



MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, MARCH 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 9:31 a.m. to a Closed Session in Room W133, (A) to confer with Legal Counsel pursuant to: Government Code Section 54956.9, subsection (a) with respect to existing litigation: (1) Naymark, et al. v City, et al.; Names of Parties Involved: Janice Naymark, Ronald Naymark, City of San José, San José Police Department, Robert Davis, City of Campbell, Campbell Police Department, David Gullo, Town of Los Gatos, City of Monte Sereno, Los Gatos/Monte Sereno Police Department, Scott Seaman, City of Palo Alto, Lynn Johnson, City of Santa Clara, Santa Clara Police Department, Stephen D. Lodge, State of California, California Highway Patrol, Michael L. Brown, County of Santa Clara, Office of the Santa Clara County Sheriff, Laurie Smith, and Does 1-25; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV080008; Amount of Money or other Relief Sought: Damages according to proof; (B) to confer with Legal Counsel – Anticipated Litigation: Initiation of litigation pursuant to subsection (c) of Section 54956.9, with respect to anticipated litigation in one (1) matter; (C) to confer with Counsel – Anticipated Litigation (Claim Not Filed). Significant exposure to litigation pursuant to subsection (b) of Section 54956.9 of the Government Code: Number of matters to be discussed: 1; (D) to confer with Real Property Designated Representatives Pursuant to Government Code Section 564956.8: (1) Property Street Address, Parcel Number or Other Unique Reference of Property: 1125 Coleman Avenue, San José, CA, APN: 230-46-055, 230-46-060, 230-46-062, 230-46-063; Negotiating Parties: Paul Krutko and Nanci Klein for the City of San José; Under Negotiation: The direction will concern price and terms of payment; Likely Range of Value of Property: Negotiated price based on appraisal and comparable property values; (2) 95 North Third Street, San José, CA 95113, APN: 467-21-002; Negotiating Parties: Jim Ortbal, Paul Krutko, Neil Stone for the City of San José

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CLOSED SESSION (Cont'd.)

and Steve Dunn for Legacy Partners; Under Negotiation: The direction will concern price and terms of payment; Likely Range of Value of Property: Negotiated price based on appraisal and comparable property values; (E) 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 Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement – City of San José and Association of Building, Mechanical and Electrical Inspectors (ABMEI); (2) International Brotherhood of Electrical Workers, Local 332 (IBEW) Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Brotherhood of Electrical Workers, Local 332 (IBEW); (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 – Confidential Employees' Organization, AFSCME Local 101 and City of San José; (4) City Association of Management Personnel Agreement (CAMP); Nature of negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Benefit & Compensation Summary - City of San José and City Association of Management Personnel Agreement; (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 - City of San José and Municipal Employees' Federation, AFSCME Local 101, AFL-CIO; (6) Association of Maintenance Supervisory Personnel (AMSP); Nature of negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: City of San José and City Association of Maintenance Supervisory Personnel (AMSP) Benefit & Compensation Summary; (7) Association of Engineers & Architects (AEA); Nature of negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement - City of San José Association of Engineers & Architects (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 - 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.

CLOSED SESSION

By unanimous consent, Council recessed from the Closed Session at 11:45 a.m. and reconvened at 1:33 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

Tlaloc Chalchihuitlicue Aztec Dance in Collaboration with Tezkatlipoka Traditional Aztec Dance and Drum performed the dance of the Eagle and Jaguar. (District 3)

PLEDGE OF ALLEGIANCE

Mayor Reed and students of A. J. Dorsa Elementary School led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Item 4.5 deferred to April 7, 2009.

CEREMONIAL ITEMS

1.1 Presentation by the San José Tech Museum to the City of San José. (Mayor)

Action: Mayor Reed accepted a check from the San José Tech Museum of the City of San José for the Redevelopment Agency of San José/Team San José in the amount of \$648,783 for shared proceeds from “Leonardo: 500 Years into the Future”.

1.2 Presentation of a commendation to Airtronics Metal Products, Inc., for choosing San Jose and for the benefits it provides to our residents and our economy through jobs and revenues to the “Capital of Silicon Valley.” (Mayor/Redevelopment Agency)

Action: Mayor Reed, Council Member Nguyen and Executive Director of the Redevelopment Agency Harry S. Mavrogenes recognized and commended Airtronics Metal Products, Inc., for choosing San Jose and for the benefits it provides to our residents and our economy through jobs and revenues to the “Capital of Silicon Valley”.

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Joint Council/Redevelopment Agency convened at 1:50 p.m. to consider Item 9.1 in a Joint Session.

