



MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, OCTOBER 7, 2008

The Council of the City of San José convened in regular session at 8:37 a.m. in the Council Chambers at City Hall.

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

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

Upon motion unanimously adopted, Council recessed at 8:40 a.m. to a Closed Session in Room W133, (A) Public Employee Performance Evaluation Pursuant to Government Code Section 54957: (1) Title: Independent Police Auditor; Name: Barbara Attard. (B) to confer with Legal Counsel with respect to existing litigation pursuant to Government Code Subsection (a) of Section 54956.9: (1) Sutter's Place, Inc., dba Bay 101 v. City of San José, et al. and Consolidated Actions; Names of Parties Involved: Sutter's Place, Inc., dba Bay 101; City of San José, et al. and Does 1-10. Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV-086614; Amount of Money or other Relief Sought: Seeking a declaration of Bay 101's legal rights and duties with respect to SJMC sections 4.77.060A(2) and 4.77.100 and 11 U.S.C. section 362(a) and an injunction enjoining the City from attempting to enforce these codes against Bay 101 as to the collection of penalties and interest for the previously unpaid monthly tax for July and August 2002; (2) Campbell Union High School District v. City of San José, et al. Name of Parties Involved: Campbell Union High School District; City of San José; Does 1-10. Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV-083413; Amount of Money or other Relief Sought: In excess of \$25,000, according to proof; (C) 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. (D) to confer with Legal Counsel with respect to the case of: Campbell Union High School v. City (District 9); PRNS/Workers' Comp reimbursement for trip and fall at Camden Community Center/Authority to reject settlement demand of \$41,000. 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 10:32 a.m. and reconvened at 1:30 p.m. in the Council Chambers.

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

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

INVOCATION

Cher Wilson, Cambrian Library Teen Idol 2008, sang "Candle on the Water". (District 9)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Council Member Chu and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Item 1.5 deferred to October 21, 2008. (9-0-2. Absent: Campos, Williams)

CEREMONIAL ITEMS

1.2 Presentation of a proclamation declaring the week of October 4 – 11, 2008 as "No Drugs Down the Drain Week" in the City of San José. (Constant)

Action: Mayor Reed and Council Member Constant recognized the week of October 4 – 11, 2008 as "No Drugs Down the Drain Week" in the City of San José.

1.4 Presentation of a proclamation declaring the week of October 5 – 11, 2008 as "Fire Prevention Week" in the City of San José. (Mayor)

Action: Mayor Reed recognized the week of October 5 – 11, 2008 as "Fire Prevention Week" in the City of San José.

1.3 Presentation of a commendation to Jeff Oberdorfer with First Community Housing for their development and construction of a 100% affordable model green community at Gish Apartments. (Liccardo)

Action: Mayor Reed and Council Member Liccardo recognized and commended Jeff Oberdorfer with First Community Housing for their development and construction of a 100% affordable model green community at Gish Apartments.

1.5 Presentation of a proclamation declaring October as “Domestic Violence Awareness Month” in the City of San José. (Williams/Constant/City Manager’s Office)

Action: Deferred to October 21, 2008.

CONSENT CALENDAR

Upon motion by Council Member Pyle, seconded by Council Member Oliverio and carried unanimously, the Consent Calendar was approved, and the below listed actions were taken as indicated. (8-0-3. Absent: Campos, Cortese, Williams.)

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 28409 – 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. C08-039**

Documents Filed: Proof of Publication of the title or Ordinance No. 28409 executed on September 8, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28409](#) was adopted. (8-0-3. Absent: Campos, Cortese, Williams.)

- (b) **ORD. NO. 28410 – Rezoning certain real property situated at the southwest corner of Berryessa Road and North Fifteenth Street (675 Berryessa Road) to A(PD) Planned Development Zoning District. PDC08-016**

Documents Filed: Proof of Publication of the title or Ordinance No. 28410 executed on September 8, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28410](#) was adopted. (8-0-3. Absent: Campos, Cortese, Williams.)

- (c) **ORD. NO. 28411 – Rezoning certain real property on the southwest corner of West San Carlos Street and Meridian Avenue to A(PD) Planned Development Zoning District. PDC07-096**

Documents Filed: Proof of Publication of the title or Ordinance No. 28411 executed on September 8, 2008, submitted by the City Clerk.

Action: [Ordinance No. 28411](#) was adopted. (8-0-3. Absent: Campos, Cortese, Williams.)

- 2.3 Accept the finding reports from Kafoury, Armstrong & Company, LLP relating to the Bay 101 Conditional Approval of Stock Transfer, quarter ending June 30, 2008. (City Auditor)**

Documents Filed: Memorandum from City Auditor Sharon Erikson, dated September 16, 2008, submitting the finding report from Kafoury, Armstrong & Company, LLP relating to the Bay 101 Conditional Approval of Stock Transfer.

