

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, FEBRUARY 10, 2009

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

Present: Council Members - Campos, Chu, Constant, Herrera, Kalra, Liccardo, Nguyen, Oliverio, Pyle; Reed.

Absent: Council Members - Chirco. (Excused)

Upon motion unanimously adopted, Council recessed at 9:30 a.m. to a Closed Session in Room W133, to confer with Legal Counsel with respect to (A) to confer with Legal Counsel with respect to anticipated litigation (Claim Filed) pursuant to Government Code subsection (b) of Section 54956.9 in one (1) matter of significant exposure (1) In re Claim of Hildebrand; City Department: Department of Transportation. (B) to confer with Legal Counsel with respect to anticipated litigation pursuant to Government Code subsection (c) of Section 54956.9 in one (1) matter; (C) to confer with Legal Counsel with respect to existing litigation pursuant to Government Code subsection (a) of Section 54956.9: (1) City v. Filipino American Senior Opportunities Development Council, Inc.; Names of Parties Involved: City of San José, Filipino American Senior Opportunities Development Council, a California Corporation, dba Filipino American Senior Opportunities Development Council, Inc. and dba Filipino American Community Development Council, Inc., Ben Menor aka Benny B. Menor, an individual and DOES 1-100, inclusive; Court: Superior Court of California, County of Santa Clara; Case No: 1-06-CV-066845; Amount of Money or Other Relief Sought: Damages according to proof; (2) San José Silicon Valley Chamber of Commerce Political Action Committee, et al. v. City of San José; Names of Parties Involved: San José Silicon Valley Chamber of Commerce Political Action Committee, COMPAC Issues Fund, Sponsored by the San José Silicon Valley Chamber of Commerce, City of San José, San José Elections Commission and DOES 1-10; Court: United States District Court, Northern District of California; Case No: C-06-04252 HRL; Amount of Money or Other Relief Sought: Challenge to SJMC 12.06.310. (D) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working

CLOSED SESSION (Cont'd.)

Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI; (2) International Brotherhood of Electrical Workers (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 IBEW; (3) Confidential Employees' Organization, 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 CEO; (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP; (5) 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 MEF; (6) 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 and AMSP; (7) 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 AEA. (8) San José Police Officers' Association (SJPOA); 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 (SJPOA); (9) International Association of Firefighters (IAFF), Local 230; 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 Association of Firefighters (IAFF), Local 230. (10) International Union of Operating Engineers, Local No. 3 (OE#3); 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 Union of Operating Engineers, Local No. 3 (OE#3). How to obtain a copy of existing contract or MOA: web: <http://www.sanjoseca.gov/employeerelations/moa.asp>; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 11:42 a.m. and reconvened to Regular Session at 1:34 p.m. in the Council Chambers.

Present: Council Members - Campos, Chu, Constant, Herrera, Kalra, Liccardo, Nguyen, Oliverio, Pyle; Reed.

Absent: Council Members - Chirco. (Excused)

INVOCATION

Reverend Jethroe Moore, Rehoboth Christian Center presented an inspirational prayer. (District 2)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the Orders of the Day and the Amended Agenda were approved, and Items 2.1 and 3.2 were deferred to February 24, 2009.

CEREMONIAL ITEMS

- 1.2 Presentation of a commendation to James Robbins, former Executive Director of the City of San José Environmental Business Cluster, the first environmental incubator in the United States, for his dedication and commitment to managing the operations of the incubator since its inception in 1994 through his retirement in January 2009, and for creating the largest private technology commercialization program for clean energy start-up companies in the country. (Mayor)
(Rules Committee referral 2/4/09)**

Action: Mayor Reed, Redevelopment Agency Executive Director Harry S. Mavrogenes and Redevelopment Agency Deputy Executive Director John Weis recognized and commended James Robbins, former Executive Director of the City of San José Environmental Business Cluster for his dedication and commitment to managing the operations of the incubator since its inception in 1994 through his retirement in January 2009.

- 1.3 Presentation of a proclamation declaring February 13, 2009 as “NAACP Day” in the City of San José in celebration of the 100 year anniversary of the founding of this vital organization. (Mayor/Council)
(Rules Committee referral 2/4/09)**

Action: Mayor Reed and the City Council recognized February 13, 2009 as “NAACP Day” in the City of San José and presented the plaque to Reverend Jethroe Moore.

