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## MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, OCTOBER 28, 2008

The Council of the City of San José convened in regular session at 9:00 a.m. in the Council Chambers at City Hall.

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

Absent: Council Members - Campos. (Excused)

Upon motion unanimously adopted, Council recessed at 9:02 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) Public Employee Performance Evaluation Pursuant to Government Code Section 54957: (1) Title: City Clerk; Name: Lee Price. (C) to confer with Counsel – Anticipated Litigation. Initiation of litigation pursuant to subsection (c) of Section 54956.9 of the Government Code: Number of matters to be discussed: 2; (D) to confer with Counsel – Anticipated Litigation (Claim Not Filed). Significant exposure to litigation pursuant to subsection (b) of Section 54956.9 of the Government Code: Number of matters to be discussed: 1; (E) 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) Association of Building, Mechanical and Electrical Inspectors (ABMEI). Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and Association of Building, Mechanical and Electrical Inspectors (ABMEI); (3) International Brotherhood of Electrical Workers, Local 332 (IBEW). Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Brotherhood of Electrical Workers, Local 332 (IBEW); (4) Confidential Employees' Organizations, AFSCME Local 101 (CEO). Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and Confidential Employees' Organization, AFSCME Local 101; (5) City Association of Management

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 REPORT (Cont'd.)**

Personnel Agreement (CAMP). Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Benefit & Compensation Summary - City of San José and City Association of Management Personnel Agreement; (6) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF). Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and Municipal Employees' Federation, AFSCME Local 101, AFL-CIO. (7) Association of Maintenance Supervisory Personnel (AMSP). Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José – Association of Maintenance Supervisory Personnel (AMSP) Benefit & Compensation Summary. (8) Association of Engineers & Architects (AEA). Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and Association of Engineers & Architects (AEA). How to obtain a copy of existing contract or MOA: web: <http://www.sanjoseca.gov/employeerelations/moa.asp>; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 10:45 a.m. and reconvened at 1:30 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 Bradley J. Smith of the San José Christian Reformed Church presented the Invocation. (District 9)

## **PLEDGE OF ALLEGIANCE**

Mayor Reed and 3<sup>rd</sup> graders from the San José Christian School led the Pledge of Allegiance.

## **ORDERS OF THE DAY**

Council Member Chu moved to defer Item 6.4. The motion was seconded by Council Member Liccardo.

Public Comments: Expressing support for deferral of Item 6.4 were Airport Commission members: Catherine Matsuyo Tompkison-Graham, Frank Sweeney and Frank Kent. Dave Logan (Yellow Checker Cab Company) spoke in opposition to the deferral.

## **ORDERS OF THE DAY (Cont'd.)**

Action: The request for a deferral was denied. (4-6-1. Noes: Constant, Nguyen, Oliverio, Pyle, Williams, Reed. Absent: Campos.)

Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Item 3.7 deferred to November 4, 2008 and Item 11.2 deferred to November 18, 2008. (10-0-1. Absent: Campos.)

## **CLOSED SESSION REPORT**

The City Council voted not to appoint Barbara Attard to a second four-year term as the Independent Police Auditor for San José, commencing January 1, 2009. (6-4-1. Noes: Chu, Cortese, Liccardo, Nguyen. Absent: Campos.)

## **CEREMONIAL ITEMS**

### **1.1 Presentation of a commendation to Raley's Nob Hill Store #635 for rebuilding their store to a LEED Silver Standard. (Mayor/Williams/Economic Development)**

Action: Mayor Reed and Council Member Williams recognized and commended Raley's Nob Hill Store #635 for rebuilding their store to a LEED Silver Standard.

### **1.3 Presentation of a commendation to Anitha and Adam Beberg for their heroic efforts to save the lives of their neighbors from a fire burning in their neighbor's home. (Constant) (Rules Committee referral 10/22/08)**

Action: Mayor Reed and Council Member Constant recognized and commended Anitha and Adam Beberg for their heroic efforts.

## **CONSENT CALENDAR**

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

### **Approval of Minutes.**

- (a) Regular Minutes dated August 5, 2008**
- (b) Regular Minutes dated August 12, 2008**

Action: Deferred to November 4, 2008 per City Clerk.

- 2.3 Approve a first amendment to the agreement with Pinnacle CNG Company to extend the term of the agreement for operation and maintenance services at the Airport's Compressed Natural Gas Fueling Station from December 1, 2008 to June 30, 2010 and increase the total compensation by \$528,694, from \$939,118 to a not-to-exceed amount of \$1,467,812. CEQA: Resolution Nos. 67380 and 71451, PP 08-212. (Airport)**

Documents Filed: Memorandum from Director of Aviation William F. Sherry, dated October 6, 2008, recommending approval of a first amendment.

Action: The first amendment to the agreement with Pinnacle CNG Company to extend the term of the agreement for operation and maintenance services at the Airport's Compressed Natural Gas Fueling Station from December 1, 2008 to June 30, 2010 was approved. (10-0-1. Absent: Campos.)

- 2.4 Adopt a resolution authorizing the City Attorney to execute the Settlement Agreement and Release that provides for the payment to the City of \$958,834.07 of Franchise fees and AB939 fees, and \$27,928.46 of AB939 fees to San José Unified School District, by Browning-Ferris Industries of North America Inc. and Allied Waste Services of North America, LLC (BFI) arising out of solid waste collection services to public school districts in San José in exchange for the City's release of all obligations for Franchise fees due on BFI's service to these school districts prior to December 31, 2007, as authorized by the City Council in Closed Session on September 30, 2008. (City Attorney's Office)**

Documents Filed: Memorandum from City Attorney Doyle, dated October 16, 2008, recommending adoption of a resolution.

Action: [Resolution No. 74639](#), entitled "A Resolution of the Council of the City of San José Authorizing the City Attorney to execute a Settlement Agreement with Browning-Ferris Industries of North America, Inc. and Allied Waste Services of North America, LLC", was adopted. (10-0-1. Absent: Campos.)

- 2.5 Adopt a resolution approving the Identity Theft Prevention Program and Procedures Related to Notices of Address Discrepancies to comply with regulations issued by the Federal Trade Commission pursuant to the Fair and Accurate Credit Transactions Act of 2003 and designation of the City Manager's Office to provide oversight of the Identity Theft Prevention Program. CEQA: Not a Project. (City Manager's Office)**

Documents Filed: Memorandum from City Manager Debra Figone, dated October 15, 2008, recommending adoption of a resolution.

Action: [Resolution No. 74640](#), entitled "A Resolution of the Council of the City of San José Approving the Identity Theft Prevention Program and Procedures Related to Notices of Address Discrepancies to Comply with Regulations Issued by the Federal Trade Commission Pursuant to the Fair and Accurate Credit Transactions Act of 2003 and Designation of the City Manager's Office to Provide Oversight of the Identity Theft Prevention Program", was adopted. (10-0-1. Absent: Campos.)

