the Neighborhoods Capital Improvements Fund Earmarked Reserve by \$1,435,000.**
- (e) **Adopt the following 2008-2009 Appropriation Ordinance amendments in the Construction Tax and Property Conveyance Tax Fund; Parks Purposes Council District #2 (Fund 378):**
- (1) **Establish a transfer to the Redevelopment Agency for the Edenvale Community Center in the amount of \$1,517,000.**
  - (2) **Establish an Edenvale Community Center Fixtures, Furniture and Equipment appropriation to the Parks, Recreation, and Neighborhood Services Department in the amount of \$600,000.**
  - (3) **Increase the Council District 2 Public Art appropriation by \$59,000.**
  - (4) **Decrease the Reserve: District 2 Community Center by \$2,117,000.**
  - (5) **Decrease the Ending Fund Balance by \$59,000.**
- (f) **Adopt the following 2008-2009 Appropriation Ordinance amendments in the Construction Tax and Property Conveyance Tax Fund: City-Wide Parks Purposes (Fund 391):**
- (1) **Establish a transfer to the Redevelopment Agency for the Edenvale Community Center in the amount of \$1,065,000.**
  - (2) **Decrease the Reserve: Calpine Open Space by \$565,000.**
  - (3) **Decrease the Reserve: District 2 Community Center by \$500,000.**
- (g) **Adopt the following 2008-2009 Appropriation Ordinance amendments in the Subdivision Park Trust Fund (Fund 375):**
- (1) **Establish a transfer to the Redevelopment Agency for the Edenvale Community Center in the amount of \$1,290,000.**
  - (2) **Decrease the Reserve: District 2 Community Center by \$1,290,000.**
- (h) **Adopt a resolution by the Redevelopment Agency Board approving the award of a construction contract to Ralph Larsen & Son, Inc., the lowest responsive bidder, in the amount of \$12,594,000, for the construction of the Edenvale Community Center, and authorizing a construction contingency of \$906,000 for a total contract amount of \$13,500,000.**

- 9.2 (i) **Approve the second amendment to the agreement by the Redevelopment Agency Board with Carrier Johnson Architects, in the amount of \$432,250 for a total contract amount not-to-exceed \$1,747,490, amending the scope of services to include contract administration and project close out, modifying the Schedule of Performance and extending the term of the agreement to June 30, 2010.**
- (j) **Approve the second amendment to the agreement by the Redevelopment Agency Board with Gilbane Building Company, in the amount of \$860,000 for a total contract amount not-to-exceed \$1,260,000, amending the scope of services to include construction administration and project close out, modifying the Schedule of Performance and extending the term of the agreement to June 30, 2010.**

**CEQA: Mitigated Negative Declaration, File No PP08-003. Council District 2. SNI: Edenvale/Great Oaks. (City Manager's Office/Redevelopment Agency)  
(Deferred from 9/9/08 – Item 9.1)**

Documents Filed: (1) Memorandum from Council Member Williams, dated September 19, 2008, recommending approval of the Staff recommendations. (2) Memorandum from City Manager Debra Figone and Redevelopment Agency Executive Director Harry S. Mavrogenes, dated September 8, 2008, recommending conducting a public hearing, approval of a cooperation agreement, adoption of an Agency resolution, adoption of appropriation ordinance amendments, award of a construction contract to Ralph Larsen and Sons, Inc., second amendment to the agreement with Carrier Johnson Architects and second amendment to the agreement with Gilbane Building Company. (3) Supplemental memorandum from City Manager Debra Figone and Executive Director Mavrogenes, dated September 22, 2008, providing additional information related to Public Art budgeting for the proposed Edenvale Community Center. (4) Letter from Redevelopment Agency Project Manager Mary Jo Coash McCully to Gonsalves & Stronck Construction, dated September 9, 2008, regarding acknowledgement of their communication containing new information about their Roeber's Plumbing (their designated subcontractor). (5) Notice of Intent to recommend award of contract to Ralph Larsen and Sons, Inc. for the Edenvale Community Center Project dated August 26, 2008. (6) Email from Gonsalves & Stronck Construction to Redevelopment Agency Project Manager Mary Jo Coash McCully, dated September 3, 2008, regarding their listed plumbing subcontractor, Roeber's Plumbing. (7) Two letters from Bell, Rosenberg & Hughes LLP, dated September 11 and September 19, 2008, regarding the Gonsalves & Stronck Construction Company, Inc.'s Protest of Notice of Intent to Recommend Award of Contract to Ralph Larsen and Sons Inc. for the proposed Edenvale Community Center. (8) Letter from Roeber's Plumbing to Gonsalves & Stronck Construction, dated September 10, 2008, regarding the Edenvale Community Center.