Action: The report was accepted. (8-0-3. Absent: Campos, Cortese, Williams.)

- 2.4 Approve first amendment to an existing continuation agreement with Management Partners, Inc. to expand the scope of services in order to assist staff with the development of the structural deficit elimination plan at an additional cost of \$47,250, to allow for additional deficit elimination plan services in an amount not-to-exceed \$100,000, and to extend the term by six months from January 1, 2009 to June 30, 2009, at a total maximum compensation not-to-exceed \$397,200. CEQA: Not a Project. (City Manager's Office)**

Documents Filed: Memorandum from Budget Director Jennifer Maguire, dated September 24, 2008, recommending approval of a first amendment and communications support services to develop a structural deficit elimination plan.

Action: The first amendment to an existing continuation agreement with Management Partners, Inc. expanding the scope of services for development of the structural deficit elimination plan and to allow for additional deficit elimination plan was accepted.(8-0-3. Absent: Campos, Cortese, Williams.)

- 2.5 (a) **Adopt a resolution authorizing the Office of Economic Development to develop, produce and conduct the inaugural 2009 San José Cycling Classic on City streets and various City venues throughout the week of February 14-22, 2009, as a City Event with registration fees of \$50-\$100 per rider.**
- (b) **Adopt Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:**
- (1) **Establish a City-wide Appropriation to the Office of Economic Development for San José Cycling Classic Event in the amount of \$275,000; and**
- (2) **Increase the estimate for Other Revenue by \$275,000.**

CEQA: Exempt, File No. PP05-277. (Economic Development/City Manager's Office)

Documents Filed: Memorandum from Chief Development Officer Paul Krutko and Budget Director Jennifer Maguire dated September 8, 2008, recommending adoption of a resolution to conduct the 2009 San José Cycling Classic and adoption of appropriation ordinance and funding sources resolution amendments in the General Fund.

Action: [Resolution No. 74611](#), entitled "A Resolution of the Council of the City of San José Authorizing the Office of Economic Development to Develop, Produce and Conduct the Inaugural 2009 San José Cycling Classic on City Streets and Various City Venues throughout the Week of February 14-22, 2009, as a City Event with Registration Fees of \$50-\$100 per Rider", [Ordinance No. 28416](#), entitled "An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the General Fund for the San José Cycling Classic Event; and providing that this ordinance shall become effective immediately upon adoption", and [Resolution No. 74612](#), 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. (8-0-3. Absent: Campos, Cortese, Williams.)

- 2.6 **Adopt a resolution authorizing the City Manger to negotiate and execute an agreement with UeBERSEE, to fabricate and install an artwork for the Norman Y. Mineta San José International Airport North Concourse Concession Area in an amount not to exceed \$700,000. CEQA: Resolution Nos. 67380 and 71451, File No. PP07-227. (Economic Development)**

Documents Filed: Replacement memorandum from Chief Development Officer Paul Krutko dated October 2, 2008, recommending adoption of a resolution and updating CEQA information.

Action: [Resolution No. 74613](#), entitled "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with UeBERSEE for a Work of Art for the Norman Y. Mineta San José International Airport North Concourse Concession Area in an amount not to exceed \$700,000", was adopted. (8-0-3. Absent: Campos, Cortese, Williams.)

- 2.7 Adopt a resolution authorizing the Director of Finance to:**
- (a) Execute a Maintenance and Support Agreement for support services from Motorola Inc, for the Automated Fingerprint Identification System in an amount not-to-exceed \$380,528 for the period of October 1, 2008 through September 30, 2009.**
 - (b) Execute subsequent maintenance agreements subject to the appropriation of funds. CEQA: Not a Project. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott P. Johnson, dated September 15, 2008, recommending adoption of a resolution.

Action: [Resolution No. 74614](#), entitled “A Resolution of the Council of the City of San José Authorizing the Director of Finance to Execute an Agreement with Motorola, Inc. for the Automated Fingerprint Identification System”, was adopted. (8-0-3. Absent: Campos, Cortese, Williams.)

- 2.8 Adopt a resolution authorizing the City Manager, or designee, to:**
- (a) Submit a grant application to Valley Transportation Authority in the amount not- to-exceed \$1,377,000 for Congestion Mitigation and Air Quality Improvement (CMAQ) program grant funding for the Lower Guadalupe River (Gold Street to Highway 880) Trail Project.**
 - (b) Accept any grant funds and to negotiate and execute any and all documents relating to the grant funding agreement with State of California.**
- CEQA: Mitigated Negative Declaration, File No. PP04-323. Council Districts 3 and 4. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated September 15, 2008, recommending adoption of a resolution.