- 2.6 (a) **Adopt a resolution amending Resolution No. 73256 to amend Commercial Solid Waste Collection Franchise Fees to set the commercial solid waste franchise fee for solid waste collected from public school districts and San José State University at zero if the school has a Waste Reduction and Recycling Cooperation Agreement with the City, to be effective November 1, 2008.**
- (b) **Adopt a resolution authorizing the City Manager to negotiate and execute new and amended Waste Reduction and Recycling Cooperation Agreements with public school districts and San José State University to address fees for solid waste collection services to the schools and to supersede Resolution Nos. 73878 and 73969.**
- (c) **Provide direction to Staff regarding the disposition of fees that may be remitted to the City pursuant to a proposed settlement with Browning-Ferris Industries of North America Inc. and Allied Waste Services of North America, LLC (BFI) which were collected before July 1, 2007 by BFI from public school districts.**

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

Action: Item 2.6 was renumbered to Item 7.3.

- 2.7 **Approve an award of open purchase orders for supplies, materials, equipment and services for FY 2008-2009 #4 and authorization for the Director of Finance to execute the purchase orders. CEQA: See Administration's memo to Council for specific CEQA clearance determinations on each recommended action. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott P. Johnson, dated October 6, 2008, recommending approval of an award of open purchase orders.

Action: An award of open purchase orders for supplies, materials, equipment and services for FY 2008-2009 #4 and authorization for the Director of Finance to execute the purchase orders was approved. (10-0-1. Absent: Campos.)

- 2.8 (a) **Report on bids and award of contract for the construction of Willows Senior Center Fire Damage Repair Project to the low bidder, Quality Plus Construction, Inc., for the base bid and adds Alternate No. 1 in the amount of \$352,460 and approval of contingency in the amount of \$52,869.**
- (b) **Adopt the following appropriation ordinance and funding sources resolution amendments in the General Fund:**
- (1) **Increase the other revenue estimate in the General Fund by \$730,449.**
  - (2) **Establish an appropriation to the Department of Parks, Recreation and Neighborhood Services for the Willows Senior Center Fire Damage project in the amount of \$618,380.**
  - (3) **Increase the contingency reserve by \$112,069.**

**Council District 6. CEQA: Exempt, PP08-138. (PRNS/Public Works/City Manager)**

**2.8 (Cont'd.)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, Budget Director Jennifer Maguire and Director of Public Works Katy Allen, dated October 6, 2008, recommending adoption of an Appropriation Ordinance and Funding Sources Resolution Amendment.

Action: [Ordinance No. 28429](#), entitled “An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the General Fund for the Willows Senior Center Fire Damage Project; and providing that this Ordinance shall become effective immediately upon Adoption”, and [Resolution No. 74641](#), 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.)

**2.9 Adopt a resolution authorizing the City Manager to negotiate and execute a First Amendment to the Agreement with URL Integration, Inc., extending the term through February 28, 2009 including in the Scope of Services a Return on Investment study for the Records Management System; and increasing compensation in an amount not to exceed \$60,232, with the total amount of compensation not to exceed \$292,586. CEQA: Not a Project. (Police)**

Documents Filed: Memorandum from Chief of Police Robert L. Davis, dated October 22, 2008, recommending adoption of a resolution.

Action: [Resolution No. 74642](#), 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 Agreement with URL Integration, Inc. relating to the San José Police Department Records Management System, in an additional amount not to exceed \$60,232 with total compensation not to exceed \$292,586”, was adopted. (10-0-1. Absent: Campos.)

**2.10 (a) Adopt a resolution accepting the FY 2008 Internet Crimes Against Children Continuation Grant in the amount of \$550,141 and authorize the City Manager to execute the Grant Agreement and all related documents.**  
**(b) Adopt amendments to the annual Appropriation Ordinance and the Funding Sources Resolution in the General Fund as follows:**  
**(1) Establish a City-wide appropriation to the Police Department for the FY 2008 Internet Crimes Against Children Continuation Grant in the amount of \$550,141;**  
**(2) Increase the Earned Revenue Estimate from the Federal Government by \$550,141.**

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

Documents Filed: Memorandum from Chief of Police Robert L. Davis and Budget Director Jennifer Maguire, dated October 6, 2008, recommending adoption of a resolution accepting the FY 2008 Internet Crimes Against Children Continuation Grant, and adoption of an annual appropriation ordinance and funding grant.

**2.10 (Cont'd.)**

Action: [Resolution No. 74643](#), “A Resolution of the Council of the City of San José Authorizing the City Manager to Accept a Grant from the U.S. Department of Justice Office of Criminal Justice Planning for the Internet Crimes Against Children Task Force in an amount not to exceed \$550,141, and to execute all related documents”, [Ordinance No. 28430](#), entitled “An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the General Fund for the Fiscal Year 2008 Internet Crimes Against Children Continuation Grant Fund; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”, and [Resolution No. 74644](#), 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.)

**2.11 Adopt a resolution by the City Council:**

- (a) **Stating its intention to form a Community Benefit and Improvement District in Willow Glen;**
- (b) **Preliminarily approving the Willow Glen Management Plan and Engineer's Report;**
- (c) **Setting a public hearing on December 16, 2008 at 7:00 p.m.; and**
- (d) **Calling an election for tabulation of the ballots for December 16, 2008 at 7:00 p.m.**

**CEQA: Exempt, File PP08-097. Council District 6. (Public Works)  
(Deferred from 10/21/08 – Item 4.2)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated September 29, 2008, recommending adoption of a resolution.

Council Member Oliverio pulled this item from the Consent Calendar to express appreciation to Chief Deputy General Counsel Patricia Deignan and Deputy Director Public Works Timm Borden for their hard work and dedication and to urge Council approval of the proposed project.

Public Comment: Richard Zappelli (Willow Glen Neighborhood Association) spoke in support of forming a Community Benefit and Improvement District in Willow Glen.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Liccardo and carried unanimously, [Resolution No. 74645](#), entitled “A Resolution of the Council of the City of San José Stating its Intention to Form a Community and Benefit and Improvement District in Willow Glen; Preliminarily approving the Willow Glen Community Benefit Improvement District Management Plan and Engineer’s Report; setting a Public Hearing to be held on December 16, 2008 at 7:00 P.M.; and calling an election for Tabulation of the Ballots for December 16, 2008 at 7:00 P.M.”, was adopted. (10-0-1. Absent: Campos.)

**END OF CONSENT CALENDAR**

## STRATEGIC SUPPORT SERVICES

### 3.1 Report of the City Manager, Debra Figone.

Action: City Manager Debra Figone reported on the General Fund forecast, the Governor's intention to call for a special legislative session on November 7 regarding the State budget, and commented on the recent allocation of funds for the Gang Prevention Task Force.