- 1.4 Presentation of a proclamation declaring the month of February as “Black History Month” in the City of San José. (Mayor/Council)
(Rules Committee referral 2/4/09)**

Action: Mayor Reed, Council Member Nguyen and the City Council recognized February 2009 as “Black History Month” in the City of San José. Mayor Reed presented the plaque to Everett Bobby Gasper, African American Community Service Agency. Members of the Iola Williams Senior Center were also present.

1.5 Presentation of a commendation to the Administrative Hearing Officers with the Rental Rights Program in recognition of exemplary mediation service to landlords and tenants in the City of San José. (Housing) (Orders of the Day)

Action: Mayor Reed and Director of Housing Leslye Krutko recognized and commended the Administrative Hearing Officers for exemplary mediation service to landlords and tenants in the City of San José.

CONSENT CALENDAR

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

2.1 Approval of minutes.

- (a) **Regular Minutes of October 7, 2008**
- (b) **Special Meeting Minutes of October 14, 2008**
- (c) **Regular Minutes of October 21, 2008**
- (d) **Joint Council/City of San José Financing Authority Minutes of October 21, 2008**
- (e) **Historic Preservation Study Session Minutes of October 23, 2008**
- (f) **Regular Minutes of October 28, 2008**

Action: Deferred to February 24, 2009 per Orders of the Day.

- 2.3**
- (a) **Accept the annual status report on the Safe Neighborhood Parks and Recreation Bond Projects for FY2007-2008.**
 - (b) **Accept the annual status report on the Branch Library Bond Projects for FY2007-2008.**
 - (c) **Accept the annual financial report on the Public Safety Bond Program for FY2007-2008.**

CEQA: Not a Project. (Citizen Oversight Committee for the Library Bond Projects/ Citizen Oversight Committee for the Public Safety Bond Program/Citizen Oversight Committee for the Parks and Recreation Bond Projects)
(Deferred from 1/27/09 – Item 2.15)

Documents Filed: (1) Supplemental memorandum from Director of Public Works Katy Allen, dated January 27, 2009, providing additional information on the status of the South San José Police Substation. (2) Memoranda from Chair Melanie Richardson, Parks and Recreation Commission and Citizen Oversight Committee, all three dated December 15, 2008, transmitting the three staff reports as indicated above in Item 2.3(a)(b)(c).

Council Members Pyle and Campos asked for clarification on the Public Safety Bond Program projects. Director of Public Works Katy Allen provided additional information about the number of challenges impacting projects, including the progress of the South San José Police Substation.

2.3 (Cont'd.)

Action: Upon motion by Council Member Campos, seconded by Council Member Pyle and carried unanimously, the annual status reports for FY2007-2008 on the Safe Neighborhood Parks and Recreation Bond Projects, the Branch Library Bond Projects and the Public Safety Bond Program Projects, were accepted. (10-0-1. Absent: Chirco.)

2.4 Adopt a resolution authorizing the City Manager to negotiate and execute a second amendment to the continuation agreement with Management Partners to extend the term of the agreement from June 30, 2009 to June 30, 2010; expand the scope of services; and increase total compensation by \$220,000 from \$397,200 to \$617,200. CEQA: Not a Project. (City Manager's Office)

Documents Filed: Memorandum from Deputy City Manager Deanna J. Santana, dated January 20, 2009, recommending adoption of a resolution.

Action: [Resolution No. 74785](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Second Amendment to the Continuation Agreement with Management Partners", was adopted. (10-0-1. Absent: Chirco.)

2.5 Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with National Hispanic University, for an agreement term from July 1, 2008 to August 11, 2011, in the amount of \$221,659 to implement the grant-funded Early Childhood Education Program. CEQA: Not a Project. (Library)

Documents Filed: Memorandum from Director of Library Department Jane Light, dated January 20, 2009, recommending adoption of a resolution.

Action: [Resolution No. 74786](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with National Hispanic University in An Amount Not To Exceed \$221,659 to Implement the Grant-Funded Early Childhood Education Program", was adopted. (10-0-1. Absent: Chirco.)

2.6 Adopt a resolution authorizing the City Manager, or designee, to negotiate and execute a First Amendment to the Turnkey Parkland Agreement for Tentative Map No. PT 05-108 with Hitachi Global Storage Technologies, Inc. ("Developer") to accept an additional warranty with certain terms and conditions for the sports court surfaces that were installed in the 10 acre and 5 acre parks that varied from City approved plans and specifications. CEQA: Resolution No. 72772. Council District 2. (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated January 30, 2009, recommending adoption of a resolution.

