



MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, NOVEMBER 18, 2008

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

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

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

Upon motion unanimously adopted, Council recessed at 9:01 a.m. to a Closed Session in Room W133, (A) Public Employee Performance Evaluation Pursuant to Government Code Section 54957: (1) Title: City Auditor; Name: Sharon Erickson. (B) to confer with Legal Counsel with respect to anticipated litigation of significant exposure (Claim Not Filed) pursuant to Government Code subsection (b) of Section 54956.9 in one (1) matter. (C) to confer with Legal Counsel with respect to anticipated litigation pursuant to Government Code Subsection (c) of Section 54956.9 in one (1) matter. (D) to confer with Legal Counsel with respect to anticipated litigation pursuant to Government Code Subsection (a) of Section 54956.9 (1) In re: Rooney; Amount of Money or other Relief Sought: Administrative Appeal; (2) In re: Scott; Amount of Money or other Relief Sought: Administrative Appeal.

By unanimous consent, Council recessed from the Closed Session at 10:46 a.m. and reconvened at 1:32 p.m. in the Council Chambers.

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

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

INVOCATION

Twelve year old Carolyn DiLoreto and eleven year old Nicolas Sancen, representing The Tabard Theatre Company, sang "Friendship", from the play "Hot 'N' Cole", which begins on November 20, 2008 at the Theatre on San Pedro Square. (District 10)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Council Member Campos and carried unanimously, the Orders of the Day and the Amended Agenda were approved, Item 11.1(a) was continued to December 16, 2008 per the Administration and Item 11.6 was continued to December 2, 2008 at the Applicant's request. (9-0-2. Absent: Constant, Nguyen.)

CEREMONIAL ITEMS

- 1.6 Presentation of a commendation to Borgata Recycling for recognizing and providing a solution for tire diversion from the City of San José landfills. (Mayor/Nguyen/OED/ESD)
(Orders of the Day)**

Action: Mayor Reed recognized and commended Borgata Recycling for recognizing and providing a solution for tire diversion from the City of San José landfills. Council Member Nguyen was not present.

- 1.1 Presentation of a commendation to San José State University in celebration of International Week, November 17 – 21, 2008, committed to highlighting the importance of international education. (Liccardo)**

Action: Mayor Reed and Council Member Liccardo recognized and commended San José State University in celebration of “International Week”.

- 1.3 Presentation of a proclamation declaring December 1, 2008 as “World AIDS Day” in the City of San José. (Pyle)**

Action: Mayor Reed and Council Member Pyle recognized December 1, 2008 as “World AIDS Day” in the City of San José.

- 1.5 Presentation of a commendation to San José State University's Silicon Valley Center for Entrepreneurship for their commitment to promoting innovation, entrepreneurship and the international visibility and economic vitality of the City of San José. (Mayor/Pyle/OED)
(Rules Committee referral 11/5/08)**

Action: Mayor Reed and Council Member Pyle recognized and commended San José State University's Silicon Valley Center for Entrepreneurship for their commitment to promoting innovation, entrepreneurship and the international visibility and economic vitality of the City of San José.

1.4 Presentation of a proclamation declaring the week of November 23 through 29, 2008 as “Family Week” in the City of San José. (Williams)

Action: Mayor Reed and Council Member Williams recognized the week of November 23 through November 29, 2008 as “Family Week” in the City of San José.

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. (9-0-2. Absent: Constant, Nguyen.)

2.2 (a) ORD. NO. 28433 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to South Bay Hauling Inc. DBA South Bay Hauling and DBA Box Recycling.

Documents Filed: Proof of Publication of the title of Ordinance No. 28433 executed on November 7, 2008, submitted by the City Clerk.

Action: Ordinance No. 28433 was adopted. (9-0-2. Absent: Constant, Nguyen.)

(b) ORD. NO. 28434 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to Bernardini Enterprises Inc. DBA JD Services.

Documents Filed: Proof of Publication of the title of Ordinance No. 28434 executed on November 7, 2008, submitted by the City Clerk.

Action: Ordinance No. 28434 was adopted. (9-0-2. Absent: Constant, Nguyen.)

(c) ORD. NO. 28437 – Rezoning certain real property situated at the east side of Campbell Avenue approximately 400 feet southeasterly of El Camino Real (1270 Campbell Avenue) to the A(PD) Planned Development Zoning District. PDC07-081

Documents Filed: Proof of Publication of the title of Ordinance No. 28437 executed on December 31, 2008, submitted by the City Clerk.

Action: Ordinance No. 28437 was adopted. (9-0-2. Absent: Constant, Nguyen.)

(d) ORD. NO. 28438 – Rezoning certain real property situated on the southwest corner of the intersection of The Alameda and Sunol Street (850 The Alameda) to A(PD) Planned Development Zoning District. PDC07-020

Documents Filed: Proof of Publication of the title of Ordinance No. 28438 executed on October 31, 2008, submitted by the City Clerk.

Action: Ordinance No. 28438 was adopted. (9-0-2. Absent: Constant, Nguyen.)

- 2.2 (e) ORD. NO. 28439 – Amending Section 6.64.250 of Chapter 6.64 of Title 6 of the San José Municipal Code to add authorization for the Director of the Department of Transportation to establish and adjust taxi rates and fares that taxicab owners and drivers can charge the public.