Action: [Resolution No. 74615](#), entitled “A Resolution of the Council of the City of San José Authorizing the City Manager, or Designee, to Submit a Grant Application to Valley Transportation Authority in the Amount not to exceed \$1,377,000 for Congestion Mitigation and Air Quality Improvement Program Funding for the Lower Guadalupe River (Gold Street to Highway 880) Trail Project”, was adopted. (8-0-3. Absent: Campos, Cortese, Williams.)

2.9 Adopt a resolution:

- (a) **Initiating proceedings to consider the single-family house located at 333 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, December 2, 2008 at 1:30 p.m. for Council consideration of City Landmark designation of the structure noted above. CEQA: Not a Project. Council District 3. (PBCE)**

Documents Filed: (1) Memorandum from Director, Planning, Building and Code Enforcement, Joseph Horwedel, dated September 15, 2008, recommending adoption of a resolution. (2) Affidavit of Routing executed on October 10, 2008, and distributed by the City Clerk.

Council Member Liccardo abstained due to a conflict of interest.

Action: Upon motion by Council Member Pyle, seconded by Council Member Oliverio and carried unanimously, [Resolution No. 74616](#), 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 Hobson House, presently located at 333 N. Fifteenth Street, as a City Landmark of Special Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of a Historic Nature”, was adopted. (7-0-3-1: Absent: Campos, Cortese, Williams. Disqualified: Liccardo.)

2.10 Adopt a resolution authorizing the City Manager to negotiate and execute the following grant agreements with Our City Forest:

- (a) **An Annual Operating Grant Agreement for FY 2008-2009 in an amount not-to-exceed \$159,000;**
- (b) **A Matching Grant Agreement in an amount not-to-exceed \$120,000 for Our City Forest to apply towards its local match required for the AmeriCorps Grant.**

CEQA: Exempt, File No. PP04-313. (Transportation)

Documents Filed: Memorandum from Director of Transportation James R. Helmer, dated September 15, 2008, recommending adoption of a resolution.

Action: [Resolution No. 74617](#), entitled “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Annual Operating Grant Agreement with Our City Forest for 2008-2009 and a Matching Grant Agreement with Our City Forest to Apply Funds towards its Local Match Required for the Americorps Grant”, was adopted. (8-0-3. Absent: Campos, Cortese, Williams.)

- 2.11 Adopt the following Appropriation Ordinance amendments in the General Fund:**
- (a) Establish an appropriation to the Department of Transportation for the Seven Trees Boulevard Sidewalk Project in the amount of \$970,000.**
 - (b) Decrease the Neighborhood Capital Improvements Fund Reserve by \$970,000.**

CEQA: Exempt, File No. PP08-137. Council District 7. SNI: Seven Trees. (Transportation/City Manager's Office)

Documents Filed: Memorandum from Director of Transportation James R. Helmer and Budget Director Jennifer Maguire, dated September 15, 2008, recommending adoption of appropriation ordinance amendments in the General Fund.

Council Member Nguyen pulled this item from the Consent Calendar to express her appreciation to the Staff of Department of Transportation and Public Works for their work on this project and to the residents of the Seven Trees neighborhood in their efforts to improve their neighborhood by implementing the 2001 Seven Trees Neighborhood Plan.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Liccardo and carried unanimously, [Ordinance No. 28417](#), entitled "An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the General Fund for the Seven Trees Boulevard Sidewalk Project; and Providing that this Ordinance shall become effective immediately upon adoption", was adopted. (8-0-3. Absent: Campos, Cortese, Williams.)

- 2.12 (a) 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:**
- (1) Increase the estimate for Earned Revenue by \$98,000.**
 - (2) Establish an appropriation to the Department of Transportation for the Spartan Keyes Sidewalk Improvement Project (PSM 547) in the amount of \$98,000.**
- (b) Adopt a resolution making certain determinations regarding the related expenditure of Redevelopment Agency funds on certain public improvements in connection with the Spartan Keyes Sidewalk Improvement Project as more specifically described in the memorandum from the Redevelopment Agency, dated July 11, 2008.**

CEQA: Exempt, File No. PP06-105. Council Districts 3 and 7. SNI: Spartan/Keyes. (Transportation/Public Works)

Documents Filed: Memorandum from Director of Transportation James R. Helmer and Budget Director Jennifer Maguire, dated September 15, 2008, recommending adoption of appropriation ordinance and funding sources resolution amendments.

City Clerk Lee Price submitted a correction to agenda item 2.12(b), replacing the reference to public improvements to the "Ann Darling Drive Improvement Project" with the "Spartan Keyes Improvement Project".