2.6 (Cont'd.)

Action: [Resolution No. 74787](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager or Designee to Negotiate and Execute a First Amendment to the Turnkey Parkland Agreement with Hitachi Global Storage Technologies, Inc.; To Accept an Additional Warranty with Certain Terms and Conditions for the Sports Court Surfaces Installed at the Park Sites that Varied from City Approved Plans and Specifications”, was adopted. (10-0-1. Absent: Chirco.)

2.7 Approve an Agreement to Perform Tariff Schedule Related Work with Pacific Gas and Electric Company for conversion of overhead facilities to underground facilities within the In-Lieu Fee (Rule 20B) Underground Utility District located on Jackson Avenue between Seventh and Ninth Streets and Taylor Street between Seventh and Tenth Streets in an amount not to exceed \$1,446,222. CEQA: Exempt, PP05-148. Council District 1. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated January 20, 2009, recommending approval of an agreement.

Action: The agreement to perform tariff schedule related work with Pacific Gas and Electric Company for conversion of overhead facilities to underground facilities within the In-Lieu Fee Underground Utility District located on Jackson Avenue between Seventh and Ninth Streets and Taylor Street between Seventh and Tenth Streets in an amount not to exceed \$1,446,222, was approved. (10-0-1. Absent: Chirco.)

2.8 Adopt a resolution authorizing the City Manager to negotiate and execute an airspace rental agreement with the State of California for use of the public parking lot located at Woz Way and Highway 87 (Woz/87 Lot) with an initial term of five (5) years and an option to extend for another five (5) year term. CEQA: Not a Project. Council District 3. (Public Works/Transportation)

Documents Filed: Memorandum from Director of Public Works Katy Allen and Director of Transportation James Helmer, dated January 20, 2009, recommending adoption of a resolution.

Action: [Resolution No. 74788](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Airspace Rental Agreement with the State of California for Use of the Public Parking Lot Located at Woz Way and Highway 87”, was adopted. (10-0-1. Absent: Chirco.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone introduced Paul Devrie, New South Wales Australia, who is currently visiting the City of San José, as part of the League of California Cities' Exchange Program.

3.2 Report of the Rules and Open Government Committee – January 21, 2009 Mayor Reed, Chair-

Action: Deferred to February 24, 2009 per Orders of the Day.

- 3.4
- (a) **Approve the 2008-2009 Mid-Year Budget Review Report.**
 - (b) **Adopt related Appropriation Ordinance and Funding Sources Resolution amendments in various funds as detailed in Section III (Recommended Budget Adjustments and Clean-Up Actions) in the 2008-2009 Mid-Year Budget Review.**
 - (c) **Approve the net elimination of 88.5 positions, comprised of the elimination of 52.0 positions in the Airport Department, the elimination of 3.0 positions in the Fire Department, the elimination of 2.0 positions in the Police Department, the elimination of 28.5 positions in the Public Works Department, the elimination of 9.0 positions in the Transportation Department, offset by the addition of 6.0 positions in Environmental Services Department as described in Section III of the 2008-2009 Mid-Year Review document.**
 - (d) **Approve the Arts Commission's recommended revisions to the Arts Stabilization Loan Fund Guidelines, as follows:**
 - (1) **The Arts Stabilization Flexible Fund, a separate appropriation from the Arts Stabilization Loan Fund, and both funded in the General Fund, will be considered for additional funding as part of the City's annual budget process beginning in 2009-2010. The Flexible Fund will no longer be automatically replenished from interest on lines of credit and general investment earnings from the Loan Fund;**
 - (2) **The Flexible Fund can no longer be used to defray costs associated with managing lines of credit issued from the Loan Fund; and**
 - (3) **Organizations receiving a line of credit from the Arts Stabilization Loan Fund will not be eligible to compete in the City's Operating Grant Program, but will be eligible to receive an annual "recovery" grant based on the organization's grant index as computed under the Operating Grant Program guidelines.**
 - (e) **Direct the City Manager to implement the Arts Stabilization Loan Fund Guidelines, as revised.**
 - (f) **Adopt a resolution repealing Resolution No. 73338 and setting forth the Schedule of Parking Penalties and Late Payment Penalties for Parking Violations to include a courthouse construction parking penalty fee increase of \$3.00 effective March 1, 2009.**

