

CITY COUNCIL AGENDA

FEBRUARY 24, 2009

SYNOPSIS

PETE CONSTANT
ASH KALRA
SAM LICCARDO
KANSEN CHU
NORA CAMPOS

DISTRICT 1
DISTRICT 2
DISTRICT 3
DISTRICT 4
DISTRICT 5

CHUCK REED MAYOR

PIERLUIGI OLIVERIO
MADISON P. NGUYEN
ROSE HERRERA
JUDY CHIRCO, VICE MAYOR
NANCY PYLE

DISTRICT 6
DISTRICT 7
DISTRICT 8
DISTRICT 9
DISTRICT 10

Welcome to the San José City Council meeting!

This Agenda contains both a Consent Calendar section for routine business items that require Council approval, and general business items arranged to correspond with San José's City Service Areas (CSAs). City Service Areas represent the policy-making level for strategic planning, policy setting, and investment decisions in the critical functions the City provides to the community. They are:

- **Strategic Support Services** — The internal functions that enable the CSAs to provide direct services to the community in an effective and efficient manner.
- **Community & Economic Development** — Manage the growth and change of the community in order to create and preserve healthy neighborhoods and ensure a diverse range of employment and housing opportunities.
- **Neighborhood Services** — Serve, foster, and strengthen community by providing access to lifelong learning and opportunities to enjoy life.
- **Transportation & Aviation Services** — A safe and efficient transportation system that contributes to the livability and economic health of the City; and provide for the air transportation needs of the community and the region at levels that is acceptable to the community.
- **Environment and Utility Services** — Manage environmental services and utility systems to ensure a sustainable environment for the community.
- **Public Safety Services** — Commitment to excellence in public safety by investing in neighborhood partnerships as well as prevention, enforcement, and emergency preparedness services.

Items listed in Section 9 require approval of both the City Council and the San José Redevelopment Agency Board.

You may speak to the City Council about any item that is on the agenda, and you may also speak during Open Forum on items that are not on the agenda and are within the subject matter jurisdiction of the City Council or Redevelopment Agency Board. If you wish to speak to the City Council, please refer to the following guidelines:

- **Fill out a Yellow Speaker's Card and submit it to the City Clerk seated at the front table. Do this before the meeting or before the item is heard.** This will ensure that your name is called for the item(s) that you wish to address, and it will help ensure the meeting runs smoothly for all participants.
- When the Council reaches your item on the agenda, Mayor Reed will open the public hearing and call your name. Please address the Council from the podium, which is located to the left of the City Clerk's table.
- Each speaker generally has two minutes to speak per item. The amount of time allotted to speakers may vary at the Mayor's discretion, depending on the number of speakers or the length of the agenda.
- To assist you in tracking your speaking time, there is a display on the podium. The green light turns on when you begin speaking; the yellow light turns on when you have 30 seconds left; and the red light turns on when your speaking time is up.

Please be advised that, by law, the City Council is unable to discuss or take action on issues presented during Open Forum. According to State Law (the Brown Act) items must first be noticed on the agenda before any discussion or action.

The San José City Council meets every Tuesday at 1:30 p.m. and every first and third Tuesday at 7 p.m., unless otherwise noted. If you have any questions, please direct them to the City Clerk's staff seated at the tables just below the dais. Thank you for taking the time to attend today's meeting. We look forward to seeing you at future meetings.

Agendas, Staff Reports and some associated documents for City Council items may be viewed on the Internet at www.sanjoseca.gov/clerk/agenda.asp. Council Meetings are televised live and rebroadcast on Channel 26.

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the Office of the City Clerk at San José City Hall, 200 E. Santa Clara Street, Council Wing, 2nd Floor, San José, CA 95113 at the same time that the public records are distributed or made available to the legislative body. Any draft contracts, ordinances and resolutions posted on the Internet site or distributed in advance of the Council meeting may not be the final documents approved by the City Council. Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for the final document.

To arrange an accommodation under the Americans with Disabilities Act to participate in this public meeting, please call (408) 535-1260 or (408) 294-9337 (TTY) at least two business days before the meeting.

On occasion the City Council may consider agenda items out of order.

- **Call to Order and Roll Call**
 - 9:31 a.m.** - Closed Session, Call to Order in Council Chambers
Absent Council Members: Chirco. (Excused)
 - 1:31 p.m.** - Regular Session, Council Chambers, City Hall
Absent Council Members: Chirco. (Excused)
 - 7:03 p.m.** - Public Hearings, Council Chambers, City Hall
Absent Council Members: Chirco. (Excused)
- **Invocation (District 2)**
Oak Grove High School Choir sang “In Time of Silver Rain”.
- **Pledge of Allegiance**
Mayor Reed led the Pledge of Allegiance.

At the evening Council Session, Boy Scout Troop 221, Almaden Valley, led the Pledge of Allegiance.
- **Orders of the Day**
The Orders of the Day and the Amended Agenda were approved.
- **Closed Session Report**
No Report.