2.12 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Chirco and carried unanimously, [Resolution No. 74618](#), 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 Services for Redevelopment Capital Projects Fund”, [Ordinance No. 28418](#), 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 Spartan Keyes Sidewalk Improvement Project; and Providing that this Ordinance shall become effective immediately upon adoption”, and [Resolution No. 74619](#), entitled “A Resolution of the Council of the City of San José Making Certain Determinations Regarding the Expenditure of Redevelopment Agency Funds for Certain Public Improvements in Connection with the Sidewalk Improvements on Keyes Street in the Spartan Keyes Strong Neighborhoods Initiative Redevelopment Project Area”, were adopted. (8-0-3. Absent: Campos, Cortese, Williams.)

2.13 Request for an excused absence for Councilmember Nguyen from the Closed Session of the City Council meeting on September 23, 2008 due to Illness: Doctor’s Appointment. (Nguyen) (Rules Committee referral 9/24/08)

Documents Filed: Memorandum from Council Member Nguyen, dated September 22, 2008, requesting an excused absence from the September 23, 2008 Closed Session.

Action: The absence was excused. (8-0-3. Absent: Campos, Cortese, Williams.)

2.14 Approve travel by City Auditor Sharon Erickson to Seattle, Washington on October 27-28, 2008 to attend the Association of Government Accountant’s Fourth Annual Nation Performance Management Conference. Source of Funds: City’s Auditor’s Non Personal Appropriation and Professional Development Funds. (City Auditor) (Rules Committee referral 10/1/08)

Documents Filed: Memorandum from City Auditor Sharon Erikson, dated September 26, 2008, requesting approval of travel.

Action: The travel request was approved.

END OF CONSENT CALENDAR

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 the 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.
- (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)

(Deferred from 9/23/08 – Item 7.1)

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated September 2, 2008, recommending adoption of a resolution.

Director of Environmental Services John Stufflebean offered a presentation on San José’s partnership with Save the Bay “Cities Keep it Clean” program and responded to questions from Council.

Public Comment: Felicia Borrego Madsen (Save the Bay) and Brian Schmidt (Committee for Green Foothills) spoke in support of the program. Marc Boyd spoke in support and added that paper bags should be included in the ban and encouraged stronger constituent involvement in cleanup programs.

Action: Upon motion by Council Member Pyle, seconded by Council Member Oliverio and carried unanimously, [Resolution No. 74623](#), “A Resolution of the Council of the City of San José to Express 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”, was adopted. (9-0-2. Absent: Campos, Williams.)

- 7.2 (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)]

(Deferred from 9/23/08 – Item 7.3)

Documents Filed: (1) Joint memorandum from Mayor Reed and Council Members Chirco and Liccardo, dated October 2, 2008, recommending adoption of the Private Sector Green Building Policy without the recommended performance levels in 2012. (2) Memorandum from Senior Executive Analyst Vilcia Rodriguez, dated September 9, 2008, transmitting the recommendations of the Transportation and Environment Committee. (3) Letter from John Sobrato, Sobrato Organization Chair, dated October 7, 2008, expressing support for the proposed Private Sector Green Policy for New Construction without the verification of compliance through the requirement of third party verification.

Planner Stahlhut offered a presentation on the standards for private sector “green building” development.

Motion: Council Member Chirco moved approval of the Staff recommendations, Council Policy #6-32 and the memorandum she cosigned with Mayor Reed and Council Member Liccardo, dated October 2, 2008, recommending the Green Building Policy for New Construction without recommended performance levels in 2012. Council Member Liccardo seconded the motion.

Public Comments: Marc Boyd and Tom Horan spoke in favor of the staff’s recommendation. Richard Truempler (Sobrato Organization) offered support for the policy but spoke in opposition to the third party verification requirement, recommending instead that the City verify compliance through the existing process. Val Alexeff (Build it Green) expressed concerns that thresholds may be placed too high.

Planner Stahlhut responded to questions on pipeline projects. Senior Planner Michael Rhoades and Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti responded to questions from Council. Extensive Council discussion followed.

Action: On a call for the question, the motion carried unanimously, [Resolution No. 74624](#), entitled “A Resolution of the Council of the City of San José Approving a New Council Policy entitled *Private Sector Green Building Policy* for New Construction”, was adopted, excluding “recommended performance levels in 2012”. (9-0-2. Absent: Campos, Williams.)