Documents Filed: Proof of Publication of the title of Ordinance No. 28439 executed on October 31, 2008, submitted by the City Clerk.

Action: Ordinance No. 28439 was adopted. (9-0-2. Absent: Constant, Nguyen.)
First Reading Vote: (9-1-1. Noes: Oliverio. Absent: Campos.)

- 2.3 (a) **Final adoption of Ordinance No. 28432, an Ordinance of the City of San José amending Title 25 of the San José Municipal Code to add a new Chapter 25.11 to extend Living Wage, Worker Retention, Labor Peace and Employee Work Environment Reporting Requirements at the Norman Y. Mineta San José International Airport.**
- (b) **Authorize the addition of three positions in the Public Works Department: 1.0 Contract Compliance Coordinator, 1.0 Contract Compliance Specialist and 1.0 Contract Compliance Assistant.**
- (c) **Adopt the following 2008-2009 appropriation ordinance amendments in the Airport Maintenance and Operation Fund (523):**
- (1) **Increase the Personal Services appropriation in the Public Works Department in the amount of \$166,930.**
 - (2) **Increase the Non-Personal/Equipment appropriation in the Public Works Department in the amount of \$22,483.**
 - (3) **Increase the Overhead appropriation in the amount of \$29,587.**
 - (4) **Decrease the Contingency Reserve in the Airport in the amount of \$219,000.**
- (Airport/Public Works/City Manager’s Office)**
(Deferred from 11/4/08 – Item 6.2)

Documents Filed: (1) Memorandum from City Attorney Richard Doyle, dated October 28, 2008, transmitting the revised draft airport living wage ordinance. (2) Memorandum from Director of Aviation William Sherry, Director of Public Works Katy Allen and Budget Director Jennifer Maguire, dated November 7, 2008, recommending approval of three additional positions in the Public Works Department and appropriation ordinance amendments. (3) Proof of Publication of the title of Ordinance No. 28432 executed on October 31, 2008, submitted by the City Clerk.

Council Member Oliverio pulled Item 2.3 from the Consent Calendar to express repeated opposition to the ordinance being passed at this low economic time.

Public Comments: Ross Signorino congratulated the City Council for adopting a living wage ordinance at the Airport.

2.3 (Cont'd.)

Action: Upon motion by Council Member Campos, seconded by Vice Mayor Cortese and carried unanimously, the additional three positions in the Public Works Department were approved; Ordinance No. 28432, entitled: “An Ordinance of the City of San José Amending Title 25 of the San José Municipal Code to add a new Chapter 25.11 to extend Living Wage, Worker Retention, Labor Peace and Employee Work Environment Reporting Requirements at the Norman Y. Mineta San José International Airport” and Ordinance No. 28442, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Airport Maintenance and Operation Fund for Personal Services and Non Personal Equipment; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”, were adopted. (8-1-2. Noes: Oliverio. Absent: Constant, Nguyen.)

2.4 **Adopt a resolution authorizing the City Attorney to execute a Settlement Agreement and Release with Green Valley Corporation, dba Barry Swenson Builder, considered by the City Council during the Closed Session held on March 25, 2008, for which the City will receive \$125,000. CEQA: Not a Project. (City Attorney's Office)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated November 6, 2008, recommending adoption of a resolution.

Action: Resolution No. 74659, entitled: “A Resolution of the Council of the City of San José Authorizing the City Attorney to Execute a Settlement Agreement and Release with Green Valley Corporation DBA Barry Swenson Builder”, was adopted. (9-0-2. Absent: Constant, Nguyen.)

2.5 **Adopt a resolution authorizing the City Attorney to execute a Settlement Agreement with Sutter's Place, Inc., dba Bay 101, considered by the City Council during the Closed Session held on October 7, 2008, for which the City will receive \$275,000. CEQA: Not a Project. (City Attorney's Office)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated November 6, 2008, recommending adoption of a resolution.

Action: Resolution No. 74697, entitled: “A Resolution of the Council of the City of San José Authorizing the City Attorney to Execute a Settlement Agreement with Sutter's Place, Inc. DBA Bay 101”, was adopted. (9-0-2. Absent: Constant, Nguyen.)

2.6 (a) **Approve the sixth amendment and Continuation Agreement to Space Lease (Existing Lease) with the USO of Northern California, Inc. (USO), to extend the term through June 30, 2010, with no change to the rental rate of \$1.00 per year, and to provide for current and future relocation, expansion, and contraction of the leased premises at the City of San José's expense.**

- 2.6 (b) **Adopt a resolution authorizing the City Manager to:**
- (1) **Negotiate and execute a new lease (New Lease) with the USO for approximately 2,000 square feet in Terminal B, for the term of five (5) years from the date that the USO takes possession of the new space, with no change to the rental rate of \$1.00 per year, to replace the Existing Lease once the USO relocates from the temporary leased premises in the Existing Lease.**
 - (2) **Exercise up to two (2), three (3)-year options to extend the term on the same terms and conditions, at the City's sole discretion.**

CEQA: Resolution Nos. 67380 and 71451, PP 08-205. (Airport)

Documents Filed: Memorandum from Director of Aviation William Sherry, dated October 27, 2008, recommending approval of the sixth amendment and continuation agreement and adoption of a resolution.