Mayor Reed opened the public hearing.

Redevelopment Agency Director Bill Ekern provided an overview of the Edenvale Community Center.

## 9.2 (Cont'd.)

Public Comments: Manny Barbara, Superintendent and Dennis Hawkins, President (Oak Grove School District), spoke in support of the Staff recommendations. Roger Hughes (Gonsalves & Stroch) protested the award of the contract to Ralph Larson & Sons.

Mayor Reed closed the public hearing.

In response to inquiry from Council Member Williams, City Attorney Richard Doyle reported that Gonsalves & Stronck Construction Company, Inc.'s prime plumbing subcontractor did not meet minimum requirements.

Discussion followed.

Action: Upon motion by Council Member Williams, seconded by Council Member Pyle and carried unanimously, [Resolution No. 74594](#), 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 for the Proposed Edenvale Community Center"; [Ordinance No. 28405](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the General Fund for the Transfer to the Redevelopment Agency for the Edenvale Community Center; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption"; [Ordinance No. 28406](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District No. 2 for the Transfer to the Redevelopment Agency for the Edenvale Community Center, for the Edenvale Community center Fixtures, Furniture and Equipment and for the Council District 2 Public Art; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption"; [Ordinance No. 28407](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Construction and Conveyance Tax Fund: Citywide Parks Purposes for the Edenvale Community Center; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption"; [Ordinance No. 28408](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Subdivision Park Trust Fund for the Transfer to the Redevelopment Agency for the Edenvale Community Center; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption"; [Redevelopment Agency Resolution No. 5855](#), entitled: "A Resolution of the Board of Directors of the Redevelopment Agency of the City of San José Approving Amendments to the Fiscal Year 2008-2009 Capital Budget and Fiscal Year 2008-2009 Agency Appropriations Resolution in Connection with the Edenvale Community Center" and [Redevelopment Agency Resolution No. 5856](#), entitled: "A Resolution of the Board of Directors of the Redevelopment Agency of the City of San José Approving the Award of a Construction Contract to Ralph Larsen & Son, Inc. in the Amount of \$12,594,000 for the Construction of the Edenvale Community Center and Authorizing a Construction Contingency in the Amount of \$906,000", were adopted;

## 9.2 (Cont'd.)

A Cooperation Agreement by the City Council and Redevelopment Agency Board providing for the Agency's construction of the Center, the City's occupation and maintenance of the Center, for the transfer of City funds in the amount of \$5,307,000 to Agency for construction of the Center, and the transfer of all the Agency's rights, title and interest in the Center following its completion; the second amendment to the agreement by the Redevelopment Agency Board with Carrier Johnson Architects, in the amount of \$432,250 for a total contract amount not-to-exceed \$1,747,490, amending the scope of services to include contract administration and project close out, modifying the Schedule of Performance and extending the term of the agreement to June 30, 2010, and the second amendment to the agreement by the Redevelopment Agency Board with Gilbane Building Company, in the amount of \$860,000 for a total contract amount not-to-exceed \$1,260,000, amending the scope of services to include construction administration and project close out, modifying the Schedule of Performance and extending the term of the agreement to June 30, 2010, were approved. (10-0-1. Absent: Campos.)