1. CEREMONIAL ITEMS

- 1.1 Presentation of a commendation to the City/San José State University Public Sector Career Initiative in recognition of its partnership to create the new website “Students: From Campus to City Hall”. (Human Resources)
Mayor Reed and City Manager Debra Figone recognized and commended the City/San José State University Public Sector Career Initiative in recognition of its partnership to create the new website “Students: From Campus to City Hall”.
- 1.2 Presentation of a commendation to the North Valley Community Association and the Northwood Adopt-A-Park for their 5th Anniversary of the Northwood Adopt-A-Park Program to keep Northwood Elementary School and Northwood Park clean. (Chu)
Heard in the Evening.
Reed and Council Member Chu recognized and commended the North Valley Community Association and the Northwood Adopt-A-Park on their 5th Anniversary to keep Northwood Elementary School and Northwood Park clean.
- 1.3 Presentation of a commendation to the North Valley Community Association for their work in organizing the “Holiday in Berryessa” event at Berryessa Branch Library in December 2008. (Chu)
Heard in the Evening.
Mayor Reed and Council Member Chu recognized and commended the North Valley Community Association for their work in organizing the “Holiday in Berryessa” event in December 2008.
- 1.4 Presentation of a commendation to the San José Youth Chamber Orchestra for their exemplary performance at the City of San José State of the City Address. (Mayor)
Heard in the Evening.
Mayor Reed recognized and commended the San José Youth Chamber Orchestra for their outstanding performance at the City of San José State of the City Address.
- 1.5 Presentation of a commendation to the Tzu-Chi organization for its worldwide service in the areas of charity, medicine, education and humanitarian development; and most especially for the services provided to the local community now that two Tzu-Chi offices are located in the City of San José. (Pyle)
Heard in the Evening.
Mayor Reed and Council Members Pyle and Chu recognized and commended the Tzu-Chi organization for its worldwide service in the areas of charity, medicine, education and humanitarian development, including the two Tzu-Chi offices which are located in the City of San José.
- 1.6 Presentation of a commendation to Miguel E. Jara, owner of La Taqueria on South First Street, upon his retirement. (Mayor/Redevelopment Agency)
Mayor Reed, Council Member Liccardo and Redevelopment Agency Executive Director Harry S. Mavrogenes recognized and commended Miguel E. Jara, owner of La Taqueria on South First Street, upon his retirement.

1. CEREMONIAL ITEMS

- 1.7 Presentation of a proclamation declaring the week of February 26th – March 1st, 2009 as “First Tee Week” in the City of San José. (Mayor/Constant)
(Rules Committee referral 2/18/09)
Mayor Reed and Council Member Constant recognized the week of February 26 through March 1, 2009 as “First Tee Week” in the City of San José.
- 1.8 Presentation of a commendation to Officer Christine Zarate and Sergeant Sal Lopez their continued efforts to make a positive impact in the community above and beyond the requirements of their service. (Kalra)
(Orders of the Day)
Mayor Reed and Council Member Kalra recognized and commended Officer Christine Zarate and Sergeant Sal Lopez their continued efforts to make a positive impact in the community above and beyond the requirements of their service.

2. CONSENT CALENDAR

2.1 Approval of Minutes.

Recommendation: 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 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
- (Deferred from 2/10/09 – Item 2.1)

Approved.

2.2 Final adoption of ordinances.

Recommendation: Final adoption of ordinances.

- (a) ORD. NO. 28493 – Rezoning certain real property situated on the southern portion of area generally bounded by North Fifth Street, East Santa Clara Street, North Sixth Street, and East Saint John Street to DC Downtown Primary Commercial Zoning District. C08-058
Ordinance No. 28493 adopted.
- (b) ORD. NO. 28495 – 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. PDC08-048
Ordinance No. 28495 adopted.

2. CONSENT CALENDAR

2.2 Final adoption of ordinances (Cont'd.)

(c) ORD. NO. 28496 – 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. C08-063
Ordinance No. 28496 adopted.

(d) ORD. NO. 28497 – Rezoning certain real property situated at the southwest corner of North First Street and Skyport Drive (1717 North First Street), from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District. PDC08-037
Ordinance No. 28497 adopted.

2.3 Contract Change Order for Airport - Runway 12R/30L Centerline Lights Project.

Recommendation:

- (a) Approve Contract Change Order No. 1 for the Runway 12R/30L Centerline Lights Project at the Norman Y. Mineta San José International Airport in the amount of \$101,527, and a four day time extension to complete additional work related to the construction of the Project.
- (b) Approve additional funding in the amount of \$81,527 for additional work related to the installation of Runway 12R/30L Centerline Lights Project.

CEQA: Resolution Nos. 67380 and 71451, PP 07-067. (Airport/Public Works)

Approved.

2.4 Settlement regarding City of San Jose v. World Oil.

Recommendation:

- (a) Approve a settlement and authorize the City Attorney to negotiate and execute a Stipulated Judgment to settle an eminent domain matter with World Oil Company relating to real property located at 3148 Senter Road for the total amount of \$762,500, plus statutory interest and costs for the land value, plus \$9,375 for the loss of goodwill, as considered by the City Council during Closed Session on January 27, 2009.

Approved.

- (b) Adopt the following Appropriation Ordinance amendments in the Building and Structure Construction Tax Fund:
- (1) Increase the appropriation to the Public Works Department for the Senter Road: Tully to Singleton project by \$150,000.
 - (2) Decrease the Ending Fund Balance by \$150,000.

CEQA: Senter Rd Widening Project Final EIR, File No. PP04-295. (City Attorney's Office)

Ordinance No. 28499 adopted.

2. CONSENT CALENDAR

2.5 Agreements for Public Art Program at Norman Y. Mineta San José International Airport.

Recommendation:

- (a) Approve two (2) agreements with Gorbet+Banerjee, related to the Norman Y. Mineta San José International Airport Public Art Program, as follows:
 - (1) An agreement for fabrication and installation of non-architectural systems for public artworks at the Norman Y. Mineta San José International Airport, in an amount not to exceed \$360,500; and
 - (2) An agreement for the design, fabrication and installation of three (3) pilot artworks at the Norman Y. Mineta San José International Airport, in an amount not to exceed \$310,000.