- 3.4 (g) **Direct the City Manager to review and evaluate the Schedule of Parking Penalties and Late Payment Penalties for Parking Violations and to report back to Council by June 2009 if additional adjustments are necessary for certain violations.**
- (h) **Adopt Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund to increase the Fines and Forfeitures revenue estimate by \$230,000 and increase the Parking Citations/Jail Courthouse Fees City-Wide appropriation by \$230,000.**

Documents Filed: (1) Memorandum from Chief Development Officer Paul Krutko, dated January 22, 2009, recommending approval of the Arts Commission's recommended revisions to the Arts Stabilization Loan Fund Guidelines. (2) Memorandum from Director of Transportation James Helmer and Budget Director Jennifer Maguire, dated January 28, 2009, recommending adoption of a resolution, appropriation ordinance and funding sources resolution amendments and direction to the City Manager to review and evaluate the Schedule of Parking Penalties and Late Payment Penalties for Parking Violations and to report back to Council by June 2009 if additional adjustments are necessary for certain violations. (3) The 2008-2009 Mid-Year Budget Review from the Office of the City Manager dated January 2009.

City Manager Debra Figone provided opening comments.

Budget Director Jennifer Maguire presented an overview of the 2008-2009 Mid-Year budget actions.

Public Comments: Ross Signorino suggested eliminating a few of the paid holidays, i.e. Martin Luther King Day or reducing the employee work week to 4-1/2 days in order to reduce the possible layoff of City employees.

City Manager Debra Figone and Budget Director Jennifer Maguire responded to Council questions and comments.

Extensive discussion followed.

Council Member Campos pointed out that previous direction to the City Manager (approved at the City Council Meeting of June 17, 2008) specified "more study on the proposal by Council Members Campos and Williams to shut off ten percent of streetlights in arterials and industrial areas and to bring it back at mid-year". Council Member Campos expressed concern that it was not included in today's 2008-2009 Mid-Year Budget Review Report.

Motion: Council Member Liccardo moved approval of the Staff recommendations, including a clarification of Council Member Campos' request for information about an analysis and impacts of shutting off street lights, providing information on the use of technology to achieve cost savings, with Staff directed to return to the Transportation and Environment Committee with that request. Council Member Nguyen seconded the motion.

3.4 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, the 2008-2009 Mid-Year Budget Review Report; the net elimination of 88.5 positions, comprised of the elimination of 52.0 positions in the Airport Department, the elimination of 3.0 positions in the Fire Department, the elimination of 2.0 positions in the Police Department, the elimination of 28.5 positions in the Public Works Department, the elimination of 9.0 positions in the Transportation Department, offset by the addition of 6.0 positions in Environmental Services Department as described in Section III of the 2008-2009 Mid-Year Review document; the Arts Commission's recommended revisions to the Arts Stabilization Loan Fund Guidelines were approved; the City Manager was directed to implement the Arts Stabilization Loan Fund Guidelines, as revised and to review and evaluate the Schedule of Parking Penalties and Late Payment Penalties for Parking Violations and to report back to Council by June 2009 if additional adjustments are necessary for certain violations; [Ordinance No. 28492](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the General Fund and Various Special and Capital Funds; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption"; [Resolution No. 74776](#), 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 and Various Special and Capital Funds"; [Resolution No. 74789](#), entitled: "A Resolution of the Council of the City of San José Setting Forth the Schedule of Parking Penalties and Late Payment Penalties for Parking Violations and Repealing Resolution No. 73338, Effective March 1, 2009; [Ordinance No. 28494](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the General Fund for the Parking Citations/Jail Courthouse Fees; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" and [Resolution No. 74790](#), 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. Staff was directed to return to the Transportation and Environment Committee with an analysis and impacts of shutting off street lights, including information on the use of technology to achieve cost savings. (10-0-1. Absent: Chirco.)

- (i) **Direct the City Attorney to prepare an ordinance to amend the Public Entertainment Permit Ordinance to authorize a change in the fee methodology for the Public Entertainment Business Permit charged to Public Entertainment Businesses operating in the Downtown Entertainment Zone to include costs related to police enforcement of the Public Entertainment Permit Ordinance. Actual fee increases will be brought forward as part of the 2009-2010 Proposed Budget process.**
- (j) **Direct the City Attorney to prepare an ordinance to amend Title 20 of the San José Municipal Code to implement a soft-closing program for the Downtown Entertainment Zone to allow bars and nightclubs to stay open until 2:30 A.M. with a Conditional Use Permit.**

- 3.4 (k) Discuss and provide further direction to the Administration on the City Manager's proposed cost model and structure in order to further inform the proposed ordinance amendments directed above.**

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

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, Items 3.4(i)(j)(k) were deferred to February 24, 2009 per the Mayor's Office. (10-0-1. Absent: Chirco.)