## 9.3 **Approve the purchase of certain City and Redevelopment Agency insurance policies (property and liability for City; property only for Redevelopment Agency) for the period October 1, 2008 to October 1, 2009 at a cost not-to-exceed \$2,000,000 from Factory Mutual Insurance Company, ACE Property & Casualty Insurance Company and Lloyds of London, Indian Harbor Insurance Company, Travelers Property Casualty Insurance Company, and Westchester Fire Insurance Company. CEQA: Not a Project. (Human Resources)**

Documents Filed: Memorandum from Director of Human Resources Mark Danaj, dated September 2, 2008, recommending approval of the purchase.

Item 9.3 was renumbered from Item 3.5

City Attorney Richard Doyle and Risk Manager/Deputy Director of Human Resources John Dam responded to Council questions.

Action: Upon motion by Council Member Chirco, seconded by Council Member Constant and carried unanimously, the purchase of certain City and Redevelopment Agency insurance policies (property and liability for City; property only for Redevelopment Agency) for the period October 1, 2008 to October 1, 2009 at a cost not-to-exceed \$2,000,000 from Factory Mutual Insurance Company, ACE Property & Casualty Insurance Company and Lloyds of London, Indian Harbor Insurance Company, Travelers Property Casualty Insurance Company, and Westchester Fire Insurance Company was approved. (10-0-1. Absent: Campos.)

The Joint Council Redevelopment Agency meeting was adjourned at 2:53 p.m.

## **OPEN FORUM**

- (1) Michael Van Every congratulated the Mayor and City Council for bringing Tesla Motors and 1,000 new Green Jobs to the City of San José.
- (2) Mark Trout suggested posting a 19 MPH speed limit at the Camden Exit off Highway 85.

## **ADJOURNMENT**

The Council of the City of San José adjourned the afternoon session at 4:09 p.m.

## RECESS/RECONVENE

The City Council recessed at 4:09 p.m. from the afternoon Council Session and reconvened at 7:03 p.m. in the Council Chambers, City Hall.

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

Absent: Council Members - Campos. (Excused)

City Clerk Lee Price read the requests for continuance of the applications. Upon motion by Council Member Liccardo, seconded by Council Member Chu and carried unanimously, the below noted continuances and actions were taken as indicated. (10-0-1. Absent: Campos.)

## NEIGHBORHOOD SERVICES

### **5.3 Approve the Action, Collaboration, Transformation - A plan to break the cycle of youth violence and foster hope, the Mayor's Gang Prevention Task Force Strategic Work Plan 2008-2011. CEQA: Not a Project. (Parks, Recreation and Neighborhood Services/Police) [PSFSS Committee referral August 21, 2008 – Item (c)]**

Documents Filed: (1) Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso and Police Chief Robert Davis, dated August 7, 2008, recommending approval of the work plan. (2) Draft Action Collaboration Transformation, Mayor's Gang Prevention Task Force Strategic Work Plan 2008-2011.

Mayor Reed introduced the video of the Mayor's Gang Prevention Task Force "Safe Summer Initiative". Mayor Reed presented comments on the Strategic Plan.

Deputy Director of Parks, Recreation and Neighborhood Services Angel Rios provided an overview of the Mayor's Gang Prevention Task Force Strategic Work Plan for 2008-2011.

Public Comments: Speaking in support of the Mayor's Gang Prevention Task Force Strategic Work Plan for 2008-2011 were Mayor Dennis Donohue of Salinas, Corazon Tomalinas (First 5 Santa Clara County), Bob Nunez (East Side Union High School District), Don McCloskey (San José Unified School District), Pastor Sonny Lara and Angelina Macias (Firehouse Corporation), Robert Rios (Victory Outreach Cease Fire), Pastor Dick Bernal (Jubilee Church), Maria Angulo, Brandie Blackwell, Maria Santoyo, Jasmine Fuentes (Girl Scouts), Lucen Arellano (Next Door Solutions), Heriberto Montezuma, Maria Trejo (ROAR), Newitt Joyner Jr. (Aquarius Project), Deborah Morello (Alma), Kevin Liao and Destiny Trevino (San José Youth Commission), Hank Rosendin, William Diaz and Maria Gonzalez (Clean Slate Tattoo Removal Program), Ed Mendence (Remax Commercial), Paul Alvarado (Goodyear/Mastic), Tina Morrill and Elsie Aranda.