Action: The sixth amendment and continuation agreement to Space Lease (Existing Lease) with the USO of Northern California, Inc. to extend the term through June 30, 2010, with no change to the rental rate of \$1.00 per year, and to provide for current and future relocation, expansion, and contraction of the leased premises at the City of San José's expense were approved and Resolution No. 74661, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a New Lease with the USO of Northern California, Inc. for Space in Terminal B for a Term of Five Years From the Date of Possession in an Amount Not To Exceed \$1.00 Per Year, and to Exercise up to Two (2), Three (3) Year Options to Extend the Term", was adopted. (9-0-2. Absent: Constant, Nguyen.)

- 2.7 **Report on bids and award of contract for the North First Street Parallel Main – Phase III to the low bidder, Ranger Pipelines, Inc., for the term of December 2008 to April 2009, in an amount not to exceed \$838,550, and approve a project contingency in the amount of \$100,000. CEQA: Exempt, File No. PP08-187. Council District 4. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated October 27, 2008, recommending award of the contract to the low bidder.

Action: The award of contract for the North First Street Parallel Main – Phase III to the low bidder, Ranger Pipelines, Inc., for the term of December 2008 to April 2009, in an amount not to exceed \$838,550, with related contingency was approved. (9-0-2. Absent: Constant, Nguyen.)

2.8 Authorize the Director of Finance to execute:

- (a) An annual purchase order for the cooperative purchase of Office Supplies with OfficeMax (Warren, MI) through the cooperative contract offered by Public Sourcing Solutions in an amount not to exceed \$1,050,000.**
- (b) Amend the initial Purchase Order to adjust the not-to-exceed compensation subject to annual appropriation of funding.**
- (c) Execute subsequent annual Purchase Orders through the term of the contract ending May 31, 2011 subject to annual appropriation of funding.**

CEQA: Not a Project. (Finance)

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated October 27, 2008, recommending the above actions (a) through (c).

Action: The Director of Finance was authorized to execute an annual purchase order for the cooperative purchase of Office Supplies with OfficeMax through the cooperative contract offered by Public Sourcing Solutions in an amount not to exceed \$1,050,000; amend the initial Purchase Order to adjust the not-to-exceed compensation subject to annual appropriation of funding and execute subsequent annual purchase orders through the term of the contract ending May 31, 2011 subject to annual appropriation of funding. (9-0-2. Absent: Constant, Nguyen.)

2.9 Report on Request for Proposal (RFP) for the purchase of Live Online Homework Help Services and adoption of a resolution authorizing the Director of Finance to:

- (a) Execute an agreement with Tutor.com (New York, NY) for a web based live homework help services solution with a first year not-to-exceed compensation of \$125,000; and**
- (b) Execute six additional one-year options to renew the Agreement subject to appropriation of funds.**

CEQA: Not a Project. (Finance)

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated October 27, 2008, recommending adoption of a resolution.

Council Member Oliverio requested that Staff look into options available for using Curriki, a free software service.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Chirco and carried unanimously, Resolution No. 74662, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Finance to Execute an Agreement with Tutor.com for Live Online Homework Help Services", was adopted, as amended, approving one year agreement only. Staff was requested to look into options available for using Curriki, a free software service. (9-0-2. Absent: Constant, Nguyen.)

- 2.10 (a) Execute a purchase order for the purchase of Symantec clustering software, maintenance and installation services from GTSI Corporation (“GTSI”) located in Chantilly, Virginia, under the pricing, terms, and conditions obtained through the U.S. Communities sponsored cooperative agreement, in an amount not to exceed \$305,000.**
- (b) Amend the Purchase Order for the purchase of additional quantities as required up to a not-to-exceed amount of \$30,000 subject to the appropriation of funds.**

CEQA: Not a Project. (Finance)

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated October 27, 2008, recommending approval to execute a purchase order and to amend the purchase order.

Action: The Director of Finance was authorized to execute a purchase order for the purchase of Symantec clustering software, maintenance and installation services from GTSI Corporation, under the pricing, terms, and conditions obtained through the U.S. Communities sponsored cooperative agreement, in an amount not to exceed \$305,000 and amend the Purchase Order for the purchase of additional quantities as required up to a not-to-exceed amount of \$30,000 subject to the appropriation of funds. (9-0-2. Absent: Constant, Nguyen.)

- 2.11 Report on bids and award the purchase of dispatcher console systems furniture, training center system furniture, printer stands, product training, delivery and installation to the low bidder, Wright Line LLC (Worcester, MA), for a total amount not to exceed \$572,477.50, including all applicable sales taxes, and authorize the Director of Finance to:**

- (a) Execute purchase order for the base bid and add alternate products and services.**
- (b) Amend the initial purchase order to make minor configuration changes as needed or to purchase additional quantities of base bid, add alternate, and/or peripheral products at the prices bid for one year after issuance of the initial Purchase Order subject to the appropriation of funds.**

CEQA: Not a Project. (Finance)

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated November 3, 2008, recommending award of the purchase to the low bidder and authorization to execute the purchase order and amend the initial purchase order.