Approved.

- (b) Adopt a resolution:
 - (1) Authorizing the City Manager to negotiate and execute an agreement with Gorbet+Banerjee for development and configuration of custom software systems and programmatic operational manuals to support art activation platforms at the Norman Y. Mineta San José International Airport, in an amount not to exceed \$355,000; and
 - (2) Authorizing the City Manager to negotiate and execute amendments to the above three (3) agreements to add up to six (6) months to the term and reallocate scope and/or funding from one agreement to another agreement if the City Manager believes that it would benefit the City's administration of the agreements, provided that there is no increase in the total aggregate compensation of \$1,025,500 approved by the authorization.

CEQA: Resolution Nos. 67380 and 71451, PP07-256. (Economic Development)

Resolution No. 74794 adopted.

2.6 Urban Runoff Management Plan.

Recommendation: Authorize the City Manager to certify and submit the 2009-2010 City of San José Urban Runoff Management Work Plans to the San Francisco Bay Regional Water Quality Control Board in conformance with the City's Municipal Separate Storm Sewer System National Pollutant Discharge Elimination System permit requirements.

CEQA: Exempt, File No. PP09-026. (Environmental Services)

Approved.

2. CONSENT CALENDAR

2.7 Grant from the California Energy Commission's RESCO Initiative for a 2009-2012 San José SMART^E Program.

Recommendation: Adopt a resolution authorizing the City Manager to submit a grant application to the California Energy Commission's Renewable-based Energy Secure Communities (RESCO) Initiative, requesting grant funding in the amount of \$1,269,000 and providing for City matching funding in the amount of \$1,076,000 to conduct the following activities ("2009-2012 San José Specific, Measurable, Attainable, Realistic and Timely Energy Solutions (SMART^E) Program.")

- (a) Development and implementation of a program that addresses the community need for financing the upfront costs of energy efficiency and renewable energy measures and enables the deployment of mature and viable renewable energy technologies and energy efficiency solutions.
- (b) Facilitation and support for PG&E's development of a Smart Grid Project and smart meter installations.
- (c) Development and implementation of San José's SMART^E Community Education and Outreach plan, including comprehensive education, training and outreach resources for the residents and businesses of San José through multiple-medias and an education and demonstration center.
- (d) Continued implementation and support for the Redevelopment Agency (RDA) Clean Tech Incentive Program, which provides incentives to clean tech companies to locate and do business in redevelopment areas San José.

CEQA: Not a Project. (Environmental Services)

Dropped per Administration.

2.8 Ordinance Revisions for Dental Mercury and Fats, Oils and Grease Programs.

Recommendation: As recommended by the Transportation and Environment Committee of February 2, 2009:

- (a) Approve proposed Dental Amalgam program and direct the City Attorney to draft an ordinance amending Chapter 15.14 of the San José Municipal Code to regulate dental practices under a Dental Wastewater Permit and require the installation of amalgam separators and implementation of Best Management Practices.
- (b) Direct the City Attorney to draft an ordinance amending Chapter 15.14 of the San José Municipal Code to implement the enhanced Fats, Oils and Grease Control Program.

(Environmental Services)

[Transportation and Environment Committee referral – Item (e)]

Approved.

2. CONSENT CALENDAR

2.9 Special Events & Venues Recycling.

Recommendation: As recommended by the Transportation and Environment Committee of February 2, 2009, require special events with over 1,000 attendees to specify that food vendors use #1 (PET) plastic recyclable beverage containers for that event as a condition of their Event Authorization effective May 1, 2009. (Environmental Services)
[Transportation and Environment Committee referral – Item (f)]

Approved.

2.10 Actions Related to Historic Landmark Initiations.

Recommendation:

- (a) Adopt a resolution to:
- (1) Initiate proceedings to consider the McMillan House, located at 525 S. Sixth Street, as a City Landmark of special historic, architectural, cultural, aesthetic or engineering interest or value of a historic nature.
 - (2) Set a public hearing on Tuesday, April 7, 2009 at 1:30 p.m. for Council consideration of City landmark designation of the structures.
 - (3) Refer the matter back to the Historic Landmarks Commission for its consideration at a public hearing, followed by a report and recommendation back to City Council.

CEQA: Not a Project. SNI: University.

HL08-176 – District 3

Resolution No. 74795 adopted.

- (b) Adopt a resolution to:
- (1) Initiate proceedings to consider the Lynwood Apartments, located at 553 S. Sixth Street, as a City Landmark of special historic, architectural, cultural, aesthetic or engineering interest or value of a historic nature.
 - (2) Set a public hearing on Tuesday, April 7, 2009 at 1:30 p.m. for Council consideration of City landmark designation of the structures.
 - (3) Refer the matter back to the Historic Landmarks Commission for its consideration at a public hearing, followed by a report and recommendation back to City Council.

CEQA: Not a Project. SNI: University.

HL08-177 – District 3

Resolution No. 74796 adopted.

2. CONSENT CALENDAR

2.10 Actions Related to Historic Landmark Initiations (Cont'd.)

- (c) Adopt a resolution to:
- (1) Initiate proceedings to consider the Kimura House, located at 556 N. Third Street, as a City Landmark of special historic, architectural, cultural, aesthetic or engineering interest or value of a historic nature.
 - (2) Set a public hearing on Tuesday, April 7, 2009 at 1:30 p.m. for Council consideration of City landmark designation of the structures.
 - (3) Refer the matter back to the Historic Landmarks Commission for its consideration at a public hearing, followed by a report and recommendation back to City Council.