- 3.5 Presentation of the results of the January 2009 Community Budget Priorities Telephone Survey. CEQA: Not a Project. (Mayor)**

Documents Filed: Memorandum from Mayor Reed, dated January 29, 2009, providing the results of the telephone Community Budget Survey dated January 2009, from Fairbank, Maslin, Maullin & Associates.

David Metz, Fairbank, Maslin, Maullin & Associates, summarized the City of San José 2009 Budget Priorities Survey and responded to Council questions. The presentation was received by the City Council.

- 3.6 As referred by the Rules and Open Government Committee of February 4, 2009, consider direction to the City Clerk to conduct a process to fill the unscheduled vacancies of the Police and Fire Department employee members on the Board of Administration of the Police and Fire Department Retirement Plan (Police and Fire Retirement Board). (City Clerk)**

(Rules Committee referral 2/4/09 – Item 9.1)

Documents Filed: Memorandum from City Clerk Lee Price, dated February 6, 2009, transmitting the recommendations of the Rules and Open Government Committee.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the City Clerk was directed to conduct a process to fill the unscheduled vacancies of the Police and Fire Department employee members on the Board of Administration of the Police and Fire Department Retirement Plan. (10-0-1. Absent: Chirco.)

TRANSPORTATION & AVIATION SERVICES

- 6.2 Conduct a public hearing and adopt a resolution approving the Report of the Director Finance on the Reimbursement of Cost for Sidewalk Repairs, confirming the assessments contained in the Report and directing the recording of liens on the property tax roll for the cost of sidewalk repairs. CEQA: Not a Project. (Finance)**

6.2 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Finance Scott Johnson, dated January 20, 2009, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Finance Scott Johnson, dated February 6, 2009, updating the final report with the attached results of the sidewalk repair administrative hearings that were held on January 29, 2009 to ensure that the property owners have the opportunity to discuss the outstanding charges with staff prior to placement of the potential liens.

Director of Finance Scott Johnson responded to Council questions.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Liccardo and carried unanimously, [Resolution No. 74791](#), entitled: “A Resolution of the Council of the City of San José Approving the Report of the Director of Finance on the Reimbursement Cost for Sidewalk Repairs, Confirming the Assessments Contained in the Report and Directing the Recording of Liens on the Property Tax Roll for the Cost of Sidewalk Repairs”, was adopted. (10-0-1. Absent: Chirco.)

ENVIRONMENTAL & UTILITY SERVICES

7.1 As referred by the Rules and Open Government Committee of February 4, 2009, consider support for the Santa Clara Valley Water District's FY2010 Federally partnered projects in the City of San José. (Environmental Services/City Manager's Office) (Rules Committee referral 2/4/09 – Item 10.2)

Documents Filed: Memorandum from City Clerk Lee Price, dated February 6, 2009, transmitting the recommendations of the Rules and Open Government Committee.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and carried unanimously, a position of support for the Santa Clara Valley Water District's Fiscal Year 2010 Federally partnered projects in the City of San José was approved. (10-0-1. Absent: Chirco.)

OPEN FORUM

- (1) Ross Signorino informed the Mayor and City Council that the City of San José is the most “treed” City in the United States as heard on KLIV Radio.

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 3:43 p.m.

RECESS/RECONVENE

The City Council recessed at 3:43 p.m. from the afternoon Council Session and reconvened at 7:02 p.m. in the Council Chambers, City Hall.

Present: Council Members - Campos, Chu, Constant, Herrera, Kalra, Liccardo, Oliverio, Pyle; Reed.

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

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

CEREMONIAL ITEM

1.1 **Presentation of a commendation to the Almaden Pop Warner Pee Wee football team for winning the national championship and earning the title of 2008 Tomlin Champions. (Pyle)**

Action: Mayor Reed and Council Member Pyle recognized and commended the Almaden Pop Warner Pee Wee football team for winning the national championship and earning the title of 2008 Tomlin Champions.