### 3.2 Report of the Rules and Open Government Committee – October 8, 2008 Mayor Reed, Chair

Action: Deferred to November 4, 2008 per City Clerk.

### 3.3 Report of the Public Safety, Finance and Strategic Support Committee, October 16, 2008 – Council Member Nguyen, Chair

Documents Filed: (1) Public Safety, Finance & Strategic Support Committee Report of October 16, 2008. (2) Memorandum from Budget Director Jennifer Maguire, dated October 6, 2008, submitting the Bi-Monthly Financial Report for July/August 2008. (3) Memorandum from Executive Director of the Redevelopment Agency Harry S. Mavrogenes, dated October 8, 2008, submitting the Redevelopment Agency's Comprehensive Annual Financial Report (CAFR). (4) Memorandum from Director of Finance Scott P. Johnson, dated October 8, 2008, submitting the City's Comprehensive Annual Financial Report (CAFR). (5) Memorandum from Director of Finance Scott P. Johnson, dated October 7, 2008, submitting the Comprehensive Annual Debt Report for Fiscal Year ending June 30, 2008.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried unanimously, the Report of the Public Safety, Finance and Strategic Support Committee and the actions of October 16, 2008 were accepted. (10-0-1. Absent: Campos.)

### 3.4 Approve an ordinance amending Chapter 4.76 of Title 4 of the San José Municipal Code by:

- (a) Amending Sections 4.76.240 and 4.76.270 to clarify the due date for the initial payment of the business tax and to revise the due date for subsequent payments of the business tax to correspond with the City's new business tax billing system;
- (b) Amending Section 4.76.290 to clarify the penalty provisions for late payment;
- (c) Adding a new Section 4.76.295 to authorize the Director of Finance to waive penalties under certain circumstances; and
- (d) Providing that the current renewal tax payment due dates will apply until such time as the new business tax billing system is successfully implemented.

**CEQA: Not a Project. (Finance)**

### 3.4 (Cont'd.)

Documents Filed: Memorandum from Director of Finance Scott P. Johnson, dated October 6, 2008, recommending approval of an ordinance.

Action: Upon motion by Council Member Williams, seconded by Council Member Chirco and carried unanimously, [Ordinance No. 28431](#), entitled “An Ordinance of the City of San José Amending Chapter 4.76 of Title 4 of the San José Municipal Code by Amending Sections 4.76.240 and 4.76.270 to Clarify the Due Date for the Initial Payment of the Business Tax and to Revise the Due Date for Subsequent Payments of the Business Tax to Correspond with the City’s New Business Tax Billing System and by Amending Section 4.76.290 to Clarify the Penalty Provisions for Late Payment, and by Adding a New Section 4.76.295 to Authorize the Director of Finance to Waive Penalties Under Certain Circumstances; and to Provide that the Current Business Tax Due Dates will apply until such time as the New Billing system is Successfully Implemented”, was passed for publication. (10-0-1. Absent: Campos.)

- 3.5 As recommended by the Rules and Open Government Committee, approve amending the bylaws of the Caltrain Centralized Equipment Maintenance and Operations Facility Monitoring Committee to modify the appointment requirements for representatives and to provide for alternate members. (Williams)**  
**[Rules Committee referral 10/15/08 – Item G(1)]**

Documents Filed: Memorandum from Council Member Williams, dated September 19, 2008, recommending approval of the bylaws of the Caltrain Centralized Equipment Maintenance Operations Facility.

Action: Upon motion by Council Member Williams, seconded by Council Member Oliverio and carried unanimously, the bylaws of the Caltrain Centralized Equipment Maintenance and Operations Facility Monitoring Committee to modify the appointment requirements for representatives and to provide for alternate members as recommended by the Rules and Open Government Committee was approved. (10-0-1. Absent: Campos.)

- 3.6 Report of the Rules and Open Government Committee – September 24, 2008**  
**Mayor Reed, Chair (Deferred from 10/7/08 – Item 3.2 and 10/21/08 – Item 3.7)**

Documents Filed: The Rules and Open Government Committee Report dated September 24, 2008.

Action: Upon motion by Council Member Cortese, seconded by Council Member Constant and carried unanimously, the Rules and Open Government Committee Report and the actions of September 24, 2008 were accepted. (10-0-1. Absent: Campos.)

- 3.7 Report of the Rules and Open Government Committee – October 1, 2008**  
**Mayor Reed, Chair**  
**(Deferred from 10/21/08 – Item 3.2)**

Action: Deferred to November 4, 2008 per Orders of the Day.

- 3.8 (a) Verbal Presentation on the Comprehensive Annual Financial Report.**  
**(b) Verbal Presentation on the Comprehensive Annual Debt Report.**  
**[Public Safety, Finance and Strategic Support Referral 10/16/08 – Items (d) & (f)]**

Documents Filed: (1) Memorandum from Senior Executive Analyst Vilcia Rodriguez, dated October 23, 2008, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee. (2) Comprehensive Annual Financial Report presentation for year ended June 30, 2008.

Director of Finance Scott P. Johnson offered a presentation on the Comprehensive Annual Financial Report. Debt Administrator Dave Persselin offered a presentation on the Comprehensive Annual Debt Report. Director of Finance Scott P. Johnson responded to questions from Council.

Action: Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, the Comprehensive Annual Financial and Comprehensive Annual Debt Reports were accepted. (10-0-1. Absent: Campos.)

- 3.9 Direct staff to pursue discussions with the County of Santa Clara for the purpose of developing a Memorandum of Understanding (MOU) regarding policies, procedures, training, safety, and ongoing interagency communications related to San José Fire Department responses to the County Jail. CEQA: Exempt.**  
**[Public Safety, Finance and Strategic Support Referral 10/16/08 – Item (h)]**

Documents Filed: Memorandum from Senior Executive Analyst Vilcia Rodriguez, dated October 21, 2008, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee.

Motion: Council Member Oliverio moved approval of the proposed Memorandum of Understanding. The motion was seconded by Council Member Liccardo.

Acting Fire Department Director Geoff Cady responded to questions from Council.

Public Comments: Michael Blackman (College Park Neighborhood Association) spoke in support of developing a Memorandum of Understanding.

Action: On a call for the question, the Staff was directed to pursue discussions with the County of Santa Clara for the purpose of developing a Memorandum of Understanding (MOU) regarding policies, procedures, training, safety, and ongoing interagency communications related to San José Fire Department responses to the County Jail. (8-0-3. Absent: Campos, Constant, Cortese.)