CEQA: Not a Project.

HL08-178 – District 3

Resolution No. 74797 adopted.

- (d) Adopt a resolution to:
- (1) Initiate proceedings to consider the Reverend G. A. Miller Residence, located at 80 S. Sixth Street, as a City Landmark of special historic, architectural, cultural, aesthetic or engineering interest or value of a historic nature.
 - (2) Set a public hearing on Tuesday, April 7, 2009 at 1:30 p.m. for Council consideration of City landmark designation of the structures.
 - (3) Refer the matter back to the Historic Landmarks Commission for its consideration at a public hearing, followed by a report and recommendation back to City Council.

CEQA: Not a Project. SNI: 13th Street.

HL08-179 – District 3

(Planning, Building and Code Enforcement)

Resolution No. 74798 adopted.

2.11 Spending Plan for the Supplemental Law Enforcement Services Fund.

Recommendation:

- (a) Approve the 2008-2010 Spending Plan for the Supplemental Law Enforcement Services (SLES) Fund for \$1,577,752.
- (b) Approve the revised 2007-2009 Spending Plan for the SLES Grant, reallocating funding from the previously established Projects #1, #4, and #6 to Projects #2 and #5 and allocating \$88,398 interest earned into the established projects within the same grant.

Approved.

2. CONSENT CALENDAR

2.11 Spending Plan for the Supplemental Law Enforcement Services Fund (Cont'd.)

(c) Adopt the following 2008-2009 Appropriation Ordinance and Funding Sources Resolution amendments in the Supplemental Law Enforcement Services Fund (Fund 414):

- (1) Establish a SLES Grant 2008-2010 appropriation for the Police Department in the amount of \$788,876; and
- (2) Increase the Earned Revenue by \$788,876.

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

Ordinance No. 28500 adopted.

Resolution No. 74799 adopted.

2.12 Forfeiture of bid bond submitted by Élan Construction.

Recommendation: Adopt a resolution waiving the requirement that the Director of the Department of Public Works seek forfeiture of the bid bond submitted by Élan Construction as security for its bid on the Third Street Garage Staircase Replacement Project. CEQA: Exempt, PP08-155. Council District 3. (Public Works)

Resolution No. 74800 adopted.

2.13 Master agreement with Engineering Economics.

Recommendation:

- (a) Approve a consultant master agreement with Engineering Economics, Inc., for a variety of commissioning consultant services for various City projects from the date of execution through December 31, 2011, in an amount not to exceed \$500,000.

Approved.

- (b) Adopt a resolution authorizing the Director of Public Works to negotiate and execute amendments to the master agreement to modify the scope of services to include additional standard services.

CEQA: Not a Project. (Public Works)

Resolution No. 74801 adopted.

2.14 Purchase agreement with the Joe E. Levitt and Jane C. Levitt Family Trust.

Recommendation: Adopt a resolution approving a purchase agreement with Joe E. Levitt and Jane Levitt, Trustees of the Joe E. Levitt and Jane C. Levitt Family Trust dated September 29, 1983, for the purchase of real property located at Jackson Avenue, San José, CA (APN No. 249-64-010) for an amount not to exceed \$352,000, with an estimated additional amount of \$7,000 for closing and escrow costs, and authorizing the Director of Public Works to execute any additional documents necessary to complete the transaction. CEQA: Mitigated Negative Declaration, File No. PP07-130. Council District 3. (Public Works)

Resolution No. 74802 adopted.

2. CONSENT CALENDAR

2.15 Excused absence for Council Member Campos.

Recommendation: Request for an excused absence for Council Member Campos from the Regular Meeting of the Neighborhood Services and Education Committee on March 12, 2009 due to being out of town. (Campos)

(Rules Committee referral 2/11/09)

Excused.

2.16 Mayor Reed's Travel to Washington, D.C.

Recommendation:

(a) Request for an excused absence for Mayor Reed from the Regular Meeting of the Rules and Open Government Committee on February 11, 2009 due to Authorized City Business: Travel to Washington, D.C. to advocate on behalf of the City with the Federal Government.

Excused.

(b) Report on Legislative Advocacy Trip to Washington, D.C. and request for approval of travel.

(Mayor)

(Rules Committee referral 2/11/09)

Approved.

2.17 Silicon Valley Workforce Investment Network Board Nomination.

Recommendation: As recommended by the Rules and Open Government Committee of February 18, 2009, approve the appointment of Brian M. Chrisman, CEO/Founder of Borgata Recycling, Inc., San José, California as a private sector representative on the Silicon Valley Workforce Investment Network Board of Directors as required by law. (Mayor)

(Rules Committee referral 2/18/09 – Item 9.1)

Approved.

3. STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone provided an update on the impacts of the Federal stimulus package and noted that an information memorandum will be routed to the City Council later in the week. She also announced the Deputy City Manager Ed Shikada will travel to Japan as part of the 2009 Japanese American Leadership Delegation.

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

Accepted.

3. STRATEGIC SUPPORT SERVICES

3.3 Report of the Rules and Open Government Committee – January 28, 2009
Mayor Reed, Chair
Accepted.

3.4 Report of the Public Safety, Finance and Strategic Support Committee
Council Member Nguyen, Chair
No Report.

3.5 2008-2009 Mid-Year Budget Actions related to the Downtown Entertainment Zone.