- 4.2 (a) **Adopt a resolution authorizing the City Manager, or her designee, to negotiate and execute a Memorandum of Understanding between the City of San José and Tesla Motors regarding their intent to bring an electric automobile manufacturing facility to San José including the use of 89 acres of buffer land at the Water Pollution Control Plant located at Zanker Road and Highway 237.**
- (b) **Accept the following report, Estimate of Economic and Fiscal Impacts to be generated by Tesla Motors by Keyser Marston Associates, Inc., on the Economic and Fiscal Impact of a proposed automobile manufacturing and assembly facility located in San José.**

CEQA: Not a Project. Council District 4. (Economic Development)

Documents Filed: (1) Memorandum of Understanding from Chief Development Officer Paul Krutko, dated September 17, 2008, regarding the intent of the City and Tesla to bring an Electric Automobile Manufacturing Facility to San José. (2)) Memorandum from Chief Development Officer Paul Krutko, dated September 17, 2008, recommending acceptance of a report outlining the economic and fiscal impact of a proposed automobile manufacturing facility locating in San José. (3) Letter from David Wall, dated October 7, 2008, expressing opposition to staff's recommendations.

Chief Development Officer Paul Krutko offered a presentation on the fiscal and economic impact of locating the Tesla facility to San José.

Mayor Reed disclosed a meeting with Tesla representatives.

Tesla Vice President of Business Development Diarmuid O'Connell expressed his appreciation to the City of San José for their support.

Public Comment: David Wall spoke in opposition to locating the Tesla Plant at this site. Marc Boyd spoke in support of locating the Tesla Plant in San José.

Action: Upon motion by Council Member Pyle, seconded by Council Member Liccardo and carried unanimously, [Resolution No. 74620](#), entitled "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Memorandum of Understanding with Tesla Motors", was adopted. (9-0-2. Absent: Campos, Williams.)

- 3.6 As referred by the Rules and Open Government Committee of October 1, 2008, approve a \$5,000 grant agreement from Council District 8 funds to the San José Evergreen Rotary Club, a nonprofit organization. (City Clerk)
[Rules Committee referral 10/1/08 – Item G(5)]**

Documents Filed: Memorandum from City Clerk Lee Price, dated October 1, 2008, transmitting the recommendations of the Rules and Open Government Committee.

Action: Upon motion by Council Member Constant, seconded by Council Member Chirco and carried unanimously, a \$5,000 grant agreement from Council District 8 funds to the San José Evergreen Rotary Club was approved, with notation from Vice Mayor Cortese that HP grant funds may be included as source of funding, in addition to the Council District 8 budget and the District's Constituent Outreach funds, and funds are to be drawn from any combination of available funds from the three funding sources. (9-0-2. Absent: Campos, Williams.)

- 7.3 Authorize the Mayor to sign the Bay Area Climate Compact with the Cities of San Francisco and Oakland, the Silicon Valley Leadership Group and Regional Non-Government Organizations, which contains action area goals and aggregate targets for regional reduction of greenhouse gas emissions, as part of San José's carbon reduction plan. (Mayor)
(Rules Committee referral 9/24/08)**

Documents Filed: (1) Memorandum from Mayor Reed, dated September 19, 2008, recommending adoption of the Bay Area Climate Change Compact. (2) Email from Carl Berg, Berg & Berg Developers, Inc., submitting objections to the proposed green building standards.

Action: Upon motion by Council Member Chirco, seconded by Council Member Pyle and carried unanimously, Mayor Reed was authorized to sign the Bay Area Climate Compact with the Cities of San Francisco and Oakland, the Silicon Valley Leadership Group and Regional Non-Government Organizations. (9-0-2. Absent: Campos, Williams)

- 4.3 Approval of a Year 2 Workplan for the Redevelopment Agency and City Departments to advance the "small wonders" component of the Downtown Vision promoted by 1st ACT. (Economic Development/Redevelopment Agency)
[Community & Economic Development Committee referral 9/22/09 – Item (b)]**

Documents Filed: Memorandum from Senior Executive Analyst Vilcia Rodriguez, dated September 25, 2008, transmitting the recommendations of the Community and Economic Development Committee.

Assistant Director of Economic Development Kim Walesh introduced the "Small Wonders" component of the downtown vision promoted by 1st Act, and 1st Act Co-Founder and Managing Director Connie Martinez offered a presentation on the SoFa activation project and retail strategy.

4.3 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Oliverio and carried unanimously, the Year 2 Workplan for the Redevelopment Agency and City Departments to advance the "Small Wonders" component of the Downtown Vision promoted by 1st ACT was approved. (8-0-3. Absent: Campos, Cortese, Williams.)

STRATEGIC SUPPORT SERVICES

3.2 Report of the Rules and Open Government Committee – September 24, 2008 Mayor Reed, Chair

Action: Deferred to October 21, 2008 per City Clerk.