## COMMUNITY & ECONOMIC DEVELOPMENT

- 4.2 (a) **Accept the work plan for the Business Cooperation Program, which would maximize the allocation of use tax to the City.**
- (b) **Direct the City Attorney's Office to draft an ordinance establishing the eligibility for use tax allocation incentive under the Business Cooperation Program.**

**CEQA: Not a Project. (Economic Development)**

Documents Filed: (1) Memorandum from Chief Development Officer Paul Krutko, dated October 6, 2008, recommending approval of a work plan and drafting an ordinance. (2) Business Cooperation Program presentation, dated October 28, 2008.

Chief Development Officer Paul Krutko offered a presentation on the Business Cooperation Program. Paul Krutko and Corporate Outreach Manager Nanci Klein responded to questions from Council.

Action: Upon motion by Council Member Pyle, seconded by Council Member Oliverio and carried unanimously, the work plan for the Business Cooperation Program was accepted with direction to the City Attorney's Office to draft an ordinance establishing the eligibility for use tax allocation incentive under the Business Cooperation Program. (9-0-2. Absent: Campos, Constant.)

- 4.3 **Direct staff to conduct community outreach to solicit public input on alternative uses, leasing potential, and/or sale of 44 under-utilized City-owned properties included in the report, with particular emphasis on identifying revenue generating and cost reducing options. CEQA: Not a Project. (City Manager's Office/Public Works)**

Documents Filed: (1) Joint memorandum from Director of Public Works Katy Allen and Deputy City Manager Ed Shikada, dated October 14, 2008, recommending direction to proceed with public outreach. (2) Supplemental memorandum from Deputy City Manager Ed Shikada and Director, Planning, Building and Code Enforcement Joseph Horwedel, dated October 16, 2008, recommending initiation of community engagement on alternative uses for former City Hall. (3) Supplemental memorandum from Deputy City Manager Ed Shikada and Director of Environmental Services John Stufflebean, dated October 16, 2008, recommending initiation of community engagement on alternative uses for Singleton and Story Road Landfill. (4) PowerPoint presentation on under-utilized City-Owned Real Property.

Deputy City Manager Ed Shikada and Deputy Director of Public Works Philip Prince offered a presentation on under-utilized city-owned real property. Director of Aviation William F. Sherry responded to questions on reallocation of airport space.

#### 4.3 (Cont'd.)

Action: Upon motion by Council Member Pyle, seconded by Council Member Constant and carried unanimously, direction was given to conduct community outreach to solicit public input on alternative uses, leasing potential, and/or sale of 44 under-utilized City-owned properties included in the report, with particular emphasis on identifying revenue generating and cost reducing options. (9-0-2. Absent: Campos, Cortese.)

- 4.4 (a) **Public hearing and adopt a resolution designating the Ames House on a 0.16-acre site located at the east side of N. Fifteenth Street, approximately 90 feet south of E. Saint James Street (186 N. Fifteenth Street) as a landmark of special historic, architectural, cultural, aesthetic or engineering interest, or value of a historic nature. (City Landmark No. HL08-172)**
- (b) **Public hearing and adopt a resolution approving the Historical Property Contract (California Mills Act Contract No. MA08-004) between the City of San José and the owners of the Ames House (Hullene and Marcus Salomon). 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. SNI: 13<sup>th</sup> Street. Council District 3. (Planning, Building and Code Enforcement)**

Action: Continued to December 2, 2008 per Administration.

## NEIGHBORHOOD SERVICES

- 5.2 **Adopt a resolution approving the revised Council Policy #7-8: “Long-Term Use of City Parklands for Private Enterprise Purposes,” which would go into effect only if the Measure M on the November 2008 ballot is approved by the voters. CEQA: Not a Project. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated October 6, 2008, recommending adoption of a resolution.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Chirco and carried unanimously, [Resolution No. 74646](#), entitled “A Resolution of the Council of the City of San José Approving the Revised Council Policy 7-8, Long-Term Use of City Parklands for Private Enterprise Purposes, which shall go into effect only if Measure M on the November 2008 Ballot is Approved by Voters”, was adopted. (9-0-2. Absent: Campos, Cortese.)

- 5.3 Approve the Memorandum of Understanding (MOU) between the City of San José and the East Side Union High School District for the shared planning, development and operation of recreational facilities. CEQA: Not a Project. Council Districts 2, 3, 4, 5, 7 and 8. SNI: Mayfair, KONA, West Evergreen. (Parks, Recreation and Neighborhood Services)**

Action: Deferred to December 2, 2008 per Administration.

## **RECESS/RECONVENE**

The City Council recessed at 5:15 p.m. from the afternoon Council Session and reconvened at 7:02 p.m. in the Council Chambers, City Hall.

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

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

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

## **CEREMONIAL ITEMS**

- 1.2 Swearing in ceremony for District 2 Youth Commissioner James Hill, III, District 3 Youth Commissioner Aaron Carrera, District 4 Youth Commissioner Kimberly Loo, District 6 Youth Commissioner Nicholas Scott Taxera, District 8 Youth Commissioner Nwakaego Uzoh, and Citywide Youth Commissioner Darlene Tu. (City Clerk) (Rules Committee referral 10/22/08)  
Heard in the evening.**

Documents Filed: Memorandum from City Clerk Lee Price, dated October 22, 2008, submitting names of new Youth Commissioners to be sworn in during the October 28, 2008 evening Council meeting.

Action: City Clerk Lee Price administered Oaths of Office to District 2 Youth Commissioner James Hill, III, District 3 Youth Commissioner Aaron Carrera, District 4 Youth Commissioner Kimberly Loo, District 6 Youth Commissioner Nicholas Scott Taxera, District 8 Youth Commissioner Nwakaego Uzoh, and Citywide Youth Commissioner Darlene Tu.

## **PUBLIC HEARINGS ON CONSENT CALENDAR**

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

- 11.1 (a) Consideration of an ordinance rezoning the real property located along Coleman Avenue between Newhall Street and Santa Clara/San José City limits (former FMC Site) from A(PD) Planned Development Zoning to A(PD) Planned Development Zoning to clarify development capacity, modify building setbacks, revise vehicular and pedestrian circulation and include other minor technical, clarifying or clerical revisions to the development standards of the existing Planned Development Zoning District on an approximately 92.5 gross acre site (City of San José, Arcadia Development Co./Coleman Airport Partners, Owners/Applicant. CEQA: EIR Resolution No. 71716 and Addenda thereto. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.  
PDC08-050- District 3**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC08-050, dated October 6, 2008, recommending approval. (2) Supplemental memorandum from Planning Commission Secretary Joseph Horwedel, dated October 23, 2008, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on October 17, 2008 submitted by the City Clerk. (4) "Use of a Final EIR" submitted by Director, Planning, Building and Code Enforcement Joseph Horwedel, dated September 15, 2008. (5) Letter from Valley Transportation Authority Senior Environmental Planner Roy Molseed, dated October 28, 2008 submitting recommendations for the planned development rezoning of the FMC site.