Action: The award the purchase of dispatcher console systems furniture, training center system furniture, printer stands, product training, delivery and installation to the low bidder, Wright Line LLC for a total amount not to exceed \$572,477.50, including all applicable sales taxes was approved and the Director of Finance was authorized to execute purchase order for the base bid and add alternate products and services and amend the initial purchase order to make minor configuration changes as needed or to purchase additional quantities of base bid, add alternate, and/or peripheral products at the prices bid for one year after issuance of the initial purchase order subject to the appropriation of funds. (9-0-2. Absent: Constant, Nguyen.)

- 2.12 Report on bids and award the purchase of 570 fully assembled 2070L traffic signal controllers, add-on modules and related hardware/software training to the lowest responsive bidder, Western Systems Inc. (Everett, WA), for a total amount not to exceed \$1,509,630, including sales taxes, and authorize the Director of Finance to:**
- (a) Execute the purchase order(s) for an initial three year term.**
 - (b) Purchase additional quantities during the initial three year period on an as-required basis at the same unit pricing subject to the appropriation of funds.**
 - (c) Execute purchase orders to acquire additional quantities for two additional one-year terms on an as-required basis at the same unit pricing subject to the appropriation of funds.**

CEQA: Not a Project. (Finance)

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated October 28, 2008, recommending the award of the purchase to the low bidder and the actions as described in Item 2.12(a)(b)(c) on Page 9.

Action: The award the purchase of 570 fully assembled 2070L traffic signal controllers, add-on modules and related hardware/software training to the lowest responsive bidder, Western Systems Inc., for a total amount not to exceed \$1,509,630, including sales taxes was approved and the Director of Finance was authorized to execute the purchase order(s) for an initial three year term; purchase additional quantities during the initial three year period on an as-required basis at the same unit pricing subject to the appropriation of funds and execute purchase orders to acquire additional quantities for two additional one-year terms on an as-required basis at the same unit pricing subject to the appropriation of funds. (9-0-2. Absent: Constant, Nguyen.)

- 2.13 (a) Adopt a resolution accepting the following nine grant awards in a total amount of \$564,899:**
- (1) Early Start Program, (U.S. Department of Education, \$191,593);**
 - (2) Early Childhood Education Program, (U.S. Department of Education, \$277,074);**
 - (3) Staff Education Grant (LSTA, \$13,808);**
 - (4) California of the Past Digital Storytelling (LSTA, \$10,000);**
 - (5) Libraries as Community Resources for Increasing High School Graduation Rates (LSTA, \$39,933);**
 - (6) Outreach to Latino Communities (LSTA, \$4,991);**
 - (7) Survey and Analysis of San José Teens (LSTA, \$5,000);**
 - (8) Developing Self-Directed Interest Groups (LSTA, \$20,000); and**
 - (9) The African American Baseball Experience (NEH, \$2,500).**
- (b) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:**
- (1) Increase the Library Grants appropriation (2431) by \$564,899;**
 - (2) Increase the Revenue from the Federal Government by \$562,399; and**
 - (3) Increase the Other Revenue estimate by \$2,500.**

CEQA: Not a Project. (Library)

2.13 (Cont'd.)

Documents Filed: Memorandum from Director of Library Department Jane Light and Budget Director Jennifer Maguire, dated October 27, 2008, recommending adoption of a resolution and appropriation ordinance and funding sources resolution amendments.

Action: Resolution No. 74663, entitled: "A Resolution of the Council of the City of San José Accepting Nine Grant Awards from the U.S. Department of Education, From the California State Library with Funds from the U.S. Institute of Library and Museum Services and From the National Endowment for the Humanities, in the Total Amount of \$564,000"; Ordinance No. 28443, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the General Fund for the Library Grants; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" Resolution No. 74664, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 74461 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2008-2009 to Adjust Revenues in the General Fund", were adopted. (9-0-2. Absent: Constant, Nguyen.)

- 2.14 (a) Adopt a resolution authorizing the City Manager to accept the FY 2008 Law Enforcement Task Forces for Human Trafficking Victims Continuation Grant in the amount of \$250,000 and to execute the grant agreement with the Department of Justice specifying the grant terms including the City's provision of in-kind services and all related documents necessary to effectuate the grant.**
- (b) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:**
- (1) Establish an appropriation to the Police Department for the 2008 Human Trafficking Prevention Grant in the amount of \$250,000;**
 - (2) Increase the estimate for Earned Revenue from Federal Government by \$250,000.**

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

Documents Filed: Memorandum from Police Chief Robert Davis and Budget Director Jennifer Maguire, dated October 27, 2008, recommending adoption of a resolution and appropriation ordinance and funding sources resolution amendments.

Action: Resolution No. 74665, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Accept the FY 2008 Law Enforcement Task Forces for Human Trafficking Victims Continuation Grant in an Amount Not To Exceed \$250,000 and to Execute All Related Documents"; Ordinance No. 28444, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the General Fund for the 2008 Human Trafficking Prevention Grant; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" and Resolution No. 74666, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 74461 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2008-2009 to Adjust Revenues in the General Fund", were adopted. (9-0-2. Absent: Constant, Nguyen.)

- 2.15 Request for an excused absence for Council Member Chirco from the Regular Meeting of the Rules and Open Government Committee on November 5, 2008 due to Personal Business. (Chirco)
(Rules Committee referral 11/5/08)**

Documents Filed: Memorandum from Council Member Chirco, dated November 4, 2008, requesting an excused absence due to personal business.