- 9.1 (a) Hold a public hearing, accept the Convention Center Facilities District Report, and take the following actions relating to the formation of Convention Center Facilities District No. 2008-1 and the necessity to incur bond indebtedness:**
- (1) Adopt a resolution of Formation of Convention Center Facilities District No. 2008-1, authorizing the levy of a special tax therein, establishing an initial annual appropriations limit therefore and submitting the authorization to levy a special tax and the establishment of the appropriations limit to the qualified electors thereof.**
 - (2) Adopt a resolution to Incur Bonded Indebtedness of the proposed Convention Center Facilities District pursuant to the City of San José Convention Center Facilities District financing procedure in an amount not to exceed \$750,000,000 over the life of the District.**
 - (3) Adopt a resolution calling a special mailed-ballot election among property owners in the District.**
- (b) Adopt resolutions authorizing the City Manager and the Executive Director to negotiate and execute a Cooperation Agreement between the City and Agency related to the financing and construction of the proposed Convention Center Phase I Project.**

CEQA: Resolution No. 72767 and addendum thereto, File No. PP08-002. (City Manager's Office/Redevelopment Agency)

Documents Filed: (1) Memorandum from City Manager Debra Figone and Executive Director of the Redevelopment Agency Harry S. Mavrogenes, dated February 24, 2009, recommending actions to be taken regarding the formation of a Convention Center Facilities District. (2) Notice of Election submitted by City Clerk Lee Price, dated March 11, 2009, calling for a special mailed-ballot election among property owners of Convention Center Facilities District No. 2008-1. (3) Proof of Publication of Notice of Public Hearing, executed on February 18, 2009, submitted by the City Clerk. (4) Letter from Ashwin N. Patel, dated March 9, 2009, expressing opposition to the proposed increase in Transient Occupancy Tax.

Chief Development Officer Paul Krutko offered opening comments on the implementation plan, and Dan Fenton, representing Team San José, urged the Council to support the formation of a Convention Center Facilities District. Redevelopment Agency Director Bill Ekern, Chief Development Officer Krutko and Dan Fenton responded to questions from Council. Extensive discussion followed.

9.1 (Cont'd.)

Mayor Reed opened the public hearing.

Public Comment: Cyril Ishard (Fairmont Hotel) and Doyle O'Neil (Homewood Suites) spoke in support of actions proposed in the formation of Convention Center Facilities District. Vikas Patel (3A Motel/Traveler's Rest) offered support of the proposal, but asked that special provisions be allowed for independently-owned hotels that may not otherwise benefit from the assessment.

Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Kalra, seconded by Council Member Liccardo, and carried unanimously, actions related to the Formation of a Convention Center Facilities District were approved, with direction to Staff to explore real and practical issues associated with smaller, independent hotels that may not otherwise benefit from the assessment; [Resolution No. 74826](#), entitled: "A Resolution of the Council of the City of San José, forming Convention Center Facilities District No. 2008-1 and Providing for the Levy of a Special Tax Therein to Finance specified Acquisition, Construction, Reconstruction, Replacement, Rehabilitation and Upgrade of the San José Convention Center"; [Resolution No. 74827](#), entitled: "A Resolution of the Council of the City of San José, Deeming it Necessary to Incur Bonded Indebtedness to Finance Specified Acquisition, Construction, Reconstruction, Replacement, Rehabilitation and Upgrades of the San José Convention Center by Authority of Convention Center Facilities District No. 2008-1, City of San José, County of Santa Clara, State of California"; [Resolution No. 74828](#), entitled: "A Resolution of the Council of the City of San José, Calling Special Mailed-Ballot Election Within Convention Center Facilities District No. 2008-1, City of San José, County of Santa Clara, State of California"; [Resolution No. 74829](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Cooperation Agreement between the City of San José and Redevelopment Agency of the City of San José Related to the Financing and Construction of the Proposed Convention Center Expansion Project" and [Redevelopment Agency Resolution No. 5891](#), entitled "A Resolution of the Board of Directors of the Redevelopment Agency of the City of San José Authorizing the Executive Director to Negotiate and Execute a Cooperation Agreement between the City of San José and Agency Related to the Financing and Construction of the Proposed Convention Center Expansion Project", were adopted. (10-0-1. Absent: Chirco.)

The Joint Council/Redevelopment Agency adjourned at 3:10 p.m.

CONSENT CALENDAR

Upon motion by Council Member Pyle, seconded by Council Member Liccardo 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 November 4, 2008.**
- (b) **Special Minutes of November 10, 2008 on the Citywide Inclusionary Housing Policy.**
- (c) **Regular Minutes of November 18, 2008.**

Documents Filed: (1) The Regular Minutes dated November 4, 2008 and November 18, 2008. (2) Special Minutes of November 10, 2008 of the Citywide Inclusionary Housing Policy.

Action: The minutes were approved. (10-0-1. Absent: Chirco.)