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

Director of Transportation Jim Helmer noted the letter submitted by Valley Transportation Authority, dated October 28, 2008, regarding planned development rezoning of the FMC site.

Action: The recommendation of the Planning Director was approved, and [Ordinance No. 28436](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the West Side of Coleman Avenue between Newhall Street and Brokaw Road from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District.", was passed for publication. (9-0-2. Absent: Campos, Constant.)

**END OF PUBLIC HEARINGS ON CONSENT CALENDAR**

## **TRANSPORTATION & AVIATION SERVICES**

- 6.2 Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with Christian Moeller, to fabricate and install an artwork on the east façade of the Airport Consolidated Rental Car Garage at the Norman Y. Mineta San José International Airport in an amount not to exceed \$1,153,200. CEQA: Resolution Nos. 67380 and 71451, PP 08-226. (Economic Development)**

Action: Deferred to November 18, 2008 per Administration.

- 6.3 As recommended by the Transportation and Environment Committee:**
- (a) Approve an ordinance amending Title 25 of the San José Municipal Code to add a new Chapter 25.11 to establish living wage, worker retention, labor peace and work environment reporting requirements applicable to the Norman Y. Mineta San José International Airport.**
  - (b) Consider modifying the monitoring and enforcement language in the draft ordinance to require that the City apply the same pro-active enforcement procedures currently used in enforcement of the Living Wage Policy.**
  - (c) Consider modifying the minimum compensation section of the draft ordinance to exempt those employees of commercial airlines from whom the aggregate of wages, corporate payments for health insurance, and corporate payments into a pension fund exceed the City's living wage level, after review of the City Attorney's determination of the feasibility of the proposed modification.**
  - (d) Implement the ordinance Airport-wide effective January 1, 2009.**
  - (e) Direct staff to return to the Transportation and Environment Committee in March 2009 with an implementation plan for the training program at the Airport.**

**CEQA: Resolution Nos. 67380 and 71451, File No. PP08-199.**

**[Transportation and Environment Committee referral – 10/6/08 Item (j)]**

### 6.3 (Cont'd.)

Documents Filed: (1) Joint memorandum from Council Members Williams and Pyle, dated October 28, 2008, recommending amendments to the draft ordinance. (2) Supplemental memorandum from Council Members Williams and Pyle, dated October 28, 2008, recommending further revisions to the proposed ordinance. (3) Memorandum from City Attorney Doyle, dated October 21, 2008, addressing the Transportation and Environment Committee's recommendations. (4) Memorandum from Senior Executive Analyst Vilcia Rodriguez, dated October 14, 2008, transmitting the recommendations of the Transportation and Environment Committee. (5) Supplemental memorandum from City Attorney Richard Doyle, dated October 28, 2008, proposing additional provisions to the Committee's recommendations. (6) Memorandum from Director of Aviation William F. Sherry, submitting a letter from Airport Commission Chair Catherine Matsuyo Tompkinson-Graham, dated October 17, 2008, sharing the Airport Commission's position on the draft living wage ordinance. (7) Supplemental memorandum from Director of Aviation William F. Sherry, Director of Public Works Katy Allen and Budget Director Jennifer Maguire, dated October 24, 2008, recommending adoption of appropriation ordinance amendments. (8) Letter from Melinda Yee Franklin (United Airlines), dated October 27, 2008, asking consideration for additional language to the ordinance. (9) Email from Getachew Reda, dated October 16, 2008, requesting support for the San José Airport Wheelchair Employees of Aviation Security.

Motion: Council Member Williams moved approval of the Staff recommendation and the memorandum he cosigned with Council Member Pyle, dated October 28, 2008. Council Member Pyle seconded the motion.

Public Comment: Expressing support for the implementation of a living wage ordinance applicable to the Norman Y. Mineta San José International Airport were: Ross Signorino, Robert Lindley, Michele Lew (Asian Americans for Community Involvement), Phaedra Ellis Lamkins (Working Partnerships USA), William Carvalho, Dwayne Green (SEIU Local 1877), Laura Chavez, Huy Nguyen, Tiffany Melendez, Everlisto Quebral (Airport Workers), Mike Fox, Sr., Lydia Bonifacio, Sean Ancelet, Aralia Alvarado (Californians for Justice), Diane Fisher (Jewish Community Relations Council), Reverend Steve Pinkston (Maranatha Christian Center), Jose Luis Sanchez (Southwest Airlines) and Betsy Arroyo (SCC Collaborative on Affordable Housing and Homelessness).

Speaking in opposition to the ordinance were Greg Hopkins (Frontier Airlines), Don Simpson and John Salah (Airport Commission), and Jody Hansen (San José Silicon Valley Chamber of Commerce). Phil Yates (Airport Terminal Services) expressed concerns on the 90-day prevention clause, and Catherine Tompkinson (Airport Commission) urged a phased or milestone approach.

Director of Aviation William F. Sherry responded to questions from Council. Extensive Council discussion followed.

Mayor Reed, Council Members Liccardo, Chirco, Chu, Nguyen, Williams and Vice Mayor Cortese disclosed meetings with various airlines and the South Bay Labor Council.

### 6.3 (Cont'd.)

Action: On a call for the question, the motion passed, [Ordinance No. 28432](#), entitled “An Ordinance of the City of San José Amending Title 25 of the San José Municipal Code to Add a New Chapter 25.11 to Extend Living Wage, Worker Retention, Labor Peace and Employee Work Environment Reporting Requirements at the Norman Y. Mineta San José International Airport”, was passed for publication, with recommendations as proposed in Council Members Williams and Pyle’s supplemental (revised) memorandum of October 28, 2008. (8-1-2. Noes: Oliverio. Absent: Campos, Constant.)

### 6.4 (a) Adopt a resolution:

- (1) **Amending the Schedule of Fees and Charges at the Norman Y. Mineta San José International Airport contained in Resolution No. 74536 to establish a Taxicab Minimum Rate of Fare from the Airport of \$15, which will include the \$1.50 Airport Trip Fee and any Waiting Time Rate and which will cover the first three miles of travel.**
- (2) **Readopting all other Rates, Fares and Tariffs in Resolution No. 74536 not revised above.**
- (3) **Repealing Resolution No. 74536.**

- (b) **Approve an ordinance amending Chapter 6.64 of Title 6 of the San José Municipal Code to authorize the Director of Transportation (“Director”) to set and adjust taxicab rates, fares and surcharges based on industry indicators on a biennial basis, or sooner, as the Director deems appropriate.**

**CEQA: Not a Project. (Airport/Transportation) (Deferred from 10/21/08 Item 6.2)**

Documents Filed: (1) Memorandum from Director of Transportation, James R. Helmer and Director of Aviation William F. Sherry, dated September 29, 2008, recommending adoption of a resolution and approval of an ordinance. (2) Supplemental memorandum from Director of Aviation William F. Sherry and Chief of Police Robert L. Davis, dated October 24, 2008, providing supplemental information on the “Minimum Fare” recommendation.