Action: The absence for Council Member Chirco was excused. (9-0-2. Absent: Constant, Nguyen.)

- 2.16 Request for an excused absence for Council Member Williams from the Special City Council Meeting on November 10, 2008 due to Personal Business. (Williams)
(Rules Committee referral 11/5/08)**

Documents Filed: Memorandum from Council Member Williams, dated November 4, 2008, requesting an excused absence due to personal business.

Action: The absence for Council Member Williams was excused. (9-0-2. Absent: Constant, Nguyen.)

- 2.17 Adopt a resolution authorizing the City Manager to submit an application to the California Gang Reduction, Intervention and Prevention Grant in the amount of \$400,000 to support the efforts of the Mayor's Gang Prevention Task Force (MGPTF) and to negotiate and execute a grant agreement accepting the grant and any collateral documents, and to execute amendments to the grant agreement to extend or modify the grant period or to accept additional grant funds under this grant in an aggregate amount up to twice the original grant amount. CEQA: Not a Project. (Parks, Recreation and Neighborhood Services)
(Rules Committee referral 11/5/08)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated November 7, 2008, recommending adoption of a resolution.

Action: Resolution No. 74667, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute and Submit an Application to the State of California Office of Emergency Services for a California Gang Reduction, Intervention and Prevention Grant in an Amount Not To Exceed \$400,000, to Accept the Grant if Awarded and to Negotiate and Execute All Documents to the Grant Agreement", was adopted. (9-0-2. Absent: Constant, Nguyen.)

- 2.18 Request for an excused absence for Council Member Constant from the Evening Session of the Regular City Council Meeting on October 28, 2008 due to Authorized City Business: Candlelight Procession for Jeff Fontana at Jeffrey Fontana Park. (Constant)
(Rules Committee referral 11/12/08)**

2.18 (Cont'd.)

Documents Filed: Memorandum from Council Member Constant, dated November 7, 2008, requesting an excused absence due to authorized City business.

Action: The absence for Council Member Constant was excused. (9-0-2. Absent: Constant, Nguyen.)

2.19 As referred by the Rules and Open Government Committee of November 12, 2008, accept the resignation of Phaedra Ellis-Lamkins from the Envision San José 2040 Task Force and appoint Mary Creasman as her replacement. (Liccardo) [Rules Committee referral 11/12/08 – Item G(2)]

Documents Filed: (1) Memorandum from City Clerk Lee Price, dated November 14, 2008, transmitting the recommendations of the Rules and Open Government Committee. (2) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 17, 2008, documenting Mary Creasman's qualifications to replace Phaedra Ellis-Lamkins on the Envision San José 2040 Task Force.

Action: The resignation of Phaedra Ellis Lamkins was accepted and Mary Creasman was appointed as her replacement. (9-0-2. Absent: Constant, Nguyen.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

Action: City Manager Debra Figone reported that the Structural Deficit Elimination Plan and the First Forecast will be out by the end of the week and added that Staff will be meeting with Labor and the media before the December 5, 2008 Study Session.

3.2 Report of the Rules and Open Government Committee – October 15, 2008 Mayor Reed, Chair

Documents Filed: The Rules and Open Government Committee Report dated October 15, 2008.

Action: Upon motion by Council Member Pyle, seconded by Vice Mayor Cortese and carried unanimously, the Rules and Open Government Committee Report and the actions of October 15, 2008 were accepted. (9-0-2. Absent: Constant, Nguyen.)

3.3 Report of the Rules and Open Government Committee – October 22, 2008 Mayor Reed, Chair

Action: Deferred to December 2, 2008 per City Clerk.

**3.4 Report of the Rules and Open Government Committee – October 29, 2008
Mayor Reed, Chair**

Action: Deferred to December 2, 2008 per City Clerk.

**3.6 Adopt a resolution approving a formal Council Policy entitled “Donation of Surplus Personal Property.” CEQA: Not a Project. (Finance)
(Deferred from 11/4/08 – Item 3.7)**

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated October 14, 2008, recommending adoption of a resolution.

Motion: Council Member Liccardo moved approval of the Staff recommendations, with the added provision that any donee, or donee’s agent, certify that no one involved in the donation process received, or will receive, a profit or fee for the transaction. Council Member Chirco seconded the motion.

City Attorney Richard Doyle and Deputy Director of Finance Walter Rossman responded to Council questions.

Action: On a call for the question, the motion carried unanimously, Resolution No. 74668, entitled: “A Resolution of the Council of the City of San José Approving a Council Policy Entitled Donation of Surplus Personal Property”, was adopted, as amended, with Staff directed to add a provision that any donee, or donee’s agent, certify that no one involved in the donation process received, or will receive, a profit or fee for the transaction. (9-0-2. Absent: Constant, Nguyen.)

3.7 Open the Public Hearing in connection with the formation of a Convention Center Facilities District to authorize the levy of special taxes pursuant to the City of San José Convention Center Facilities District financing procedure and authorizing other related actions, and adoption of a resolution to continue the Public Hearing to January 13, 2009. CEQA: Resolution No. 72767. (Economic Development)

Documents Filed: Memorandum from Chief Development Officer Paul Krutko, dated November 6, 2008, recommending opening the public hearing and adoption of a resolution.