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 28503 – Rezoning certain real property situated on the northwest corner of Blossom Hill Road and Poughkeepsie Road (161 Blossom Hill Road) to R-MH Mobilehome Park Zoning District. C08-064**

Documents Filed: Proof of Publication of the title of Ordinance No. 28503, executed on March 3, 2009, submitted by the City Clerk.

Action: [Ordinance No. 28503](#) was adopted. (10-0-1. Absent: Chirco.)

- (b) **ORD. NO. 28504 – Rezoning certain real property situated on the southwest corner of South De Anza Boulevard and Fallen Leaf Lane (1051 South De Anza Boulevard) to CN Commercial Neighborhood Zoning District. C08-060**

Documents Filed: Proof of Publication of the title of Ordinance No. 28504, executed on March 3, 2009, submitted by the City Clerk.

Action: [Ordinance No. 28504](#) was adopted. (10-0-1. Absent: Chirco.)

2.2 (Cont'd.)

- (c) **ORD. NO. 28505 – Rezoning certain real property situated on the east side of North 33rd Street, 140 feet south of McKee Road (280 North 33rd Street) to CP Commercial Pedestrian Zoning District. C08-053**

Documents Filed: Proof of Publication of the title of Ordinance No. 28505, executed on March 3, 2009, submitted by the City Clerk.

Action: [Ordinance No. 28505](#) was adopted. (10-0-1. Absent: Chirco.)

- 2.3 **Adopt a resolution authorizing the City Attorney to execute a Second Continuation Agreement with Miller & Van Eaton, LLP, for consultant services related to cable television franchise renewal matters, extending the term through December 31, 2009, with no increase in total compensation. CEQA: Not a Project. (City Attorney's Office)**

Documents Filed: Memorandum from City Attorney Rick Doyle, dated February 26, 2009, recommending adoption of a resolution.

Action: [Resolution No. 74815](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Attorney to Execute a Second Continuation Agreement with Miller & Van Eaton, L.L.P.”, was adopted. (10-0-1. Absent: Chirco.)

- 2.4 **Approve settlement and authorize payment to Regina Rodriguez and Justin Cruz in the amount of \$87,000 pursuant to a Settlement Agreement and Release, as considered by the City Council during the Closed Session held on February 9, 2009. CEQA: Not a Project. (City Attorney's Office)**

Documents Filed: Memorandum from City Attorney Rick Doyle, dated February 26, 2009, recommending approval of the settlement and authorization of payment.

Action: The settlement was approved, and payment to Regina Rodriguez and Justin Cruz in the amount of \$87,000 pursuant to a Settlement Agreement and Release, as considered by the City Council during Closed Session, was authorized. (10-0-1. Absent: Chirco.)

- 2.5 **Approve the City Manager's travel to San Diego, California on March 19 and 20, 2009, for the CEO's for Cities 2009 Strategy Session. Source of Funds: City Manager's Non Personal Appropriation. (City Manager's Office)**

Documents Filed: Memorandum from City Manager Debra Figone, dated February 25, 2009, requesting approval of travel.

Action: The travel request for City Manager Debra Figone was approved. (10-0-1. Absent: Chirco.)

2.6 Approval of award of open purchase orders for supplies, materials, equipment and services for FY 2008-2009 #5 and authorization for the Director of Finance to execute the purchase orders. CEQA: See attachment for CEQA determinations. (Finance)

Documents Filed: Memorandum from Director of Finance Scott P. Johnson, dated February 17, 2009, recommending approval of award of open purchase orders.

Action: An award of open purchase orders for supplies, materials, equipment and services for FY 2008-2009 #5 and authorization for the Director of Finance to execute the purchase orders were approved. (10-0-1. Absent: Chirco.)

2.7 Adopt a resolution approving a change in the affordability mix of the 90 Archer Street Apartments, a 42-unit rental housing development to be constructed at 90 Archer Street, to be made available to extremely low-income and very low-income households, with 41 units affordable to households with incomes at or below 45% Area Median Income and one unrestricted managers' unit. CEQA: Resolution No. 72768 and Addendum thereto, File No. PDC06-085. Council District 3. (Housing)

Documents Filed: Memorandum from Director of Housing Leslye Krutko, dated February 17, 2009, recommending adoption of a resolution.

Action: [Resolution No. 74816](#), entitled: "A Resolution of the Council of the City of San José Approving a Change in the Unit Affordability Mix for the 90 Archer Street Apartments", was adopted. (10-0-1. Absent: Chirco.)

2.8 Adopt the following amendment to the 2008-2009 Appropriation Ordinance in the Home Investment Partnership Program (HOME) Fund 445:

- (a) Increase the WelcomeHOME appropriation by \$600,000; and**
 - (b) Decrease the Home Loans and Grants appropriation by \$600,000.**
- CEQA: Not a Project. (Housing/City Manager's Office)**

Documents Filed: Memorandum from Director of Housing Leslye Krutko and Budget Director Jennifer Maguire, dated February 17, 2009, recommending adoption of an amendment to an appropriation ordinance.