Motion: Council Member Pyle moved approval of the Staff recommendations. The motion was seconded by Council Member Constant.

Council Member Chirco moved to defer this item for one week to allow further analysis by the Airport Commission. Council Member Liccardo seconded the motion. Council Member Chirco withdrew the motion.

Assistant Director of Transportation Jim Ortbal responded to questions from Council.

Public Comment: Dave Logan (Yellow Checker Cab) spoke in support of the Staff recommendations to establish a taxicab minimum rate of fare .

## 6.4 (Cont'd.)

Action: On a call for the question, the motion carried, [Resolution No. 74655](#), entitled “A Resolution of the Council of the City of San José Establishing Fees, Rates and Charges at the Norman Y. Mineta San José International Airport, and Repealing Resolution No. 74536”, was adopted, and [Ordinance No. 28439](#), entitled “An Ordinance of the City of San José Amending Section 6.64.250 of Chapter 6.64 of Title 6 of the San José Municipal Code to Add Authorization for the Director of the Department of Transportation to Establish and Adjust Taxi Rates and Fares that Taxicab Owners and Drivers can Charge the Public”, was passed for publication, with Staff directed to re-circulate the April 2008 joint information memorandum regarding elements of a Taxi Commission. (8-1-2. Noes: Oliverio. Absent: Campos, Constant.)

## ENVIRONMENTAL & UTILITY SERVICES

- 7.1 Conduct a public hearing on the application of South Bay Hauling, Inc. dba South Bay Hauling and dba Eco Box Recycling for a Commercial Solid Waste and Recyclables Collection Franchise, approval of an ordinance granting the franchise, and approval of a Commercial Solid Waste and Recyclables Collection Franchise Agreement with South Bay Hauling, Inc. dba South Bay Hauling and dba Eco Box Recycling for a term from December 18, 2008 through June 30, 2009. CEQA: Exempt, File No. PP08-228. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated October 6, 2008, recommending a public hearing and adoption of an ordinance.

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 Nguyen, seconded by Council Member Pyle and carried unanimously, [Ordinance No. 28433](#) entitled “An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to South Bay Hauling Inc., DBA South Bay Hauling and DBA Eco Box Recycling”, was adopted. (9-0-2. Absent: Campos, Constant.)

**7.2 Conduct a public hearing on the application of Bernardini Enterprises Inc. dba JD Services for a Commercial Solid Waste and Recyclables Collection Franchise, approval of an ordinance granting the franchise, and approval of a Commercial Solid Waste and Recyclables Collection Franchise Agreement with Bernardini Enterprises Inc. dba JD Services for a term from December 18, 2008 through June 30, 2009. CEQA: Exempt, File No. PP08-228. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated October 6, 2008, recommending a public hearing and adoption of an ordinance.

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 Nguyen, seconded by Council Member Pyle and carried unanimously, [Ordinance No. 28434](#) entitled “An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Bernardini Enterprises Inc. DBA JD Services”, was adopted. (9-0-2. Absent: Campos, Constant.)

- 7.3**
- (a) Adopt a resolution amending Resolution No. 73256 to amend Commercial Solid Waste Collection Franchise Fees to set the commercial solid waste franchise fee for solid waste collected from public school districts and San José State University at zero if the school has a Waste Reduction and Recycling Cooperation Agreement with the City, to be effective November 1, 2008.**
  - (b) Adopt a resolution authorizing the City Manager to negotiate and execute new and amended Waste Reduction and Recycling Cooperation Agreements with public school districts and San José State University to address fees for solid waste collection services to the schools and to supersede Resolution Nos. 73878 and 73969.**
  - (c) Provide direction to Staff regarding the disposition of fees that may be remitted to the City pursuant to a proposed settlement with Browning-Ferris Industries of North America Inc. and Allied Waste Services of North America, LLC (BFI) which were collected before July 1, 2007 by BFI from public school districts.**

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

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated October 6, 2008, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Environmental Services John Stufflebean, dated October 16, 2008, providing clarification regarding disposition of funds from the proposed settlement.

### 7.3 (Cont'd.)

Public Comments: Marc Liebmar (Berryessa Union School District/Santa Clara County Superintendent's Association) spoke in favor of the proposed resolutions.

Integrated Waste Management Deputy Director Jo Zientek asked for a recommendation from Council on disbursement of the pre July 2007 settlement funds.

Action: Upon motion by Council Member Chirco, seconded by Council Member Pyle and carried unanimously, [Resolution No. 74647](#), entitled "A Resolution of the Council of the City of San José Amending Resolution No. 73256 to set the Commercial Solid Waste Franchise Fee for Solid Waste Collected from Public School Districts and San José State University at Zero if the School has a Waste Reduction and Recycling Cooperation Agreement with the City", and [Resolution No. 74648](#), entitled "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute Waste Reduction and Recycling Cooperation Agreements or Amendments to an Existing Waste Reduction and Recycling Cooperation Agreement with Eligible Public School Districts, San José/Evergreen Community College District, and San José State University", were adopted, with direction to Staff to return settlement funds to school districts that paid them as outlined in Option #1 of Director of Environmental Services John Stufflebean's supplemental memorandum of October 16, 2008. (9-0-2. Absent: Campos, Constant.)

## JOINT COUNCIL/REDEVELOPMENT AGENCY

- 9.1 (a) (1) **Adopt a resolution by the City Council to authorize:**
- (a) **Changes to the 2008-09 Consolidated Annual Action Plan to award and appropriate \$600,000 in CDBG funds to CTC for the acquisition of the Property.**
  - (b) **The assumption by CTC of a \$550,000 CDBG 15-year conditional loan previously awarded to Kelly Park Community Resource Center (Kelly Park) with St. Vincent de Paul acting as fiscal agent, for the 2003 rehabilitation of the Property.**
  - (c) **The assumption by CTC of a \$1,000,000 Healthy Neighborhood Venture Fund (HNVF) 15-year conditional loan previously awarded to Kelly Park with St. Vincent de Paul acting as fiscal agent, for the 2003 acquisition and rehabilitation of the Property.**
  - (d) **The Director of Housing to negotiate and execute a CDBG 15-year conditional loan agreement and promissory note secured by a deed of trust in the amount of \$600,000.**

9.1 (Cont'd.)