Mayor Reed opened the public hearing in connection with the formation of a Convention Center Facilities District to authorize the levy of special taxes pursuant to the City of San José Convention Center Facilities District financing procedure and authorizing other related actions. Mayor Reed noted that the public hearing will be continued to January 13, 2009.

Action: Upon motion by Council Member Pyle, seconded by Council Member Liccardo and carried unanimously, Resolution No. 74669, entitled: “A Resolution of the Council of the City of San José Continuing Public Hearing on the Establishment of Convention Center Facilities District No. 2008-1, City of San José, County of Santa Clara, State of California”, was adopted. (9-0-2. Absent: Constant, Nguyen.)

- 3.8 As referred by the Rules and Open Government Committee of November 12, 2008, receive the verbal report and discuss lessons learned from the City-to-City trip to Chicago, Illinois. (Mayor)
[Rules Committee referral 11/12/08 – Item (g)(3)]**

Documents Filed: Memorandum from City Clerk Lee Price, dated November 14, 2008, transmitting the recommendations of the Rules and Open Government Committee.

Mayor Reed and City Manager Debra Figone provided comments about the Chamber of Commerce City-to-City Trip to Chicago, Illinois.

Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti, Director of Transportation James Helmer and Police Chief Robert Davis presented brief reports.

Council discussion followed.

Public Comments: Pat Dando, San José Silicon Valley Chamber of Commerce, stated that the City of San José should make better use of the Guadalupe River Park and added that she has a meeting set up in order to go forward with that plan.

Action: The report was received.

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 Report of the Community & Economic Development Committee – October 27, 2008
Council Member Pyle, Chair**

Documents Filed: The Community and Economic Development Committee Report dated October 27, 2008.

Action: Upon motion by Council Member Pyle, seconded by Council Member Williams and carried unanimously, the Community and Economic Development Committee Report and the actions of October 27, 2008 were accepted. (9-0-2. Absent: Constant, Nguyen.)

- 4.2 (a) Adopt a resolution authorizing:**
- (1) The Director of Housing to negotiate and execute any documents necessary to accept federal Neighborhood Stabilization Program funds in the amount of \$5,628,283;**
 - (2) A shortened citizen participation comment period of 15 days on a Substantial Amendment to the City’s FY 2008-09 Consolidated Annual Action Plan (ConPlan);**
 - (3) Approval of a Substantial Amendment to the ConPlan; and**
 - (4) The Director of Housing to negotiate and execute any documents necessary to apply for and accept additional Neighborhood Stabilization Program funds from the State’s allocation of \$145 million.**

4.2 (b) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the Multi-Source Housing Fund (Fund 448):

- (1) Establish an appropriation to the Housing Department for the Housing and Economic Recovery Act Program in the amount of \$5,628,283;**
- (2) Increase the estimate for Earned Revenue by \$5,628,283.**

CEQA: Not a Project. (Housing)

Documents Filed: (1) Memorandum from Director of Housing Leslye Krutko and Budget Director Jennifer Maguire, dated October 27, 2008, recommending adoption of a resolution and appropriation ordinance and funding sources resolution amendments. (2) Letter from the Melissa Morris, Senior Attorney, Law Foundation of Silicon Valley, dated November 18, 2008, expressing support for the Neighborhood Stabilization Program Funds.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, Resolution No. 74670, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Housing to Accept Federal Funds Under the Housing and Economic Recovery Act of 2008"; Ordinance No. 28445, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Multi Source Housing Fund for the Housing and Economic Recovery Act Program; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" and Resolution No. 74671, 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 Multi Source Housing Fund", were adopted. (9-0-2. Absent: Constant, Nguyen.)

4.3 Approve a Memorandum of Understanding between the City of San José and the City of Santa Clara regarding planning, permit approval and inspection responsibilities for the proposed residential housing development at 1270 Campbell Avenue. CEQA: Not a Project. Council District 3. (Planning, Building and Code Enforcement)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated October 27, 2008, recommending approval of a memorandum of understanding.

Council Member Liccardo confirmed with Assistant Director of Planning, Building, and Code Enforcement Laurel Prevetti that there will be an additional Memorandum of Understanding to implement the Council direction of October 28, 2008 relating to mitigation of traffic accidents, public safety and to obtain traffic data.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Oliverio and carried unanimously, a memorandum of understanding between the City of San José and the City of Santa Clara regarding planning, permit approval and inspection responsibilities for the proposed residential housing development at 1270 Campbell Avenue was approved. (9-0-2. Absent: Constant, Nguyen.)

NEIGHBORHOOD SERVICES

- 5.2 Adopt a resolution to allow the expansion of the Teacher Homebuyer Program to include credentialed, non-teaching staff and administrators in San José K-12 public schools. CEQA: Not a Project. (Housing)**

Documents Filed: Memorandum from Director of Housing Leslye Krutko, dated October 27, 2008, recommending adoption of a resolution.

Public Comments: Chris Funk (San José State University) stated he would like to see the program expanded to include nurses.

Action: Upon motion by Council Member Williams, seconded by Council Member Pyle and carried unanimously, Resolution No. 74672, entitled: “A Resolution of the Council of the City of San José Approving the Expansion of the Teacher Homebuyer Program to Non-Teaching, Credentialed Employees of San José Public Schools”, was adopted. (9-0-2. Absent: Constant, Nguyen.)