Action: [Ordinance No. 28508](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Home Investment Partnership Program Fund for the Welcome Home Program; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. (10-0-1. Absent: Chirco.)

2.9 Approve an amendment to the Buena Vista Park Master Plan for its proposed expansion. CEQA: Exempt, PP08-266. Council District 6. SNI: Burbank/Del Monte. (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated February 17, 2009, recommending approval of an amendment.

Council Member Oliverio pulled this item from the Consent Calendar to commend the Buena Vista Community and the Parks, Recreation and Neighborhood Services Staff for their dedication in making the park expansion plan a reality.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Pyle and carried unanimously, an amendment to the Buena Vista Park Master Plan for proposed expansion was approved. (10-0-1. Absent: Chirco.)

2.10 Approve an agreement with 2M Associates, a California general partnership, for consultant services for a hydrologic study and an update to the Silver Creek Linear Park Master Plan from the date of execution through December 31, 2010 in the amount not to exceed \$139,410. CEQA: Not a Project. Council District 8. (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated February 17, 2009, recommending approval of an agreement with 2M for consultant services.

Action: An agreement with 2M Associates for consultant services for a hydrologic study and an update to the Silver Creek Linear Park Master Plan were approved. (10-0-1. Absent: Chirco.)

2.11 Adopt a resolution summarily vacating a 10-foot Public Service Easement and a 5-foot Wire Clearance Easement lying in the northerly and southerly boundaries of Lot 163, Tract 3451 (Mylinda Drive). CEQA: Not a Project. Council District 4. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated February 17, 2009, recommending adoption of a resolution.

Action: [Resolution No. 74817](#), entitled: "A Resolution of the Council of the City of San José Summarily Vacating a Portion of the Public Service Easement (PSE) and Wire Clearance Easement (WCE) Lying within Lot 163 of Tract 3451", was adopted. (10-0-1. Absent: Chirco.)

- 2.12 Adopt a resolution to consider the establishment of a Rule 20A Underground Utility District along Tully Road, between Kenoga Drive and 720 feet west of Senter Road, and along Senter Road, between Parrott Street and 170 feet south of Tully Road, and set a public hearing on April 14, 2009 at 1:30 p.m. CEQA: Addendum to a Mitigated Negative Declaration, PP08-160. Council District 7. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated February 17, 2009, recommending adoption of a resolution.

Action: [Resolution No. 74818](#), entitled: “A Resolution of the Council of the City of San José Setting the Time and Place for a Public Hearing to Consider the Establishment of a Rule 20A Underground Utility District Along Tully Road, between Kenoga Drive and 720 Feet West of Senter Road, and along Senter Road, between Parrott Street and 170 Feet south of Tully Road on April 14, 2009 at 1:30 p.m.”, was adopted. (10-0-1. Absent: Chirco.)

- 2.13 Adopt a resolution of intention to vacate a 20-foot street alley, located between Eastgate Avenue and Beverly Boulevard, reserve a public services easement over the vacated area, and set a public hearing on April 14, 2009 at 1:30 p.m. CEQA: Exempt, H07-049. Planning Commission recommends approval (7-0-0). Council District 5. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated February 17, 2009, recommending adoption of a resolution.

Action: [Resolution No. 74819](#), entitled: “A Resolution of the Council of the City of San José Setting a Public Hearing to Consider Whether to Vacate a Street Alley Located Between Eastgate Avenue and Beverly Boulevard and Reserve a Public Service Easement over the Entire Area Being Vacated”, was adopted. (10-0-1. Absent: Chirco.)

- 2.14 Approval to increase the construction contingency for the San José Animal Care Center Tenant Improvements II Project in the amount of \$5,854, from \$3,474 to \$9,328. CEQA: Mitigated Negative Declaration, PP00-057. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated February 17, 2009, recommending approval to increase contingency and contract time extension.

Action: An increase in the construction contingency for the San José Animal Care Center Tenant Improvements II Project in the amount of \$5,854, from \$3,474 to \$9,328 was approved. (10-0-1. Absent: Chirco.)