3.4 As recommended by the Rules and Open Government Committee on September 24, 2008, approve the recommended City positions for Propositions 1A, 3, 5, 6, 7, 10 and 12 on the November 4, 2008 California General Election Ballot:

- (a) **Adopt a position of support for Proposition 1A – Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century (Replaces Proposition 1).**
- (b) **Adopt a position of support for Proposition 3 – Children’s Hospital Bond Act.**
- (c) **Adopt a position to oppose Proposition 5 – Nonviolent Offender Rehabilitation Act of 2008.**
- (e) **Adopt a position to oppose Proposition 7 – The Solar and Clean Energy Act of 2008.**
- (f) **Adopt a position to oppose Proposition 10 – The California Renewable Energy and Clean Alternative Fuel Act.**
- (g) **Adopt a position of support for Proposition 12 – Veterans Bond Act of 2008.**
(City Manager’s Office) (Rules Committee referral 9/24/08)

Documents Filed: Memorandum from City Clerk Lee Price, dated September 25, 2008, transmitting the recommendations of the Rules and Open Government Committee.

Council Member Oliverio requested that Item (d) be pulled aside for a separate vote.

Action: Upon motion by Council Member Constant, seconded by Council Member Chirco and carried unanimously, City positions for Propositions 1A, 3, 5, 7, 10 and 12 on the November 4, 2008 California General Election Ballot were approved as indicated. (8-0-3. Absent: Campos, Cortese, Williams.)

(d) **Adopt a position to oppose Proposition 6 – Safe Neighborhoods Act.**

Action: Upon motion by Council Member Constant, seconded by Council Member Chirco and carried, a position of opposition was adopted for Proposition 6. (7-1-3. Noes: Oliverio. Absent: Campos, Cortese, Williams.)

- 3.5 As referred by the Rules and Open Government Committee of October 1, 2008, consider approval of an expenditure in the amount not to exceed \$4,500 from the Mayor's Office budget to hold a Faith Leaders Appreciation Breakfast on October 16, 2008. (City Clerk)
[Rules Committee referral 10/1/08 – Item G(4)]**

Documents Filed: Memorandum from City Clerk Lee Price dated October 1, 2008, transmitting the recommendations of the Rules and Open Government Committee. .

Action: Upon motion by Council Member Liccardo, seconded by Council Member Oliverio and carried unanimously, an expenditure in the amount not to exceed \$4,500 from the Mayor's Office budget to hold a Faith Leaders Appreciation Breakfast on October 16, 2008 was approved. (8-0-3. Absent: Campos, Cortese, Williams.)

- 4.1 Report of the Community & Economic Development Committee – September 22, 2008 - Councilmember Pyle, Chair**

Documents Filed: The Community & Economic Development Committee Report dated September 22, 2008.

Action: Upon motion by Council Member Pyle, seconded by Council Member Chirco and carried unanimously, the Community & Economic Development Committee Report and actions of September 22, 2008 were accepted. (8-0-3. Absent: Campos, Cortese, Williams.)

- 4.4 (a) Public hearing and adoption of a resolution designating the L. D. Bohnett House located at the easterly side of Plaza Drive, approximately 160 feet southerly of Palm Haven Avenue (940 Plaza Drive) as a landmark of special historic, architectural, cultural, aesthetic or engineering interest or value of an historic nature. (City Landmark No. HL08-171)**
- (b) Public hearing on the Historical Property Contract (California Mills Act No. MA08-003) between the City of San José and the owners of L. D. Bohnett House (City Landmark No. HL08-171) on a 0.25 acre site, located at the easterly side of Plaza Drive, approximately 160 feet southerly of Palm Haven Avenue (940 Plaza Drive), (Joan E. Bohnett, Property Owner) and adoption of a resolution approving the contract. The proposed contract, which is available to owners of designated City Landmark buildings, would facilitate a property tax reassessment and partial tax relief in return for a binding agreement to rehabilitate and maintain the historical and architectural character of the property for at least a ten-year period.**

CEQA: Exempt. Council District 6. (Planning, Building and Code Enforcement)

4.4 (Cont'd.)

Documents Filed: (1) Memorandum from Historic Landmarks Commission Secretary Joseph Horwedel, dated September 15, 2008, recommending adoption of a resolution. (2). Proof of Publication of Notice of Public Hearing, executed on August 19, 2008, submitted by the City Clerk (3) Affidavit of Routing executed on October 10, 2008, and distributed by the City Clerk.

Public Comments: 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 Pyle and carried unanimously, [Resolution No. 74621](#) 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 L.D. Bohnett House located at 940 Plaza Drive as a City Landmark of Special Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of a Historic Nature", and [Resolution No. 74622](#), entitled "A Resolution of the Council of the City of San José approving a Historic Landmark Preservation Agreement with Joan E. Bohnett for the L.D. Bohnett House (City Landmark No. HL08-171), which house is located at 490 Plaza Drive", were adopted. (8-0-3. Absent: Campos, Cortese, Williams.)