TRANSPORTATION & AVIATION SERVICES

- 6.1 Report of the Transportation and Environment Committee – November 3, 2008
Council Member Williams, Chair**

Documents Filed: The Transportation and Environment Committee Report dated November 3, 2008.

Public Comments: Ross Signorino spoke about the minimum taxicab fare of \$15.00 at the Norman Y. Mineta San José International Airport, Item (b) on the Committee agenda.

Action: Upon motion by Council Member Williams, seconded by Council Member Pyle and carried unanimously, the Transportation and Environment Committee Report and the actions of November 3, 2008 were accepted. (9-0-2. Absent: Constant, Nguyen.)

- 6.2 Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with Christian Moeller, to fabricate an artwork on the east façade of the Airport Consolidated Rental Car Garage at the Norman Y. Mineta San José International Airport in an amount not to exceed \$1,153,200 for artist to cause the materials and labor related to production of a 79,360 square foot pixelated mural upon metal fabric facade material, to be purchased and installed by the construction contractor with funds for the garage construction project. This agreement does not increase the base budget for garage façade construction, the costs of which will be repaid by rental car user fees. CEQA: Resolution Nos. 67380 and 71451, PP 08-226. (Economic Development)
(Deferred from 10/28/08 – Item 6.2)**

6.2 (Cont'd.)

Documents Filed: (1) Memorandum from Chief Development Officer Paul Krutko, dated October 6, 2008, recommending adoption of a resolution. (2) Supplemental memorandum from Chief Development Officer Paul Krutko, dated November 7, 2008, providing greater background on the artist's involvement in the façade design of the ConRAC and more insight into the conceptualization of final façade imagery. (3) Staff presentation of Artwork on Airport ConRAC Garage dated November 18, 2008.

Motion: Council Member Williams moved approval of the Staff recommendations to negotiate and execute an agreement with Christian Moeller to fabricate artwork on the east façade of the Airport Consolidated Rental Car Garage. Council Member Liccardo seconded the motion.

Director of Economic Development Kim Walesh provided the presentation of the Artwork on the Airport ConRAC Garage.

Public Comments: Speaking in support to the artwork at the Airport were Michael Martin (Arts Commission), Sharon Gustafson (Airport Commission) and Sharon Sweeney.

Brief Council discussion followed.

Action: On a call for the question, the motion carried unanimously, Resolution No. 74673, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with Christian Moeller to Fabricate an Artwork on the East Façade of the Airport Consolidated Rental Car Garage at the Norman Y. Mineta San José International Airport in an Amount Not To Exceed \$1,153,200 for Artist to Cause the Materials and Labor Related to Production of a 79,360 Square Foot Pixelated Mural Upon Metal Fabric Façade Material, to be Purchased and Installed by the Construction Contractor with Funds for the Garage Construction Project", was adopted. (9-0-2. Absent: Constant, Nguyen.)

PUBLIC SAFETY SERVICES

8.1 **Accept staff presentation on the e-Citation Pilot Program. CEQA: Not a Project. (Police)**

Documents Filed: Memorandum from Police Chief Robert Davis, dated October 30, 2008, transmitting the Electronic Citation PowerPoint Presentation.

Captain Diane Urban, San José Police Department, provided the Electronic Citation update and responded to Council questions and comments.

Public Comments: Ross Signorino expressed avid interest in the fingerprinting process.

Action: The presentation was received.

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Joint Council/Redevelopment Agency convened at 3:28 p.m. to consider Item 9.1 in a Joint Session.

- 9.1 (a) Direct the City Manager and Redevelopment Agency Executive Director to explore alternatives for allowing affordable housing projects and those projects demonstrating an ability to finance construction of the units to proceed in the short term, in spite of the lack of allocation. Any change to Phase 1 allocations should be covered by the existing North San José Environmental Impact Report.**
- (b) Direct staff to return to City Council with findings by mid January 2009.**
(Mayor)
(Rules Committee referral 11/12/08)

Documents Filed: (1) Memorandum from Mayor Reed and Council Members Chu and Liccardo, dated November 14, 2008, recommending direction as described in “Action” on Page 18. (2) Memorandum from Mayor Reed, dated November 7, 2008, recommending as described above in 9.1(a)(b).

Motion: Council Member Chu moved approval of the memorandum he cosigned with Mayor Reed and Council Member Liccardo, dated November 14, 2008. Council Member Liccardo seconded the motion.

Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti responded to Council questions and comments.

Council Member Oliverio explained that his no vote was based on the housing/job ratio and indicated that it would be a negative action for the City.

Action: On a call for the question, the motion carried, the memorandum from Mayor Reed and Council Members Chu and Liccardo, dated November 14, 2008, was approved, with the City Manager directed to: (1) Devise a procedure that allows projects to move forward on an “as ready” basis through a temporary increase in the 8,000 Phase I cap, with a retroactive reduction in Phase I as projects’ reserved development capacity expires at the termination of their 2 year PD or SD Permits or other through any other feasible alternative. (2) Return before the end of the 2008 calendar year with a recommendation for Council action. (8-1-2. Noes: Oliverio. Absent: Constant, Nguyen.)

The Joint Council/Redevelopment Agency adjourned at 3:44 p.m.