- (a) (1) (e) **The Director of Parks, Recreation and Neighborhood Services to negotiate and execute a one-time \$300,000 service agreement with CTC for the continued operations of day laborer services.**
- (f) **The closing of the Consolidated Annual Action Plan Amendment public hearing process.**
- (2) **Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Community Development Block Grant (CDBG) Funds:**
  - (a) **Establish an appropriation to the Housing Department for the CTC Property Acquisition Project in the amount of \$600,000.**
  - (b) **Decrease Ending Fund Balance by \$600,000.**
- (b) **Adopt a resolution by the Redevelopment Agency Board:**
  - (1) **Adjusting the Redevelopment Agency's FY 2008-09 Adopted Capital Budget to reallocate \$662,000 from the Japantown – Nishioka Site Acquisition project line to the new Story Road – Career Training Center project line in the Neighborhood Business Investment Program Redevelopment Area, and amending the FY 2008-2009 Agency appropriations resolution as detailed in Attachment A.**
  - (2) **Authorizing the Executive Director of the Redevelopment Agency (Agency), to negotiate and execute an Owner Participation Agreement with CTC to provide Agency assistance to rehabilitate the Property.**

**(City Manager's Office/Redevelopment Agency)**

Documents Filed: Joint memorandum from City Manager Debra Figone and Executive Director of the Redevelopment Agency Harry S. Mavrogenes, dated October 21, 2008, recommending a funding commitment for the acquisition and rehabilitation of a multi-service community service center.

Public Comment: Rose Amador (Career Training Center) presented performance measures accumulated on the CTC, responded to questions from Council and spoke in support of the acquisition. Also speaking in support of Owner Participation Agreement with CTC were Bill Del Biaggio (Kelly Park Community Resource Center), Deacon Sal Alvarez (Dolores Huerta Foundation), and Dr. Peter Nguyen, Victor Garza, Andrew Farias, Paulina Gutierrez and Ashley Glasper (Career Training Center).

## 9.1 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and passed unanimously, [Ordinance No. 28435](#), entitled “An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Community Development Block Grant Fund for the CTC Property Acquisition Project; and Providing that this Ordinance shall become effective immediately upon adoption”, [Resolution No. 74649](#), entitled “A Resolution of the Council of the City of San José Authorizing Actions in connection with the Acquisition and Rehabilitation of a Multi-Service Community Center to be Located at 749 Story Road”, [Redevelopment Agency Resolution No. 5862](#), entitled “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 a Proposed Owner Participation Agreement with the Center for Training and Careers, Inc.”, and [Redevelopment Agency Resolution No. 5863](#), entitled “Resolution of the Board of Directors of the Redevelopment Agency of the City of San José Authorizing the Executive Director to Negotiate and Execute an Owner Participation Agreement with the Center for Training and Careers, Inc.”, were adopted. (9-0-2. Absent: Campos, Constant.)

## PUBLIC HEARINGS

- 11.2 Consideration of an ordinance of the City of San José amending Title 20 of the San José Municipal Code, the Zoning Code, to amend Section 20.70.100 of Chapter 20.70 to allow business support and business and administrative office uses as permitted uses with a special use permit in the DG Downtown Ground-Floor space overlay, modify parking requirements for live/work units, and allow animal grooming as a permitted use in downtown zoning districts; Amend Section 20.70.120 to modify the residential occupancy requirement for live/work units; and make other related clarifying changes and amendments. CEQA: Exempt, PP08-197. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0).  
Citywide**

Action: Deferred to November 18, 2008 per Orders of the Day.

**11.3 Consideration of an ordinance rezoning the real property located at/on the east side of Campbell Avenue, approximately 400 feet southeasterly of El Camino Real (1270 Campbell Avenue) from HI Heavy Industrial Zoning District to A(PD) Planned Development Zoning District to allow up to 259 multi-family residences over a podium garage on a 5.11 gross acre site (Sobrato Development Co, Owner; Sobrato Development Mr. Tim Steele, Developer). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval to allow up to a maximum of 255 multi-family residences (7-0-0).**

**PDC07-081 – District 3**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC07-081, dated September 30, 2008, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated October 9, 2008, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, 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.

Council Member Oliverio voiced objection to the conversion of industrial land.

Council Member Nguyen disclosed meeting with the applicant.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Williams and carried, the recommendation of the Planning Commission and the Planning Director was approved, [Ordinance No. 28437](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the East Side of Campbell Avenue approximately 400 feet Southeasterly of El Camion Real (1270 Campbell Avenue) to the A(PD) Planned Development Zoning District”, was passed for publication with the following three conditions: (1) Require City Manager to negotiate immediately with the City of Santa Clara to obtain a formal staff agreement, in writing, whether memorialized in Memorandum of Understanding or other similar public document. The agreement should identify those steps that will mitigate traffic accident risk at the intersection of El Camino Real and Campbell Avenue, such as (for example) the closure or re-routing of the driveway to the office complex facing that intersection. (2) Require City Manager, in consultation with CalTrans and the City of Santa Clara, to obtain traffic accident data relating to the intersection of Campbell Avenue and El Camino Real for a period of 12 to 18 months before and after the issuance of the certificate of occupancy on the majority of approved units, and report to the appropriate Council committee with the findings upon their collection. (3) Require notification of the Newhall Neighborhood Association board members of the results of the City Manager’s efforts as to conditions #1 and #2. (8-1-2. Noes: Oliverio. Absent: Campos, Constant.)

**11.4 Consideration of an ordinance rezoning the real property located at the southwest corner of The Alameda and Sunol Street (850 The Alameda) from the LI Light Industrial Zoning District to the A(PD) Planned Development Zoning District to allow up to 3,200 square feet of commercial uses and up to 9 single-family attached residential units in a mixed-use configuration on a 0.30 gross acre site (Ham Real Est Inv LLC, Owner/Developer). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0).  
PDC07-020 – District 6**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC07-020, dated September 29, 2008, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated October 9, 2008, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on September 19, 2008 submitted by the City Clerk. (4) Letters from Deborah Arant, Shasta Hanchett Park Neighborhood Association, dated April 29, 2008; Nathan and Sara Norberg, dated October 6, 2008; Helen Chapman, Shasta Hanchett Park Neighborhood Association, dated October 7, 2008; and Christopher Flood, CF Management, dated October 7, 2008, expressing concerns over the rezoning project.

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

Action: Upon motion by Council Member Oliverio, seconded by Council Member Nguyen and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and [Ordinance No. 28342](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Southwest Corner of the Intersection of the Alameda and Sunol Street (850 The Alameda) to A(PD) Planned Development Zoning District”, was passed for publication. (9-0-2. Absent: Campos, Constant.)

**NOTICE OF CITY ENGINEER’S PENDING DECISION ON FINAL MAPS**

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

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>
9960	Southeast corner of Hostetter Road and Sierra Creek Way	4	Marvin Bamberg	6 Lots / 6 Units	Single Family Detached
10022	East corner of Berryessa Road and Jackson Avenue	4	Berryessa-Jackson Partners LLC	105 Lots / 371 Units	Multi-Family Attached and Retail

## **OPEN FORUM**

Documents Filed: (2) Letters from Paul J. Manley, dated October 28, 2008, offering suggestions for decreasing the City's overhead and increasing revenue.