NEIGHBORHOOD SERVICES

5.2 Hold a Consolidated Action Plan public hearing process to be concluded on October 21, 2008 regarding:

- (a) The proposed assumption by Center for Training and Careers of a \$550,000 Community Development Block Grant (CDBG) 15-year conditional loan previously awarded to St. Vincent de Paul as fiscal agent to Kelly Park Community Resource Center; and
- (b) Changes to the Fiscal Year 2008-09 Consolidated Plan to include a CDBG award not-to-exceed \$600,000 to CTC for the acquisition of the multi-service facility located at 749 Story Road.

CEQA: Not a Project. Council District 7. (Housing)

Documents Filed: Memorandum from Director of Housing Leslye Krutko dated September 15, 2008, recommending that a consolidated action plan public hearing be held.

Director of Housing Leslye Krutko responded to questions from Council.

Mayor Reed opened the public hearing.

5.2 (Cont'd.)

Public Comments. Speaking in support of the assumption by Center for Training and Careers of a Community Development Block Grant were: Rose Amador, John Hammett, John Baker, Sabrina Hernandez, Jannette Ledezma, Jose Castro and Rudy Pastor (Center for Training and Careers), and Dennis King (Hispanic Chamber of Commerce Silicon Valley).

Mayor Reed closed the public hearing.

5.3 Approve an ordinance amending Section 7.20.520 of Chapter 7.20 of Title 7 of the San José Municipal Code to allow residents who obtained a cat or dog license from another jurisdiction and are annexed into the City to transfer the remainder of the license period. CEQA: Not a Project. (General Services)

Documents Filed: Memorandum from Director of General Services Peter Jensen, dated September 15, 2008, recommending approval of an ordinance.

Action: Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, [Ordinance No. 28419](#), entitled “An Ordinance of the City of San José Amending Section 7.20.520 of Chapter 7.20 of Title 7 of the San José Municipal Code to allow Residents who obtained a Cat or Dog License from another Jurisdiction and are Annexed into the City to Transfer the remainder of the License Period”, was passed for publication. (8-0-3. Absent: Campos, Cortese, Williams.)

OPEN FORUM

- (1) Adolph Burton expressed concerns over the closing of the Iola Williams’s Senior Center. He was referred to Deputy City Manager Ed Shikada.
- (2) Mark Trout expressed religious viewpoints.

RECESS/RECONVENE

The City Council recessed at 4:02 p.m. from the afternoon Council Session and reconvened at 7:01 p.m. in the Council Chambers, City Hall.

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

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

CEREMONIAL ITEMS

1.1 Presentation of a proclamation declaring October as “Filipino History Month” in the City of San José. (Chu/Cortese/Liccardo)

Action: Mayor Reed, Vice Mayor Cortese and Council Members Chu and Liccardo recognized October as “Filipino History Month” in the City of San José.

1.6 Presentation of a proclamation declaring the month of October as “International Walk to School Month” in the City of San José. (Constant) (Rules Committee referral 10/1/08)

Action: Mayor Reed and Council Member Constant recognized October as “International Walk to School Month” in the City of San José.

PUBLIC HEARINGS ON CONSENT CALENDAR

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

11.1 (a) Consideration of an ordinance rezoning the real property located at 1480 Saratoga Avenue from R-1-5 Residence Zoning District to CO Commercial Office Zoning district to allow office uses on a 0.23 gross acre site (Keyhan Koushyar, Owner). CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required. C08-041 – District 1

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C08-041, dated September 17, 2008, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated September 15, 2008, transmitting the Planning Commission recommendations of approval. (3) Proof of Publication of Notice of Public Hearings, executed on September 12, 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 Director was approved, [Ordinance No. 28420](#), entitled “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the East Side of Saratoga Avenue, 300 Feet Southerly of Los Felice Drive (1480 Saratoga Avenue) to CO Commercial Office Zoning District”, was passed for publication. (9-0-2. Absent: Campos, Williams.)

- 11.1 (b) **Consideration of an ordinance rezoning the real property located on the west side of Piedmont Road approximately 220 feet north of Suncrest Avenue (1199 Piedmont Road) from R-1-8 Residential District to A(PD) Planned Development Zoning District to demolish the existing single-family residence and to construct three new single-family detached residences on a 0.37 gross acre site (Linh Van Nguyen). CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1). PDC07-021 – District 4**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC07-021, dated September 3, 2008, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated September 15, 2008, transmitting the Planning Commission recommendations of approval. (3) Proof of Publication of Notice of Public Hearings, executed on August 29, 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 Director and the Planning Commission was approved, [Ordinance No. 28421](#), entitled “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the West Side of Piedmont Road approximately 220 feet North of Suncrest Avenue (1199 Piedmont Road) to A(PD) Planned Development Zoning District”, was passed for publication. (9-0-2. Absent: Campos, Williams.)