### 5.3 (Cont'd.)

Motion: Council Member Nguyen moved approval of the Mayor's Gang Prevention Task Force Strategic Work Plan for 2008-2011. Council Member Constant seconded the motion.

Deputy Director of Parks, Recreation and Neighborhood Services Angel Rios responded to Council questions and comments. A short discussion followed.

Action: On a call for the question, the motion carried unanimously, the Mayor's Gang Prevention Task Force Strategic Work Plan for 2008-2011 was approved. (10-0-1. Absent: Campos.)

## PUBLIC HEARINGS

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

**CEQA: Strong Neighborhoods Initiative Program EIR Resolution No. 71045. Council District 2. SNI: Edenvale/Great Oaks. 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 Deputy City Manager Norberto Duenas and Deputy Executive Director Redevelopment Agency John Weis, dated September 11, 2008, transmitting the Planning Commission recommendations and the Edenvale/Great Oaks SNI Neighborhood Improvement Plan Amendment. (2) Proof of Publication of Notice of Public Hearing, executed on July 25, 2008, submitted by the City Clerk.

Mayor Reed opened the public hearing.

Strong Neighborhood Initiative Manager Laura Lam provided the Staff report.

Public Comments: Speaking in support of the Plan Amendment were Elizabeth Lopez, Judy Purrington and Yasmin Rios (Edenvale/Great Oaks Plan Implementation Coalition).

Mayor Reed closed the public hearing.

## 11.2 (Cont'd.)

Action: Upon motion by Council Member Williams, seconded by Council Member Pyle and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and the Strong Neighborhoods Initiative (SNI) Edenvale/Great Oaks Neighborhood Improvement Plan Amendment as the renewed community vision for the future of the Edenvale/Great Oaks SNI Planning Area was accepted and the Edenvale/Great Oaks area residents, property owners and community members were encouraged to continue to dedicate their time, energy and resources towards the Plan Amendment while continuing with their community-building activities. (9-0-2. Absent: Campos, Nguyen.)

## COMMUNITY & ECONOMIC DEVELOPMENT

- 4.2 Denial or continued processing of a General Plan amendment request to change the Land Use/Transportation Diagram designation from Silver Creek Planned Residential Community/Non-Urban Hillside to a new land use designation to be determined to allow 290-340 assisted-living units on five acres of a 21-acre site on the east side of Dove Road approximately 400 feet north of Hassler Parkway (4200 Dove Hill Road) (Salvatore Caruso, Applicant/Stanislaus and Eleanore Kuehne, Owner). CEQA: Incomplete. Director of Planning, Building and Code Enforcement recommends denial. Planning Commission recommends continued processing of the General Plan amendment request to change the Land Use/Transportation Diagram designation to a new land use designation to allow up to 340 assisted-living units on five acres of the subject site (5-2-0, Commissioner Zito and Jensen opposed). GP08-08-03 – District 8**

Documents Filed: (1) Replacement memorandum from Vice Mayor Cortese, dated September 23, 2008, recommending approval of the Planning Commission recommendation to continue processing the proposed General Plan amendment for the property on the east side of Dove Road. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP08-08-03, dated August 11, 2008. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated September 2, 2008, transmitting the Planning Commission recommendation.

Planner Andrew Crabtree provided the Staff report. He reported that the Director of Planning, Building and Code Enforcement recommended denial but the Planning Commission recommends continued processing the General Plan Amendment.

Mayor Reed opened the public hearing.

Public Comments: Salvatore Caruso, Applicant, spoke to the merits of the project to allow 290-340 assisted living units on five acres of a 21 acre site on the east side of Dove Road. Richard Russell, adjacent property owner, spoke in support of the project.

Mayor Reed closed the public hearing.

#### 4.2 (Cont'd.)

Motion: Vice Mayor Cortese moved approval of his memorandum dated September 23, 2008, approving the Planning Commission recommendation to continue processing the General Plan Amendment request. Council Member Constant seconded the motion.

Mayor Reed and Council Member Liccardo expressed concerns about hillside development.