Recommendation:

- (a) 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.
- (b) 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.
- (c) 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)

[Deferred from 2/10/09 – Items 3.4(i)-(k)]

The memorandum from Mayor Reed and Council Members Liccardo, Kalra and Herrera, dated February 11, 2009, was approved, as amended, as follows:

- (1) **Support staff recommendations to implement a soft-closing program for the Downtown Entertainment Zone.**
- (2) **Support staff recommendation to amend the Public Entertainment Permit Ordinance to authorize a change in the fee methodology to include costs related to police enforcement of that ordinance and to bring the actual fee increases forward as part of the 2009-2010 budget process in May and June, with the following changes:**
 - (a) **Hold additional community meetings prior to returning to Council with any proposed changes in this policy. Outreach should include interested stakeholder groups including, but not limited to, affected businesses and neighborhood associations in the Entertainment Zone, 1stAct Silicon Valley, the San José Restaurant and Entertainment Association and the San José Downtown Association. Report to Council should reflect the extent of outreach.**

(Action continued on the next page)

3. STRATEGIC SUPPORT SERVICES

3.5 2008-2009 Mid-Year Budget Actions related to the Downtown Entertainment Zone (Cont'd.)

- (2) (b) **Include in the fee methodology a “sliding scale” approach, articulated in the January 9, 2009 staff memorandum as “Alternative 1”, that would exempt the first 50 persons of occupancy, or some other appropriate number, from the fee calculation.**
- (c) **Allow club owners to stipulate to a lower allotted occupancy, which will both mitigate the fee and constrain the permitted attendance at their establishments. Any necessary revisions in the Conditional Use Permit or other documentation to reflect the reduced occupancy should be made at no cost to the applicants.**
- (d) **Direct the City Manager to create a mechanism to collect the fee by a specified date. Further direct that the City Manager shall suspend or waive the fee on any particular club when that club has become a member of a Business Improvement District (BID) and has paid its designated fee to the BID and the City has received such fee. The City Manager would be authorized to lift or impose the suspension as is appropriate to ensure the full receipt of the aggregate fees required by Council in its June budget deliberations.**
- (3) **Direct the City Manager to continue changes in the policing model in the Entertainment Zone (EZ) to fully embrace the “community policing” concept, incorporating the following Council objectives:**
 - (a) **Courteous presence and engagement with patrons and businesses in the EZ:**
 - **Having officers typically encountered on foot rather than in patrol cars.**
 - **Prior to 2:30 a.m. allowing civil, law-abiding citizens to leave clubs and the downtown at a leisurely pace.**
 - **Encountering officers individually or in pairs rather than in groups where no urgency compels a group response.**
 - (b) **Proximity of officers to the clubs:**
 - **Confining patrol of individual beat officers to smaller areas on sidewalks.**
 - (c) **Efficiency and effectiveness:**
 - **Deployment of larger share of the total officers on “regular time” rather than “overtime”, particularly where it results in cost savings.**
 - **Having officers deployed to the EZ earlier in the evening to allow them to observe and assess potential problem situations well before the “rush” of closing time.**
 - **Reduction in daily deployment commensurate with lower levels of club attendance, occupancy, activity and number/severity of incidents.**

(Action continued on the next page)

3. STRATEGIC SUPPORT SERVICES

3.5 2008-2009 Mid-Year Budget Actions related to the Downtown Entertainment Zone (Cont'd.)

- (3) (d) **EZ specific training for all officers:**
 - **Ensuring that every officer in the EZ has awareness of protocols and practice arising from collaboration between police management and nightclubs.**
- (e) *Ensure adequate coverage at the periphery of the City to maintain safety for residents and officers throughout the City.*
- (4) **Direct the City Manager engage with the San José Police Officers' Association to discuss alternative deployment models, particularly as to any matters that may eventually raise "meet and confer" obligations.**
- (5) **Direct the City Manager to return to Council by April 21, 2009 with a status report that includes:**
 - (a) **A proposed alternative policing model and a description of any changes that the Police Department has already implemented in the past 2 years.**
 - (b) **An analysis of the feasibility of the Redevelopment Agency serving as the entity implementing a hybrid "secondary employment" program.**
 - (c) **An analysis of the feasibility of assessing a cost recovery fee on any establishment located in the EZ that serves alcohol after 11:00 p.m. or some other appropriate time. Such a fee would require a mechanism separate from the Entertainment Permit.**
- (6) **Direct the City Manager to include police overtime cost and deployment data in quarterly reports prepared for the Public Safety, Finance and Strategic Support Committee.**
- (7) **Subsequent to Council action in June, report back to Council soon thereafter regarding the feasibility of the following options:**
 - (a) **Assessing a police cost-recovery fee for any similar establishment located anywhere in the City of San José beginning in Fiscal Year 2010-2011.**
 - (b) **Placing an "overtime cap" on police costs and deployment in the EZ, by requiring the City Manager to return to Council to request authorization for additional funds to cover overtime expenditures that exceed the cap.**

3.6 Agreement with the San José Police Officers' Association.

Recommendation:

- (a) **Adopt a resolution to approve the terms of a Memorandum of Agreement with the San José Police Officers' Association and authorizing the City Manager to execute the agreement with a term of July 1, 2008 to June 30, 2010.**

Resolution No. 74803 adopted.