- 2.15 (a) (1) **Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the Services for Redevelopment Capital Projects Fund (City-side Redevelopment Fund) for 2008-2009:**
- (a) **Increase the estimate for Earned Revenue by \$859,000.**
 - (b) **Establish the appropriation to the Department of Public Works for the Convention Center Central Utility Plant Project (PSM 561) in the amount of \$194,000.**
 - (c) **Establish the appropriation to the Department of Public Works for the Autumn Street Extension Project (PSM 566) in the amount of \$665,000.**
- (2) **Adopt resolutions making certain determinations regarding the related expenditure of Redevelopment Agency funds on certain public improvements in connection with:**
- (a) **The Convention Center Central Utility Plant Project as more specifically described in the memorandum from the Redevelopment Agency, dated January 15, 2009; and**
- (a) (2) (b) **The Autumn Street Extension Project as more specifically described in the memorandum from the Redevelopment Agency dated January 22, 2009.**

CEQA: Convention Center Central Utility Plant Project: Resolution No. 72767 and addendum thereto, File No. PP08-002; Autumn Street Extension Project: Not a Project. (Public Works/City Manager's Office)

- (b) (1) **Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the Services for Redevelopment Capital Projects Fund (City-side Redevelopment Fund) for 2008-2009:**
- (a) **Increase the estimate for Earned Revenue by \$385,000.**
 - (b) **Increase the appropriation to the Department of Transportation for the Agency Pole Painting Project (PSM 501 Amendment #1) in the amount of \$360,000.**
 - (c) **Establish the appropriation to the Department of Transportation for the Bird Avenue Bike Lanes and Lane Modification Project (PSM 569) in the amount of \$25,000.**
- (2) **Adopt a resolution making certain determinations regarding the related expenditure of Redevelopment Agency funds on certain public improvements in connection with the Bird Avenue Bike Lanes and Lane Modification Project as more specifically described in the memorandum from the Redevelopment Agency, dated February 2, 2009.**

CEQA: Agency Pole Painting Project: Exempt, File No. PP07-242; Bird Avenue Bike Lanes and Lane Modification Project: Exempt, File No. PP08-293. (Transportation/City Manager's Office)

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen and Budget Director Jennifer Maguire, dated February 17, 2009, recommending adoption of an appropriation ordinance and funding sources resolution amendments. (2) Memorandum from Director of Transportation James R. Helmer and Budget Director Jennifer Maguire, dated February 17, 2009, recommending adoption of an appropriation ordinance and funding sources resolution amendments.

2.15 (Cont'd.)

Action: [Ordinance No. 28509](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Services for Redevelopment Capital Projects Fund for the Convention Center Central Utility Plan Project and the Autumn Street Extension Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”; [Resolution No. 74820](#), entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 74461 Setting Forth the Estimated sources of Funds for the Fiscal Year 2008-2009 to Adjust Revenues in the Services for Redevelopment Capital Projects Fund”; [Resolution No. 74821](#) entitled: “A Resolution of the Council of the City of San José Making Certain Determinations Regarding the Expenditure of Redevelopment Agency Funds for Certain Public Improvements in the Guadalupe-Auzerais Redevelopment Project Area”; [Resolution No. 74822](#), entitled: “A Resolution of the Council of the City of San José Making Certain Determinations Regarding the Expenditure of Redevelopment Agency Funds for Certain Public Improvements in the Julian Stockton Redevelopment Project Area; [Resolution No. 74823](#), entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 74461 Setting Forth the Estimated sources of Funds for the Fiscal Year 2008-2009 to Adjust Revenues in the Services for Redevelopment Capital Projects Fund”; [Ordinance No. 28510](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Services for Redevelopment Capital Projects Fund for the Agency Pole Painting Project and the Bird Avenue Bike Lanes and Lane Modification Project and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”, and [Resolution No. 74824](#), entitled: “A Resolution of the Council of the City of San José Making Certain Determinations Regarding the Expenditure of Redevelopment Agency Funds for Certain Public Improvements in the Greater Gardner Strong Neighborhoods Initiative Redevelopment Project Area”, were adopted. (10-0-1. Absent: Chirco.)

2.16 **Approve travel by Councilmember Herrera to Boston, MA on October 21 – 23, 2009 to participate in the San José/Silicon Valley Chamber of Commerce City-to-City Trip for 2009. Source of Funds: Mayor & Council Travel Fund. (Herrera) (Rules Committee referral 2/25/09)**

Documents Filed: Memorandum from Council Member Herrera, dated February 23, 2009, requesting approval of travel to participate in the San José/Silicon Valley Chamber of Commerce City-to-City Trip for 2009.

Action: The travel request for Council Member Herrera was approved. (10-0-1. Absent: Chirco.)

- 2.17 (a) **Approve travel by Councilmember Kalra to Washington, D.C. on March 14-18, 2009 to attend the National League of Cities Congressional City Conference. Source of Funds: Council Office Budget. (Kalra)**
(Rules Committee referral 2/25/09)
- (b) **Request for an excused absence for Councilmember Kalra from the Closed Session and Regular Meeting and Evening Meeting of the City Council on March 17, 2009 due to Authorized City Business: National League of Cities 2009 Congressional City Conference in Washington, D.C. (Kalra)**
(Rules Committee referral 3/04/09)

Documents Filed: Memoranda from Council Member Kalra, dated March 2, 2009 and March 6, 2009, requesting approval of travel and an excused absence due to Official City Business.