Meeting disclosures were provided by Mayor Reed and Council Members Williams, Liccardo, Oliverio, Chirco and Pyle.

Action: On a call for the question, the motion carried unanimously, the Planning Commission recommendation to continue processing the General Plan amendment request was approved as outlined in the memorandum from Vice Mayor Cortese, dated September 23, 2008. (9-0-2. Absent: Campos, Nguyen.)

#### 4.3 **Conduct a public hearing and adoption of a resolution ordering the reorganization of territory designated as Meridian No. 73 which involves the annexation to the City of San José of an approximately 147 gross acre County island located between Hamilton Avenue and Dry Creek Road, west of Meridian Avenue and east of the City of Campbell boundary, and the detachment of the same from the appropriate special districts including Central Fire Protection, County Lighting, West Valley Sanitation, and Area No. 01 (Library Services) County Service. CEQA: Resolution No. 65459. Council District 6. (Planning, Building and Code Enforcement)**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated September 2, 2008, recommending adoption of a resolution. (2) Two letters from the public, dated September 16, and September 19, 2008, regarding the annexation.

Mayor Reed opened the public hearing.

Public Comments: Speaking in opposition to the annexation to the City of San José with a preference to be annexed to the City of Campbell were Jerry Bleeg, Chuck Jeffery and Chris Wolfgram.

Mayor Reed closed the public hearing.

Motion: Council Member Oliverio moved approval of the Staff recommendations. Council Member Liccardo seconded the motion.

Council Member Constant expressed concern that the City is annexing residents against their will and added that it was not the right thing to do.

City Attorney Richard Doyle responded to Council questions and concerns.

#### 4.3 (Cont'd.)

Action: On a call for the question, the motion carried, [Resolution No. 74596](#), entitled: “A Resolution of the Council of the City of San José Making Determinations and Ordering the Annexation and Detachment of Certain Inhabited, Unincorporated Territory Designated as Meridian No. 73, Subject to Liability for General Indebtedness of the City”, was adopted. (8-1-2. Noes: Constant. Absent: Campos, Nguyen.)

#### 4.4 **Conduct a public hearing and adoption of a resolution ordering the reorganization of territory designated as Hamilton No. 59 which involves the annexation to the City of San José of an approximately 131 gross acre County island located between Meridian Avenue and Leigh Avenue, north of Hamilton Avenue, and the detachment of the same from the appropriate special districts including Central Fire Protection, County Lighting, West Valley Sanitation, and Area No. 01 (Library Services) County Service. CEQA: Resolution No. 65459. Council District 6. (PBCE)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated September 2, 2008, recommending adoption of a resolution.

Mayor Reed opened the public hearing.

Public Comments: Chuck Jeffery spoke in opposition to the annexation.

Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Pyle and carried unanimously, [Resolution No. 74597](#), entitled: “A Resolution of the Council of the City of San José Making Determinations and Ordering the Annexation and Detachment of Certain Inhabited, Unincorporated Territory Designated as Hamilton No. 59, Subject to Liability for General Indebtedness of the City”, was adopted. (9-0-2. Absent: Campos, Nguyen.)

#### 4.5 **Conduct a public hearing and adoption of a resolution ordering the reorganization of territory designated as Burbank No. 41 which involves the annexation to the City of San José of an approximately 16 gross acre County island located on the north side of Stevens Creek Boulevard, west of Revey Avenue, including additional properties along Bellerose Drive, Di Salvo Avenue, Ciro Avenue, O’Connor Drive and Bailey Avenue, and the detachment of the same from the appropriate special districts including Central Fire Protection, County Lighting, West Valley Sanitation, and Area No. 01 (Library Services) County Service. CEQA: Resolution No. 65459. Council District 6. SNI: Burbank/Del Monte. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated September 2, 2008, recommending adoption of a resolution.

#### 4.5 (Cont'd.)

Action: Upon motion by Council Member Oliverio, seconded by Council Member Pyle and carried unanimously, Resolution No. 74598 adopted entitled: "A Resolution of the Council of the City of San José Making Determinations and Ordering the Annexation and Detachment of Certain Inhabited, Unincorporated Territory Designated as Burbank No. 41, Subject to Liability for General Indebtedness of the City", was adopted. (9-0-2. Absent: Campos, Nguyen.)