PUBLIC HEARINGS ON CONSENT CALENDAR

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

- 11.1 (a) **Consideration of an ordinance rezoning the real property located on the north side of Foxworthy Avenue approximately 100 feet east of Lansford Avenue (1345 Foxworthy Avenue) from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow up to five new single-family residences on a 0.70 gross acre site (Hawkstone Foxworthy LLC, Owner). CEQA: Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-1-0-1).
PDC08-048 – District 9
[Continued from 1/27/09 – Item 11.1(b)]**

11.1 (a) (Cont'd.)

Documents Filed: (1) Memorandum from Planning Commission Secretary Joseph Horwedel, dated January 28, 2009, transmitting the recommendations of the Planning Commission to allow up to 5 single family detached residences on a 0.70 gross acre site. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC08-048, dated January 21, 2009. (3) Letter from Susan Sisneros, dated January 1, 2009, expressing opposition to the subject rezoning because of the privacy issue and devaluation of her property. (4) Letter from Allan and Karen Jones, dated February 10, 2009, proposing four options, including building a one-story home rather than the proposed two-story home, turning the home on an angle, placing no windows along the back of the home and planting mature trees in that backyard.

Motion: Council Member Liccardo moved approval of the Planning Commission recommendation, including direction to Staff to work with the applicant at the Planning Development permit stage to address privacy concerns through planting of trees, design modifications or other appropriate measures with special attention to the adjacent property owners' concerns on the northwest corner of the site. Council Member Campos seconded the motion.

Mayor Reed opened the public hearing.

Reyad Katwan, Hawkstone Foxworthy LLC, Applicant/Owner, expressed comments about the values of the project and noted that he has met individually with the residents in the surrounding neighborhood.

Public Comments: Keith Meyer expressed concern about the height of the homes. Susan Sisneros complained that the two-story home behind her home would invade her privacy. Allan Jones objected to the infringement upon his privacy and indicated that the value of his home will decrease. Mayor Reed closed the public hearing.

Responding to a question from Council Member Liccardo, Director of Planning, Building and Code Enforcement Joseph Horwedel confirmed that the surrounding neighborhood is R-1-8 and the building height is 35 feet.

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, [Ordinance No. 28495](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the North Side of Foxworthy Avenue Approximately 100 Feet East of Lansford Avenue (1345 Foxworthy Avenue) to A(PD) Planned Development Zoning District", was passed for publication, as amended, with Staff directed to work with the Applicant at the Planned Development Permit stage to address privacy concerns through planting of trees, design modifications or other appropriate measures with special attention to the adjacent property owners' concerns on the northwest corner of the site. (9-0-2. Absent: Chirco, Nguyen.)

- 11.1 (b) **Consideration of an ordinance rezoning the real property located at the northwest corner of Blossom Hill Road and Poughkeepsie Road (161 Blossom Hill Road) from CN Commercial Neighborhood Zoning District to R-MH Mobilehome Park District to allow mobile home use on a 0.5 gross acre site (Barbaccia Properties Holdings, LLC, Owner). CEQA: Resolution No. 65459.**
C08-064 – District 2

Action: Continued to February 24, 2009 per Administration.

- (c) **Consideration of an ordinance rezoning the real property located on the east side of North 21st Street, approximately 350 feet northerly of East Santa Clara Street (32 N. 21st Street) from A(PD) Planned Development Zoning District to CN Commercial Zoning Neighborhood Zoning District to allow commercial uses on a 0.33 gross acre site (Dironisio Amor, Owner). SNI: Five Wounds/ Brookwood Terrace. CEQA: Resolution No. 65459. No Planning Commission action required.**
C08-063 – District 3

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C08-063, dated January 22, 2009, recommending approval. (2) Proof of Publication of Notice of Public Hearing, executed on December 19, 2008, submitted 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: The recommendation of the Planning Director was approved, [Ordinance No. 28496](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the East Side of North 21st Street Approximately 350 Feet Northerly of East Santa Clara Street (32 North 21st Street) to CN Commercial Neighborhood Zoning District”, was passed for publication. (9-0-2. Absent: Chirco, Nguyen.)

END OF PUBLIC HEARINGS ON CONSENT CALENDAR

PUBLIC HEARINGS

- 11.2 Consideration of an ordinance rezoning the real property located on the northeast corner of Juliet Park Drive and Rosemar Avenue (Tract 8735) from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow up to 17 single-family detached residences on a 26.4 gross acre site (Rosemar Enterprises Corp, Owner). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-1-0).**

PDC06-063 – District 5

(Continued from 1/27/09 – Item 11.3)

Action: Continued to March 10, 2009 per District 5.