Action: The travel request and excused absence for Council Member Kalra were approved. (10-0-1. Absent: Chirco.)

- 2.18 (a) **Approve travel for City Clerk Lee Price to Riverside, California on March 11-12, 2009 to provide professional development training services at Technical Track for City Clerks. Source of Funds: Technical Track for City Clerks.**
- (b) **Approve travel for City Clerk Lee Price to Brea, California on March 27, 2009 to provide professional development training services for the City Clerks Association of California (CCAC). Source of Funds: City Clerks Association of California.**
(City Clerk)
(Rules Committee referral 2/25/09)

Documents Filed: Memorandum from City Clerk Lee Price, dated January 27, 2009, requesting approval of travel to provide professional development training services.

Action: The travel requests for City Clerk Lee Price were approved. (10-0-1. Absent: Chirco.)

- 2.19 (a) **Designate Councilmember Liccardo as the City's representative to the CEOs for Cities meeting regarding the nation urban agenda on March 19-20, 2009.**
- (b) **Approve travel by Councilmember Liccardo to San Diego, CA on March 19-20, 2009 to act as the City's representative to the CEOs for Cities meeting regarding the national urban agenda. Source of Funds: Mayor/Council Travel Fund. (Liccardo)**
(Rules Committee referral 3/04/09)

Documents Filed: Memorandum from Council Member Liccardo, dated February 27, 2009, requesting authorization to travel and represent the City of San José.

Action: The travel request and designation of Council Member Liccardo to represent the City of San José to the CEOs for Cities meeting were approved. (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 announced the cancellation of the Public Intoxication Task Force meeting scheduled for March 12, 2009 in order to pull 200 incident reports for a representative example. The March 26, 2009 meeting of the Task Force will remain as scheduled.

3.2 Report of the Rules and Open Government Committee – February 11, 2009 Mayor Reed, Chair

Documents Filed: The Rules and Open Government Committee Report dated February 11, 2009.

Action: Upon motion by Council Member Pyle, seconded by Council Member Constant and carried unanimously, the Rules and Open Government Committee Report and the actions of February 11, 2009 were accepted. (10-0-1. Absent: Chirco.)

3.4 Accept staff's presentation to the City Council on ethical issues related to recent changes in California law. (City Attorney's Office)

Documents Filed: (1) Memorandum from City Attorney Rick Doyle, dated February 26, 2009, recommending acceptance of the Staff's report on ethical issues. (2) PowerPoint Ethics Presentation on Open Meetings, dated March 10, 2009.

Senior Deputy City Attorney Lisa Herrick offered a presentation outlining ethical issues related to recent changes to the Ralph M. Brown Act. City Attorney Rick Doyle responded to questions from Council.

Action: The Staff's presentation was received.

3.5 Adopt a resolution amending the Conflict of Interest Code for the City of San José. (City Clerk)

Action: Deferred to March 24, 2009 per the City Clerk.

3.6 Accept report on implementation of Phase I of the City's Open Government (Sunshine Reform) initiatives. CEQA: Not a Project. (City Manager's Office)

Documents Filed: Memorandum from Communications Director Tom Manheim, dated February 25, 2009, transmitting the status report on Phase I Open Government Initiatives.

Communications Director Tom Manheim offered an update on the implementation of Sunshine Reform Task Force (SRTF) Phase I recommendations for public meetings and closed session items. Senior Deputy City Attorney Lisa Herrick responded to questions from Council.

3.6 (Cont'd.)

Public Comment: David Wall expressed concerns over an undue influence and material conflict of interest by local newspapers.

Action: Upon motion by Council Member Pyle, seconded by Council Member Campos and carried unanimously, the report on implementation of Phase I of the City's Open Government (Sunshine Reform) initiatives was accepted. (10-0-1. Absent: Chirco.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Report of the Community & Economic Development Committee – February 23, 2009 Councilmember Pyle, Chair

Documents Filed: The Community & Economic Development Committee Report dated February 23, 2009.

Action: Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, the Community & Economic Development Committee Report and the actions of February 23, 2009 were accepted. (10-0-1. Absent: Chirco.)

4.2 Conduct a public hearing on the 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 and 2/10/09 – Item 11.2)

Action: Continued to March 17, 2009 per District 5.

4.3 Conduct a public hearing on the consideration of an ordinance amending Part 2 of Chapter 18.08 of Title 18 of the San José Municipal Code, entitled “Procedures,” to add a new section allowing the withdrawal of, or deeming withdrawn, applications to amend the General Plan under certain specified circumstances, and to make other non-substantive technical clarifications to said Part 2 of Chapter 18.08 of Title 18, amending Section 20.100.390 of Chapter 20.100 and Section 20.120.070 of Chapter 20.120, all of Title 20 of the San Jose Municipal Code, to allow certain development permit or approval applications or rezoning applications to be deemed withdrawn under certain circumstances of inactivity, and amending Section 20.100.170 of Chapter 20.100.170 of Chapter 20.100 of Title 20 to clarify that applicants of development permits or approvals may withdraw applications. CEQA: Exempt, File No. PP09-014. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1; Platten absent). (Planning, Building and Code Enforcement)

Director of Planning, Building and Code Enforcement Joseph Horwedel, offered a report on the proposed ordinance amendment and responded to questions from Council.