3. STRATEGIC SUPPORT SERVICES

3.6 Agreement with the San José Police Officers' Association (Cont'd.)

(b) Adopt the following 2008-2009 Appropriation Ordinance amendments in the General Fund:

(1) Increase the Police Department's Personal Services appropriation by \$10,822,874; and

(2) Decrease the Salaries and Benefits Earmarked Reserve by \$10,822,874.

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

Ordinance No. 28501 adopted.

3.7 Amend Municipal Code to add a cap on the amount of Telecommunications Users Tax paid by service users.

Recommendation: Approve an ordinance amending Chapter 4.70 of Title 4 of the San José Municipal Code, by adding a new Part to provide a cap on the amount of Telecommunications Users Tax paid by service users, provided certain conditions are satisfied, which part shall expire on December 31, 2012, unless otherwise extended, shortened, or revised by the City Council. CEQA: Not a Project. (Finance)

Ordinance No. 28498 passed for publication.

3.8 AB 46 (Blakeslee), Energy: Energy Conservation Assistance.

Recommendation: As referred by the Rules and Open Government Committee of February 11, 2009, consider adopting a position of support for AB 46 (Blakeslee) – An Act to Amend Section 25421 of the Public Resources Code, relating to energy, and energy conservation assistance. (Environmental Services)

[Rules Committee referral 2/11/09 – Item 6.1(b)]

Position of support adopted.

3.9 SB 16 and H.R. 598 – Related to Low Income Housing Tax Credits.

Recommendation: As referred by the Rules and Open Government Committee of February 11, 2009, consider adopting a position of support for State SB 16 (Lowenthal) – Low-Income Housing Tax Credit, and Federal H.R. 598 (Rangel) – American Recovery and Reinvestment Tax Act. (Housing)

[Rules Committee referral 2/11/09 – Items 6.1(c) and 6.2(a)]

Position of support adopted.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Report of the Community & Economic Development Committee Council Member Pyle, Chair

No Report.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.2 Downtown Property-Based Business Improvement District Annual Financial Report.

Recommendation: Accept the Downtown San José Property-Based Business Improvement District Financial Report for FY 2007-08. CEQA: Exempt, File No. PP08-095. Council District 3. (Public Works/Transportation)

Accepted.

5. NEIGHBORHOOD SERVICES

5.1 Report of the Neighborhood Services and Education Committee – February 12, 2009 Council Member Campos, Chair

Accepted.

6. TRANSPORTATION & AVIATION SERVICES

6.1 Report of the Transportation and Environment Committee – February 2, 2009 Council Member Liccardo, Chair

Accepted.

7. ENVIRONMENTAL & UTILITY SERVICES

7.1 Amendments in the Integrated Waste Management Fund.

Recommendation: Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the Integrated Waste Management Fund (Fund 423):

- (a) Increase the estimate for Earned Revenue by \$393,005;
- (b) Increase the Household Hazardous Waste Las Plumas Facility appropriation by \$2,193,005; and
- (c) Decrease the Ending Fund Balance by \$1,800,000.

CEQA: Mitigated Negative Declaration, File No. PP06-100. (Environmental Services)

Ordinance No. 28502 adopted.

Resolution No. 74804 adopted.

7. ENVIRONMENTAL & UTILITY SERVICES

7.2 Application of Living Wage Policy to Contracts for the Water Pollution Control Plant.

Recommendation: Adopt a resolution modifying the City of San José Living Wage Policy so that it applies to the contracts issued for the San José/Santa Clara Water Pollution Control Plant, and approving the Policy as modified and updated to reflect current wage rates as a formal City Council Policy, and superseding Resolution No. 68900. CEQA: Not of Project. (Environmental Services)

Dropped per Administration; To be Renoticed.

7.3 Commercial Waste System Redesign.

Recommendation: As recommended by the Transportation and Environment Committee of February 2, 2009, develop an RFP to solicit and award an exclusive franchise to collect and process commercial solid waste, recyclables, and organic materials for each of the two service districts for an initial term of ten years with two options to extend the term, the first for three years and the second for two years for a total of five years. (Environmental Services)

[Transportation and Environment Committee referral – Item (d)]

Dropped per Rules and Open Government Committee.

7.4 Plastic Carryout Bag Ban and Reduction in Single Use.

Recommendation: As recommended by the Transportation and Environment Committee of February 2, 2009:

- (a) Adopt a resolution of support for the efforts of the Santa Clara County Cities Association in promoting a regional approach to reducing the use and impacts of disposable, single-use carryout paper and plastic bags; and
- (b) Direct staff to continue supporting the Santa Clara County Recycling and Waste Reduction Commission for a regional approach to single-use carryout bag usage and to provide feedback to the commission on the County's draft model ordinance language; and
- (c) Direct staff and the City Attorney to return to the Transportation and Environment Committee in April 2009 with option to reduce single-use carryout bags for Council consideration including implementation, cost and stakeholder outreach plans; and
- (d) Continue to support legislation that would implement a state-wide program that would significantly reduce the use of single use carryout bags and that would remove any restriction on the City's ability to establish fees on plastic carryout bags or other disposable packaging.

(Environmental Services)

[Transportation and Environment Committee referral – Item (g)]

Dropped per Administration; Referred back to Transportation & Environment Committee.

8. PUBLIC SAFETY SERVICES

9. JOINT COUNCIL/REDEVELOPMENT AGENCY

- **Open Forum**
 - (1) **Ross Signorino voiced opposition to the adoption of a sewer service fee as a new revenue source.**

- **Adjournment**

The Council of the City of San José adjourned the afternoon session at 4:01 p.m.