### **PUBLIC HEARINGS ON CONSENT CALENDAR**

- 11.1 (a) **Consideration of an ordinance rezoning the real property located at the southwest terminus of Fortran Court (4405 Fortran Drive) from A(PD) Planned Development Zoning District to IP Industrial Park Zoning District to allow industrial park uses, including religious assembly in a vacant building on a 5.15 gross acre site (Fortran Court Investors, LLC, Owner). CEQA: Exempt. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required. C08-039 – District 4**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C08-039, dated September 2, 2008, recommending approval. (2) Proof of Publication of Notice of Public Hearing, executed on August 29, 2008, submitted by the City Clerk.

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

Action: Upon motion by Council Member Williams, seconded by Council Member Chu and carried unanimously, the recommendation of the Planning Director was approved, [Ordinance No. 28409](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Southwest Terminus of Fortran Court, Approximately 1,000 Feet Southerly of Nortech Parkway (4405 Fortran Drive) to IP Industrial Park Zoning District", was passed for publication. (9-0-2. Absent: Campos, Nguyen.)

### **END OF PUBLIC HEARINGS ON CONSENT CALENDAR**

## PUBLIC HEARINGS

- 11.3 Consideration of an ordinance rezoning the real property located on the southwest corner of Berryessa Road and N. 15<sup>th</sup> Street (674 Berryessa Road) from the R-2 Residential Zoning District to the A(PD) Planned Development Zoning District to allow the demolition of a two-family dwelling and three multi-family dwellings and the construction of up to four single-family detached residences on a 0.25 gross acre site (Somot Properties, LLC). SNI: 13<sup>th</sup> Street. CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0).  
PDC08-016 – District 3**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC08-016, dated September 2, 2008, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated September 11, 2008, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on August 19, 2008 submitted by the City Clerk. (4) Letter from Gerry De Young, Ruth and Going, dated September 19, 2008, regarding the rezoning.

Public Comments: Mayor Reed opened the public hearing. Gerry De Young, representing the Applicant, spoke about the project. Mayor Reed closed the public hearing.

Motion: Council Member Liccardo moved approval of the Staff recommendations with two amendments as described in “Action”. Council Member Pyle 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 recommendation of the Planning Commission and the Planning Director was approved, and [Ordinance No. 28410](#) entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Southwest Corner of Berryessa Road and North Fifteenth Street (674 Berryessa Road) to A(PD) Planned Development Zoning District”, was passed for publication, as amended: Technical modification of the minimum parcel size to 2,300 square feet. Up to 40% of the 15th Street frontage may have a setback of 7 feet on the ground floor, excluding porches. (9-0-2. Absent: Campos, Nguyen.)

- 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. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0).  
PDC07-096 – District 6  
(Continued from 9/9/08 – Item 11.4)**

## 11.4 (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC07-096, dated August 11, 2008, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated September 11, 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. (4) Two letters from the public dated September 23, 2008 regarding the proposed rezoning.

Mayor Reed opened the public hearing.

Meeting disclosures were made by Mayor Reed, Vice Mayor Cortese, Council Members Oliverio, Constant, Chu, Liccardo, Williams and Chirco.

Director of Planning, Building and Code Enforcement Joseph Horwedel stated that he envisions this project as a prototype of future building with high density and a 15 foot setback.

Public Comments: Michael Van Avery, Architect, spoke to the merits of the project.

Expressing concern about the setback were Brian Ward, Robert Ward, (Buena Vista Neighborhood Association), Chet Lockwood (Fiesta Lanes Action Group), Jean Dresden, Deborah Arant and Helen Chapman (SHPNA).

Michael Van Avery presented a rebuttal and expressed support of the Staff's recommendation for 15 foot setbacks.

Mayor Reed closed the public hearing.

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

Motion: Council Member Oliverio moved approval of the Staff recommendations with the addition that the park and open space for this project have a permanent easement for public access. Council Member Constant seconded the motion.