Documents Filed: (1) Memorandum from Planning Commission Secretary Joseph Horwedel, dated February 26, 2009, transmitting the Planning Commission recommendation. (2) Proof of Publication of Notice of Public Hearing, executed on February 6, 2009, submitted by the City Clerk.

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

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera, and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and [Ordinance No. 28511](#), entitled: “An Ordinance of the City of San José Amending Part 2 of Chapter 18.08 of Title 18 of the San Jose Municipal Code, Entitled “Procedures,” to Add a New Section Allowing the Withdrawal of, or Deeming Withdrawn, Applications to Amend the General Plan Under Certain Specified Circumstances, and to Make Other Non-substantive Technical Clarifications to Said Part 2 of Chapter 18.08 of Title 18, Amending Section 20.100.390 of Chapter 20.100 and Section 20.120.070 of Chapter 20.120, all of Title 20 of the San José Municipal Code to Allow Certain Development Permit or Approval Applications or Rezoning Applications to be Deemed Withdrawn Under Certain Circumstances of Inactivity, and Amending Section 20.100.170 of Chapter 20.100.170 of Chapter 20.100 of Title 20 of the San José Municipal Code to Clarify that Applicants of Development permits or Approvals May Withdraw Applications”, was passed for publication. (10-0-1. Absent: Chirco.)

- 4.4 Conduct an ADMINISTRATIVE HEARING and consider an appeal of the Planning Commission's decision to deny a Determination of Public Convenience or Necessity application as mandated by the Municipal Code to allow off-sale of alcoholic beverages (beer, wine & liquor) at an existing retail grocery store on a 0.54 gross acre site, in the CP Pedestrian Commercial and R-1-8 Single-Family Residence Zoning District, located on the southeast corner of Vollmer Way and S. King Road (400 S. King Road) (Peter and Maria P Haramis, Owner). SNI: Mayfair. CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend that the Council uphold the appeal and grant the Determination of Public Convenience or Necessity (7-0-0).
ABC08-012 – District 5**

Documents Filed: (1) Memorandum from Council Member Campos, dated March 6, 2009, recommending a Determination of Public Convenience or Necessity (PCN) to allow the off-sale of beer, wine and liquor at Region Supermarket with additional recommendations to be submitted to the Alcohol Beverage Control as outlined in “Action”. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement regarding Project File No. ABC08-012, dated February 2, 2009. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated February 20, 2009, transmitting the Planning Commission recommendation. (4) Proof of Publication of Notice of Public Hearing, executed on February 20, 2009, submitted by the City Clerk. (5) Letter from Jose Manzo, Chief Operating Officer Region Supermarket, requesting the decision to approve the PCN request. (6) Letter from Gerald Houlihan, requesting an appeal to approve the PCN request.

As part of the Administrative Hearing, disclosures were made by Council Member Campos.

Director of Planning, Building and Code Enforcement Joseph Horwedel provided a brief report in recommendation of the Determination of Public Convenience or Necessity.

Mayor Reed opened the public hearing.

Council Member Campos moved approval of the recommendation to allow the off-sale of beer, wine and liquor at Region Supermarket with additional recommendations as outlined in her memorandum of March 6, 2009. Council Member Constant seconded the motion.

Public Comment: Applicant Jose Ruiz Manzo spoke in support of upholding the appeal in question without restrictions. Also speaking in support of appealing the Planning Commission's decision were the following: Alejandro Manzo, Margarita Manzo, Fermin Saucedo, Jesse Castaneda, Rogelio Lopez, Salvador Heredia, Eliana Franco Gonzalez and Maria Gonzalez.

Mayor Reed closed the public hearing.

Council discussion followed.

4.4 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, [Resolution No. 74825](#) to uphold the appeal was adopted, with recommendations to be forwarded to Alcohol Beverage Control (ABC) as follows: (a) The Applicant will not sell alcoholic beverages between the hours of 10 pm. And 6 a.m.; (b) The Applicant will not sell single-serving alcoholic beverage containers, including but limited to beer and distilled spirits; (c) The Applicant will maintain all distilled spirits in controlled-access cabinets; (d) The Applicant will maintain all beer and wine in refrigerators located in the rear corner of the store, furthest from the store entrance and exit. Additionally, Staff was directed to inspect the business in 12 months and provide a status report to Council via an informational memorandum. (10-0-1. Absent: Chirco.)