- (c) **Consideration of a street renaming to change Sabal Drive west of Berryessa Road to Sabal Court in order to clarify property locations for post office and emergency services. Council District 4. CEQA: Exempt. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required. ST08-003 – District 4**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. ST08-003, dated September 3, 2008, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated September 15, 2008, transmitting the Planning Commission recommendations of approval. (3) Proof of Publication of Notice of Public Hearings, executed on September 19, 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 Director was approved, [Resolution No. 74625](#), entitled “A Resolution of the Council of the City of San José Renaming the Eastern Extension of Sabal Drive to Sabal Court”, was adopted. (9-0-2. Absent: Campos, Williams.)

END OF PUBLIC HEARINGS ON CONSENT CALENDAR

PUBLIC HEARINGS

- 11.2 Consideration of an ordinance rezoning the real property located on the east side of Entrada Cedros approximately 200 feet south of Giuffrida Avenue (5550 Entrada Cedros) from the R-1-2 Residential Zoning District to the A(PD) Planned Development Zoning District to allow eight single-family attached residences on a 0.52 gross acre site (Henning James C and Mark K Trustee, Maxwell Rachel D Trustee & Et Al, Owner). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0).
PDC07-012 – District 10(9-0-1. Absent: Campos, Cortese.)**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC07-012, dated August 29, 2008, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated September 15, 2008, transmitting the Planning Commission recommendation of approval. (3) Proof of Publication of Notice of Public Hearings, executed on August 29, 2008, submitted by the City Clerk.

Mayor Reed opened the public hearing.

Public Comments: David Bartlett, Karen Solheim, and Bob Gonzalez (Blossom Hill Homes Association) spoke in opposition to the rezoning and expressed the need for a more complete traffic study.

Mayor Reed closed the public hearing.

Director, Planning, Building and Code Enforcement Joseph Horwedel addressed traffic concerns and assured that Public Works has been studying the issue and will continue further studies with the Planning Commission.

Action: Upon motion by Council Member Pyle, seconded by Council Member Constant and carried unanimously, the recommendation of the Planning Director and the Planning Commission was approved, [Ordinance No. 28423](#), entitled “An Ordinance of the City of San José Rezoning Certain Real Property Situated at the East Side of Entrada Cedros, approximately 200 Feet South of Giuffrida Avenue (5550 Entrada Cedros), to A(PD) Planned Development Zoning District”, was passed for publication. (9-0-2. Absent: Campos, Williams.)

NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS

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

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/ Units</u>	<u>Type</u>	<u>Proposed Decision</u>
9955	East side of 9 Taft Drive, 200 feet north of Blossom Valley Drive		Masoumi Brothers LLC	5 Lots / 5 Units	Single Family Detached	Approve

ADJOURNMENT

The Council of the City of San José was adjourned at 7:22 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

rmk/10-07-08MIN

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/COUNCIL

- 8.1 (a) **City Council and Redevelopment Agency Board approval of a Cooperation Agreement between the City and the Redevelopment Agency to convey the property located at 292 Stockton Avenue and 610 West Julian Street from the City to the Agency for a purchase price of \$1,585,000.**
- (b) **Adoption of a resolution by the Redevelopment Agency Board approving an adjustment to the FY 2008-09 Adopted Capital Budget adding \$1,000,000 to the Demolition/Acquisition of Westinghouse Warehouse Building project line in the Julian-Stockton Redevelopment Area, and amending the FY 2008-09 Agency appropriations resolution.**

CEQA: San Jose Downtown Strategy 2000, Resolution No 72767 and addenda thereto, File No. PP07-277. [JULIAN/STOCKTON]

Documents Filed: Memorandum from Executive Director of the Redevelopment Agency Harry S. Mavrogenes and City Manager Debra Figone, dated September 23, 2008, recommending approval of a cooperation agreement.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Liccardo and carried unanimously, a Cooperation Agreement related to real property located at 292 Stockton Avenue and 610 W. Julian Street was approved, and Redevelopment Agency Resolution No. 5860 was adopted. (8-0-3. Absent: Campos, Cortese, Williams.)

- 8.2 **City Council and Redevelopment Agency Board approval of an agreement with Empire California Investment LLC,, in the amount of \$400,000, for improvements to the property located at 499 North 11th Street for the creation of a Smart Start Center providing 80 childcare spaces to be operated under Smart Start San Jose standards. CEQA: Exempt, File No. CP08-024. [SNI – 13th STREET]**

Documents Filed: Memorandum from Executive Director of the Redevelopment Agency Harry S. Mavrogenes and City Manager Debra Figone, dated September 25, 2008, recommending approval of a property improvement agreement.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Oliverio and carried unanimously, an agreement with Empire California Investment LLC, for improvements to the property located at 499 N. 11th Street was approved. (8-0-3. Absent: Campos, Cortese, Williams.)