Mayor Reed, Council Members Liccardo, Williams, Chirco and Vice Mayor Cortese expressed their support for the project.

Action: On a call for the question, the motion carried unanimously the recommendation of the Planning Commission and the Planning Director was approved, and [Ordinance No. 28411](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property on the Southwest Corner of West San Carlos Street and Meridian Avenue to A(PD) Planned Development Zoning District", was passed for publication as amended, with the addition that the park and open space for this project have a permanent easement for public access. (9-0-2. Absent: Campos, Nguyen.)

## **ADJOURNMENT**

The Council of the City of San José was adjourned at 10:12 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC  
City Clerk

smd/9-23-08 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 2:54 p.m. to consider Items 8.1 and 8.2 in a Joint Session.

- 8.1 (a) Adoption of a resolution by the Redevelopment Agency Board:**
- (1) Authorizing the issuance of Merged Area Redevelopment Project Tax Allocation Bonds, in two or more series (tax-exempt and taxable), in an aggregate principal amount not to exceed \$119,000,000 (the 2008 Bonds); and approving in substantially final form the Twelfth Supplemental Indenture of Trust with Union Bank, as Trustee.**
  - (2) Authorizing the competitive sale of the 2008 Bonds.**
  - (3) Approving in substantially final form the Preliminary Official Statement (POS), Official Notices Inviting Bids and Notice of Intention to Sell Bonds, and authorizing Agency staff to distribute the POS.**
  - (4) Authorizing all officers, agents and employees to take such actions and execute such documents necessary and desirable to accomplish issuance of the 2008 Bonds.**
  - (5) Authorizing the Executive Director to qualify the 2008 Bonds for municipal bond insurance in order to give bidders for the 2008 Bonds the option to purchase such insurance.**
- (b) Adoption of a resolution by the City Council approving the issuance of Merged Area Redevelopment Project Tax Allocation Bonds, in two or more series (tax-exempt and taxable), in an aggregate principal amount not to exceed \$119,000,000, and affirming subordination of statutory pass-through payments to debt service on the bonds.**

**[MERGED]**

Documents Filed: (1) Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated September 9, 2008, recommending adoption of resolutions. (2) Supplemental memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated September 16, 2008, distributing the Preliminary Official Statement.

Redevelopment Agency Executive Director Harry S. Mavrogenes presented comments. Redevelopment Agency Chief Financial Officer David Baum provided a staff presentation and responded to Council questions. Discussion followed.

Action: Upon motion by Council Member Pyle, seconded by Council Member Liccardo and carried unanimously, Redevelopment Agency Resolution No. 5858 and Resolution No. 74595, entitled: "A Resolution of the Council of the City of San José Approving the Issuance and Sale of Not To Exceed \$119,000,000 Combined Aggregate Principal Amount of Merged Area Redevelopment Project Taxable Tax Allocation Bonds, Series 2008A-T and Merged Area Redevelopment Project Tax Allocation Bonds, Series 2008B", were adopted. (10-0-1. Absent: Campos.)

- 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 Agency funding of the proposed improvements to the SoFA Sidewalk Demonstration Project.**
- (b) Approval by the Redevelopment Agency Board of a contract 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 and 8/26/08 - Item 8.1)**

Action: Item 8.2 was dropped.

- 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] (Deferred from 8/26/08 - Item 8.3)**

Documents Filed: Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes and City Manager Debra Figone, dated September 11, 2008, recommending acceptance of the design.

Redevelopment Agency Director Bill Ekern provided an update of the Convention Center Phase 1 Expansion Project on the design for the renovation and expansion. Chief Development Officer Paul Krutko provided an update on the operational aspects and the Team San José Agreement and responded to Council questions.

Extensive discussion followed.

Vice Mayor Cortese requested that Staff return with an analysis of the impact to the retail community.

Action: Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, the schematic design for the renovation and expansion of the San Jose McEnery Convention Center was accepted. Staff was requested to return with an analysis of the impact to the retail community. (10-0-1. Absent: Campos.)

The Council of the City of San José and Redevelopment Agency Board was adjourned at 4:06 p.m.