Mayor Reed appointed Council Member Pyle as Vice Mayor Pro Tem at 7:18 pm. Mayor Reed left the City Council Meeting.

- 11.3 Consideration of the following actions related to the real property located on a 3.21 gross acre site, located at/on the southwest corner of N. First Street and Skyport Drive (Green Valley Corp, Owner).**

(a) PDC08-037 – Consideration of an ordinance rezoning the real property from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow 22 additional hotel rooms to a previously approved project for a total of up to 321 hotel rooms.

(b) PD08-062 – Consideration of a resolution approving a Planned Development Permit to construct a 215,828 square foot 321-room hotel.

Council District 3. CEQA: North San José EIR Resolution No. 72628, and addenda thereto. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-0-1).

Documents Filed: (1) Memorandum from Council Member Liccardo, dated February 9, 2009, recommending approval of the Staff/Planning recommendations with conditions of approval as indicated in “Action”. (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated January 20, 2009, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC08-037/PD08-062, dated January 22, 2009, recommending approval. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated January 29, 2009, transmitting the Planning Commission recommendation of approval with an additional condition that the hotel provide shuttle service for hotel guests to businesses within 5 miles and to strongly encourage green building practices. (4) Proof of Publication of Notice of Public Hearing, executed on January 14, 2009, submitted by the City Clerk.

Motion: Council Member Liccardo moved approval of the Staff/Planning recommendations and his memorandum dated February 9, 2009, with conditions as described in “Action”. Council Member Constant seconded the motion.

11.3 (Cont'd.)

Public Comments: Vice Mayor Pro Tem Pyle opened the public hearing. There was no testimony from the floor. Vice Mayor Pro Tem Pyle closed the public hearing.

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, the memorandum from Council Member Liccardo, dated February 9, 2009, was approved with the following conditions: (1) Conformance of streetscape design with Rincon South Specific Plan as it exists or is amended at the time of the commencement of construction. (2) Applicant or its lessee provides Eco Passes at no cost to hotel employees. (3) Applicant or its lessee provides shuttle service for hotel guests to and from business destinations within five miles; [Ordinance No. 28497](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Southwest Corner of North First Street and Skyport Drive (1717 North First Street) from a A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District", was passed for publication and [Resolution No. 74792](#), entitled: "A Resolution of the Council of the City of San José Granting a Planned Development Permit to Construct a 322-Room Hotel on a Vacant Site Located at the Southwest Corner of North First Street and Skyport Drive (1717 N. First Street)", was adopted. (8-0-3. Absent: Chirco, Nguyen; Reed.)

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>
10024	S/S Montecito Vista Dr. between Goble/Montecito Vista Ways	7	ROEM Development Corporation	2 Lots/ 242 Units	MFA	Approve

ADJOURNMENT

The Council of the City of San José was adjourned at 7:21 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk
smd/2-10-09 MIN

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

JOINT REDEVELOPMENT AGENCY ITEM

The Joint Redevelopment Agency Board convened at 3:53 p.m. to consider Item 8.1 in a Joint Session.

- 8.1**
- (a) Approval of a grant agreement by the Redevelopment Agency Board and the City of San José with Baseball Acquisition Company, in an amount not to exceed \$375,000, for improvements to the San José Municipal Stadium.**
 - (b) Adoption of a resolution by the City Council making certain determinations required by law for Redevelopment Agency funding of a public project.**
- CEQA: Exempt, File No. PP09-015 [SNI]**

Documents Filed: Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated January 29, 2009, recommending approval of a grant agreement and adoption of a resolution.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried unanimously, a grant agreement by the Redevelopment Agency Board and the City of San José with Baseball Acquisition Company, in an amount not to exceed \$375,000, for improvements to the San José Municipal Stadium was approved and [Resolution No. 74793](#), entitled: “A Resolution of the Council of the City of San José Making Certain Determinations Required by Redevelopment Law, Health and Safety Code Section 33445 for Redevelopment Agency Funding of the Public Improvements for the San José Municipal Stadium Project”, was adopted. (10-0-1. Absent: Chirco.)

The Council of the City of San José and Redevelopment Agency Board was adjourned at 3:54 p.m.