- (1) Dave McLeroy expressed concerns over water wasted in City landscaping and offered solutions . He was referred to Director of Transportation, James Helmer.
- (2) Paul Manley summarized ideas outlined in two letters about decreasing costs of City services through the use of prevailing wage and increasing City revenue.

## **ADJOURNMENT**

The Council of the City of San José adjourned at 8:39 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC  
City Clerk

rmk/10-28-08MIN

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

The Joint Redevelopment Agency Board convened to consider Items 8.1 and 8.2 in a Joint Session.

- 8.1 (a) Adoption of a resolution by the Redevelopment Agency Board finding that creation of a Smart Start Center at 1560 Berger Drive will be of Primary Benefit to the Rincon de Los Esteros Redevelopment Project Area.**
- (b) Redevelopment Agency and City Council approval of an agreement with the San Jose Conservation Corps & Charter School, a California Non-Profit Corporation, in the amount of \$600,000, for improvements to the property located at 1560 Berger Drive for the creation of a Smart Start Center providing 82 childcare spaces to be operated under Smart Start San Jose standards.**

**CEQA: Mitigated Negative Declaration, File No. CP06-004. [RINCON DE LOS ESTEROS] (Deferred from 10/21/08, City Council Agenda, Item 9.1)**

Documents Filed: Memorandum from Executive Director of the Redevelopment Agency Harry S. Mavrogenes and City Manager Debra Figone, dated October 16, 2008, recommending approval of an agreement and adoption of a resolution.

Action: Upon motion by Council Member Chirco, seconded by Council Member Pyle and carried unanimously, Redevelopment Agency Resolution No. 5868, entitled "Finding that Creation of a Smart Start Center at 1560 Berger Drive will be of Primary Benefit to the Rincon de Los Esteros Redevelopment Project Areas", was adopted, and an agreement with the San Jose Conservation Corps & Charter School was approved. (10-0-1. Absent: Campos.)

- 8.2
- (a) **Redevelopment Agency Board approval of an assignment of the Disposition And Development Agreement (DDA) from the Olson Company to Intracorp San Francisco (name changed to North San Pedro Townhomes, LLC).**
  - (b) **Adoption of a resolution by the City Council approving the sale of certain sites located on Agency-owned property generally located in the blocks bounded by Highway 87 to the west, West Saint James Street to the south, North Market Street to the east and a Union Pacific Railroad right of way to the north to Intracorp, accepting the 33433 Summary Report and Re-Use Valuation, and finding that the sale of the property will assist in the elimination of blight, is consistent with the Implementation Plan for the Julian Stockton Redevelopment Project Area, and that the consideration for the property is not less than the fair reuse value for the proposed use, with the covenants and conditions and development costs authorized by the DDA.**
  - (c) **Redevelopment Agency Board approval of an Amended and Restated Disposition and Development with Intracorp San Francisco (name changed to North San Pedro Townhomes, LLC) and authorizing the Executive Director to execute ancillary documents contemplated by the DDA, to close escrow subject to compliance with the terms of the DDA, and to negotiate and execute amendments to the DDA substantially in conformance with the intent of the DDA and as reasonably necessary to conform to lender requirements.**
  - (d) **Adoption of a resolution by the City Council approving the sale of certain sites located on Agency-owned property generally located in the blocks bounded by Highway 87 to the west, West Saint James Street to the south, North Market Street to the east and a Union Pacific Railroad right of way to the north, to Barry Swenson Builder (Swenson), accepting the 33433 Summary Report and Re-Use Valuation and finding that the sale of the property will assist in the elimination of blight, is consistent with the Implementation Plan for the Julian-Stockton Redevelopment Project Area and that the consideration for the property is not less than the fair reuse value for the proposed use, with the covenants and conditions and development costs authorized by the Disposition and Development Agreement.**
  - (e) **Redevelopment Agency Board approval of an Amended and Restated Disposition and Development Agreement with Swenson and authorizing the Executive Director to execute ancillary documents contemplated by the DDA, to close escrow subject to compliance with the terms of the DDA, and to negotiate and execute amendments to the DDA substantially in conformance with the intent of the DDA and as reasonably necessary to conform to lender requirements.**

**CEQA: Resolution No: 72170, File no GPT03-03-01a and GP03-03-01b Brandenburg Mixed Use Project/ North San Pedro Housing Sites. [JULIAN-STOCKTON]**

### 8.3 (Cont'd.)

Documents Filed: (1) Memorandum from Executive Director of the Redevelopment Agency Harry S. Mavrogenes, dated October 14, 2008, recommending approval of Disposition and Development Agreements and adoption of resolutions. (2) Supplemental memorandum from Executive Director of the Redevelopment Agency Harry S. Mavrogenes, dated October 21, 2008, substituting a new entity, North San Pedro Townhomes, LLC, for Intracorp in relevant documents.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and carried unanimously, approval of an assignment of the Disposition and Development Agreement (DDA) from the Olson Company to Intracorp San Francisco, [Resolution No. 74651](#), entitled “A Resolution of the Council of the City of San José Approving the Sale of Certain Sites Located on Agency-Owned Property Generally Located in the Blocks Bounded by Highway 87 to the West, West Saint James Street to the South, North Market Street to the East and Union Pacific Railroad right of Way to the North to North San Pedro Townhomes, LLC, accepting the 33433 Summary Report and Re-Use Validation, and Making Certain Findings”, [Redevelopment Agency Resolution No. 5869](#), entitled “Amended and Restated Disposition and Development with Intracorp San Francisco (name changed to North San Pedro Townhomes, LLC) and authorizing the Executive Director to execute ancillary documents contemplated by the DDA, to close escrow subject to compliance with the terms of the DDA, and to negotiate and execute amendments to the DDA substantially in conformance with the intent of the DDA and as reasonably necessary to conform to lender requirements”, [Resolution No. 74652](#), entitled “A Resolution of the Council of the City of San José Approving the Sale of Certain Sites Located on Agency-Owned Property Generally Located in the Blocks Bounded by Highway 87 to the West, West Saint James Street to the South, North Market Street to the East and Union Pacific Railroad right of Way to the North to Barry Swenson Builder (Swenson), accepting the 33433 Summary Report and Re-Use Validation, and Making Certain Findings”, and [Redevelopment Agency Resolution No. 5870](#), entitled “A Resolution of the Board of Directors of the Redevelopment Agency of the City of San José Approving the Amended and Restated Disposition and Development with Swenson and authorizing the Executive Director to execute ancillary documents contemplated by the DDA, to close escrow subject to compliance with the terms of the DDA, and to negotiate and execute amendments to the DDA substantially in conformance with the intent of the DDA and as reasonably necessary to conform to lender requirements”, were adopted. (10-0-1. Absent: Campos.)