10. GENERAL PLAN PUBLIC HEARINGS

No General Plan Public Hearings at this time.

11. PUBLIC HEARINGS

11.1 Public Hearings on Consent Calendar.

Recommendation:

- (a) 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. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0).
C08-064 – District 2
[Continued from 2/10/09 – Item 11.1(b)]
Ordinance No. 28503 passed for publication.
- (b) Consideration of an ordinance rezoning the real property located at/on the southwest corner of S. De Anza Boulevard and Fallen Leaf Lane (1051 S. De Anza Boulevard) from the CP Commercial Zoning District to the CN Commercial Zoning District to accommodate setback restriction on a 0.51 gross acre site (Robinson Oil Corp, Owner). CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.
C08-060 – District 1
Ordinance No. 28504 passed for publication.
- (c) Consideration of an ordinance rezoning the real property located on the southeast corner of McKee Road and N. 33rd Street (280 N 3rd Street) from the R-2 Residential and CP Commercial Pedestrian Zoning Districts to the CP Commercial Pedestrian Zoning District on a 0.51 gross acre site (Shirazi Amir Et Al, Owner). SNI: Five Wounds/Brookwood Terrace. CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.
C08-053 – District 3
Ordinance No. 28505 passed for publication.

END OF PUBLIC HEARINGS ON CONSENT CALENDAR

11. PUBLIC HEARINGS

11.2 Administrative Hearing regarding an appeal of the Planning Commission’s decision to deny a Conditional Use Permit and Determination of Public Convenience or Necessity.

Recommendation: Conduct an Administrative Hearing and consider an appeal of the Planning Commission's decision to deny, as mandated by the Municipal Code, a Conditional Use Permit and Determination of Public Convenience or Necessity to allow off-sale of alcohol at a new 2,379 square foot retailer/convenience store on a 0.53 gross acre site in the CP Commercial Pedestrian Zoning District, located on the southeast corner of North King Road and Maybury Road (788 North King Road) (Rosado, Leticia C. and Carmelo G., Owner). CEQA: Exempt. The Planning Commission recommends denial (4-1-1), as mandated by the Municipal Code. The Director of Planning, Building and Code Enforcement recommends the City Council overturn the mandatory denial by the Planning Commission and approve the subject Conditional Use Permit and make a Determination of Public Convenience or Necessity by finding that the required findings for a Determination of Public Convenience or Necessity can be made and that there is a significant overriding public benefit served by the proposed off-sale of alcohol at the location.

CP08-035 & ABC08-006 - District 3

Continued to 3/17/09 per Administration.

- **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>
9999	Northwest corner of Curtner Avenue and Monterey Road	7	WPV San José LLC	16 Lots	Retail	Approve

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>
10023	Southeast corner of Piercy Road and Tennant Avenue	2	KB Home – South Bay	44 Lots / 40 Units	Single Family Detached
10028	East side of Boynton Avenue, 150 feet north of Underwood Drive	1	Hammond-Ku	5 Lots / 4 Units	Single Family Attached

- **Notice of City Engineer's Award of Construction Projects**
None.

- **Open Forum**
 - (1) **Jeffrey Horne complained about a Cease and Desist letter he received from the City of San José regarding his business.**
 - (2) **Mark Boyd provided information about the recent signing of the American Recovery and Reinvestment Act.**

- **Adjournment**
The Council of the City of San José was adjourned at 8:22 p.m.

8. JOINT REDEVELOPMENT AGENCY ITEMS

8.1 Actions related to an Amended and Restated Disposition and Development Agreement with Block 3 Development Partners, LLC, for the development of Block 3.

Recommendation: Public Hearing followed by City Council and Redevelopment Agency actions:

- (a) Adoption of a resolution by the City Council accepting the summary of costs and findings of the Amended Summary 33433 Report and the Estimated Reuse Valuation pursuant to the California Health and Safety Code Section 33433 for the development of Block 3, including additional Agency assistance for improvements to the ground floor commercial space and the public garage of Block 3, Phase I – The 88.

Resolution No. 74805 adopted.

- (b) Approval by the Redevelopment Agency Board of the Amended and Restated Disposition and Development Agreement with Block 3 Development Partners, LLC, for the development of Block 3 (Phase I -The 88 and Phase II) to increase Agency assistance to the Phase I project by \$1,850,000 to attract a new grocery store and an additional \$841,075 to address payment of other items arising out of the DDA for a total increase of \$2,691,075; to revise the project description and to modify the schedule of performance.

Approved.

- (c) Adoption of resolutions by the Redevelopment Agency Board:
- (1) Authorizing the Executive Director to negotiate and execute an Agreement with Block 3 Development Partners to define procedures and protocols to correct water infiltration issues in the Central Place public parking garage after garage conveyance to the Agency; and,
- (2) Approving an adjustment to the FY 2008-09 Adopted Capital Budget to reallocate \$160,000 from the Downtown Business Improvements & Loan project line to the Downtown Mixed Use Projects line in the Merged Redevelopment Area, and amending the FY 2008-2009 Agency appropriations resolution.

CEQA: Resolution No. 71039.1, Use of Mixed Use Project and Century Center Plan Amendment EIR and addenda thereto, File No. H04-038. [SAN ANTONIO PLAZA]
Redevelopment Agency Resolution Nos. 5885 and 5886 adopted.

8.2 Approval of a Cooperation Agreement between the City and Agency and related actions for a proposed Spartan Keyes Neighborhood Action Center.