- 4.5 **As referred by the Community and Economic Development Committee of February 23, 2009, accept the status report and consider continuation of the sidewalk café permit program on a permanent basis and eliminate the automatic expiration dates that would sunset the program under the most recent ordinance revision that took effect on May 30, 2008. CEQA: Exempt. (Planning, Building and Code Enforcement)**
[Community and Economic Development referral 2/23/09 – Item (c)(2)]

Action: Deferred to April 7, 2009 per the Administration.

- 4.6 (a) **Approve a request for early disbursement of \$603,435 of the existing funding commitment to San Carlos Willard Associates, L.P., or its designated affiliate, to finance the shared offsite development costs for the 100-unit San Carlos Bowl Seniors rental project located at 1523-1533 West San Carlos Street; and**
(b) **Authorize the Director of Housing to negotiate and execute all documents to effectuate this early disbursement.**
CEQA: Exempt, PD04-103. Council District 6. SNI: Burbank/Del Monte. (Housing)
(Deferred from 3/3/09 – Item 2.3)

Action: Deferred to March 17, 2009 per Administration.

OPEN FORUM

- (1) David Wall commented on the stream flow augmentation and reclaimed water projects.
- (2) Ross Signorino offered congratulations to participating law enforcement officials on a recent and successful raid.

ADJOURNMENT

The Council of the City of San José was adjourned at 4:05 p.m. in memory of Alfons “Al” Vindasius. He was at the heart of the industry that created Silicon Valley registering several patents for the design and fabrication of advanced semiconductor devices. He will be missed by his family and member of the Market Almaden Neighborhood where he gave generously of his time and expertise. (Liccardo)

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

rmk/3-10-09MIN

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 ITEMS

The Joint Redevelopment Agency Board convened at 4:04 p.m. in the Council Chambers, City Hall to consider Items 8.1 and 8.2 in a Joint Session.

- 8.1**
- (a) Adoption of a resolution by the Agency Board finding that creation of a Smart Start Center at 950 St. Elizabeth Drive will be of Primary Benefit to the Burbank/Del Monte Strong Neighborhoods Initiative Redevelopment Project Area.**
 - (b) Approval by the Redevelopment Agency Board and City Council of an agreement with St. Elizabeth's Day Home, in the amount of \$400,000, for improvements to the property located at 950 St. Elizabeth Drive for the creation of a Smart Start Center providing 24 new pre-school child care spaces, added to 170 existing child care spaces, for a total of 194 spaces to be operated under Smart Start San Jose standards.**
 - (c) Adoption of a resolution by the Redevelopment Agency Board approving a shift of \$50,000 from the Adopted FY 2009-2010 Two-Year Spending Plan to the FY 2008-09 Adopted Capital Budget for the Child Care Development Fund project line in the Merged Redevelopment Area, and amending the FY 2008-2009 Agency appropriations resolution. [Burbank/Del Monte SNI]**

Documents Filed: Memorandum from Executive Director of the Redevelopment Agency Harry S. Mavrogenes, and City Manager Debra Figone, dated February 26, 2009, recommending adoption of resolutions and approval of a childcare agreement with St. Elizabeth's Day Home.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, Redevelopment Agency Resolution No. 5892 and Redevelopment Agency Resolution No. 5893 were adopted, and an agreement was approved with St. Elizabeth's Day Home, in the amount of \$400,000, for improvements to the property located at 950 St. Elizabeth Drive for the creation of a Smart Start Center providing 24 new pre-school child care spaces to be operated under Smart Start San Jose standards. (10-0-1. Absent: Chirco.)

JOINT REDEVELOPMENT AGENCY ITEMS (Cont'd.)

- 8.2 Adoption of resolutions by the Redevelopment Agency Board and City Council setting a public hearing on May 5, 2009, at 1:30 p.m., to consider a proposed Plan Amendment to authorize the collection of tax increment from a portion of the Burbank/Del Monte neighborhood of the Strong Neighborhoods Initiative Area that is located in the Arena/Diridon Area. CEQA: Not a project. [MERGED]**

Documents Filed: Memorandum from Executive Director of the Redevelopment Agency Harry S. Mavrogenes, dated February 26, 2009, recommending adoption of a resolution setting a public hearing.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera, and carried unanimously, [Resolution No. 74830](#), entitled: "A Resolution of the Council of the City of San José Setting a Public Hearing on May 5, 2009, at 1:30 p.m. to Consider a Proposed Redevelopment Plan Amendment to Authorize the Collection of Tax Increment from a Portion of the Burbank/Del Monte Neighborhood of the Strong Neighborhoods Initiative Area that is Located in the Arena/Diridon Area", and [Redevelopment Agency Resolution No. 5894](#) were adopted. (10-0-1.)

The Joint Redevelopment Agency Board was adjourned at 4:05 p.m.