Recommendations:

- (a) Adoption of a resolution by the City Council making certain determinations required by Redevelopment Law, Health and Safety Code Section 33445, for Redevelopment Agency funding of construction of improvements for the proposed Spartan Keyes Neighborhood Action Center, which will be located in space proposed to be subleased for that purpose in the Spartan Keyes SNI area.

Resolution No. 74806 adopted.

8. JOINT REDEVELOPMENT AGENCY ITEMS

8.2 Approval of a Cooperation Agreement between the City and Agency and related actions for a proposed Spartan Keyes Neighborhood Action Center (Cont'd.)

- (b) City Council and Redevelopment Agency Board approval of a Cooperation Agreement providing for:
- (1) The Agency to fund the initial security deposit of \$5,000 of the proposed sublease for the Center;
 - (2) The Agency to fund rent payments for the 5-year term of the proposed sublease for the Center in an amount not to exceed \$136,961;
 - (3) The Agency to fund certain tenant improvements and fixtures, furniture and equipment (FF&E) for the proposed Center in an amount not to exceed \$80,000; and,
 - (4) The City to maintain and operate the Spartan Keyes Neighborhood Action Center pursuant to the proposed sublease.

Approved.

- (c) City Council approval of a five-year sublease agreement with ROEM Development Corporation for 2,256 square feet of commercial space on the ground floor of a building located at 570 Keyes Street, at a rental rate of \$2,256 per month for nine months of the first year of the sublease with the first three months free and annual increases of 3% for a total amount not to exceed \$136,961 for the five-year sublease period.

Approved.

- (d) Adoption of a resolution by the City Council authorizing the City Manager to negotiate and execute any further ancillary agreements, sublease amendments or other documents necessary to complete the transaction.

Resolution No. 74807 adopted.

- (e) Adoption by the City Council of the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund in the amount of \$105,304 for FY 2008-2009:

- (1) Increase the appropriation to the Department of Public Works for Non-Personal/Equipment by \$25,304;
- (2) Establish a City-Wide appropriation to the General Services Department for the Spartan Keyes Neighborhood Action Center Tenant Improvements in the amount of \$80,000; and,
- (3) Increase the estimate for Earned Revenue by \$105,304.

CEQA: Mitigated Negative Declaration and Addenda Thereto, File No. PD04-065.

[SPARTAN KEYES SNI]

Ordinance No. 28506 adopted.

Resolution No. 74808 adopted.

8. JOINT REDEVELOPMENT AGENCY ITEMS

8.3 Approval of a Building Rehabilitation and Loan Agreement with Urban Markets, LLC, for improvements related to the San Pedro Square Urban Market.

Recommendations: It is recommended that:

- (a) The Redevelopment Agency Board adopt a resolution approving a Building Rehabilitation and Loan Agreement with Urban Markets, LLC (Developer), in an amount not to exceed \$5,000,000 for private improvements and \$1,000,000 for off-site public improvements related to the San Pedro Square Urban Market generally located in the vicinity of 87 North San Pedro and 196 West Saint John Street and authorize the Executive Director to negotiate and execute all documents necessary to implement the transaction described in the Agreement.

Redevelopment Agency Resolution No. 5888 adopted.

Noes: Campos.

- (b) The Agency Board adopt a resolution approving a shift of \$4,000,000 from the adopted FY 2009-2010 Two-Year Spending Plan to the FY 2008-2009 Adopted Capital Budget for the San Pedro Square Urban Market project line in the Merged Redevelopment Area, and amending the FY 2008-2009 Agency appropriations resolution.

Redevelopment Agency Resolution No. 5889 adopted.

Noes: Campos.

- (c) That the City Council direct the City Attorney and City Administration to draft appropriate ordinances and/or documents for Phase 1 of the Project to allow:
- (1) Revocable license to use City streets and rights of way for kiosks and carts for the Project;
 - (2) Master vendor permit for multiple vendor sites within the Project;
 - (3) Renaming of the Market Street Garage to reflect the new project; and,
 - (4) Joint use of the Peralta Adobe and Fallon House properties by History San Jose and Developer.

Approved.

Noes: Campos.

- (d) Direction by the Agency Board and City Council to staff to discuss with the Developer the alternatives for the future acquisition and/or use of the parking lot located directly west of the Fallon House (West Parking Lot) and the property referred to as the North Garage Space.

CEQA: Resolution No. 72767, Downtown Strategy 2000 Final EIR, File No. PP09-024.
[SNI]

Approved.

Noes: Campos.

8. JOINT REDEVELOPMENT AGENCY ITEMS

8.4 Approval of an Amended and Restated DDA with Green Valley Corporation for development of property on the northwest corner of N. Second St. and E. Saint James St.

Recommendations:

- (a) Adoption of a resolution by the City Council accepting the 33433 Summary Report and Re-Use Valuation pursuant to the California Health and Safety Code Section 33433 for the sale and development of Agency-owned property on the northwest corner of North Second Street and East Saint James Street (APN 467-01-118).

Resolution No. 74809 adopted.

- (b) Adoption of a resolution by the Redevelopment Agency Board approving the Amended and Restated Disposition and Development Agreement (DDA) with Green Valley Corporation and authorizing the Executive Director to execute ancillary documents as contemplated by the Amended 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: Administrative EIR Findings For Final Supplemental Environmental Impact Report for Park View Towers Project Adopted by Director of PBCE on 6/4/08 in connection with File Nos. H05-029, HP05-002 and HP05-003. **[MERGED]**

Redevelopment Agency Resolution No. 5887 adopted.