OPEN FORUM

- (1) Ross Signorino commented on the new speaker card boxes in Council Chambers and the discussion about the City Officials’ participation in the Chamber of Commerce City-to-City Trip to Chicago, Illinois.

RECESS/RECONVENE

The City Council recessed at 3:46 p.m. from the afternoon Council Session and reconvened at 7:06 p.m. in the Council Chambers, City Hall.

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

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

City Clerk Lee Price read the requests for continuance of the applications. Upon motion by Vice Mayor Cortese, seconded by Council Member Williams, and carried unanimously, the below noted continuances and actions were taken as indicated. (8-0-3. Absent: Chirco, Constant, Nguyen.)

CEREMONIAL ITEMS

1.2 Presentation of a commendation to McLaughlin Area Tenants (MAT) for their contributions to the community and in recognition of MAT receiving the Elizabeth Anabo BRICC Award 2008. (Nguyen)

Action: Mayor Reed recognized and commended McLaughlin Area Tenants for their contributions to the City of San José. Council Member Nguyen was not present.

NEIGHBORHOOD SERVICES

- 5.3 (a) **Accept the Strong Neighborhoods Initiative SNI *K.O.N.A. Neighborhood Improvement Plan Amendment* as the renewed community vision for the future of the K.O.N.A. SNI Planning Area.**
- (b) **Encourage K.O.N.A. area residents, property owners and community members to continue to dedicate their time, energy and resources towards the *Plan* and this *Amendment* while continuing with their community-building activities.**

CEQA: Resolution No. 71045. Council Districts 7 and 8. SNI: K.O.N.A. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0). (Planning, Building and Code Enforcement)

Documents Filed: (1) Memorandum from Planning Commission Secretary Joseph Horwedel, dated October 27, 2008, transmitting the Planning Commission recommendations. (2) Neighborhood Improvement Plan Amendment for K.O.N.A., dated November 2008. (2) K.O.N.A. Neighborhood Improvement Plan dated December 2002.

Senior Planner Juan Borelli and Strong Neighborhoods Manager Laura Lam provided the Staff report on the K.O.N.A. SNI Neighborhood Plan Amendment.

5.3 (Cont'd.)

Public Comments: Neighborhood leaders of K.O.N.A. speaking in support of the Staff recommendations were Laura Arechiga, President, Beatrice Thomas, Amalia Ponce, Volanda Candelaria and Laurie Kendall.

Brief Council discussion followed.

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Pyle and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and the Strong Neighborhoods Initiative SNI K.O.N.A. Neighborhood Improvement Plan Amendment as the renewed community vision for the future of the K.O.N.A. SNI Planning Area was accepted. (8-0-3. Absent: Chirco, Constant, Nguyen.)

- 5.4 (a) **Accept the *Silver Leaf Neighborhood Action Agenda* as the community vision for the future of the Silver Leaf area.**
- (b) **Encourage the Silver Leaf neighborhood residents, property owners and community members to continue to dedicate their time, energy and resources towards the Neighborhood Improvement Plan, continuing with their community-building activities.**

**CEQA: Not a Project. Council District 2. (City Manager's Office)
(Rules Committee referral 11/5/08)**

Documents Filed: (1) Memorandum from Deputy City Manager Norberto Duenas, dated November 7, 2008, recommending acceptance of the Silver Leaf Neighborhood Improvement Plan. (2) Silver Leaf Pilot Area Neighborhood Improvement Plan dated November 2008. (3) Petitions signed by over 1,000 Silver Leaf Neighborhood residents and supporters dated November 18, 2008.

Senior Planner Juan Borelli and Strong Neighborhoods Manager Laura Lam provided the Staff report on the Silver Leaf Neighborhood Improvement Plan.

Public Comments: Neighborhood leaders of the Silver Leaf Area speaking in support of the Staff recommendations were Dana Breckbill, Chris Jew and Frank Ybarra.

Brief Council discussion followed.

Action: Upon motion by Council Member Williams, seconded by Council Member Oliverio and carried unanimously, the Silver Leaf Neighborhood Action Agenda as the community vision for the future of the Silver Leaf area was accepted. (8-0-3. Absent: Chirco, Constant, Nguyen.)

PUBLIC HEARINGS ON CONSENT CALENDAR

- 11.1 (a) **Consideration of a Street Renaming for Tract 9881 from Tierra Encantada Court to Bob Hansen Way, located on the south side of Tierra Encantada Way, approximately 220 feet east of McCreery Avenue (Tierra Encantada Development, LLP, Owner). SNI: Mayfair. CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0).
ST08-002 – District 5
[Continued from 10/21/08 – Item 11.1(c)]**

Action: Continued to December 16, 2008 per Administration.

- (b) **Consideration of an ordinance rezoning the real property located at/on the northwest corner of S. 2nd Street and Martha Street (895 S 2nd Street) from CN Commercial Neighborhood Zoning District to R-M Multiple Residence Zoning District for future development of 3 single family residential units on a 0.19 gross acre site. A separate Site Development Permit application would need to be approved for the future development of 3 units at the site (Fazekas Rose M and Leslie J Trustee, Owner). SNI: Spartan/Keyes. CEQA: San José 2020 General Plan Final EIR.
C08-043 – District 3**

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on October 3, 2008, submitted by the City Clerk.

Action: Dropped per Applicant.

- (c) **Consideration of an ordinance prezoning the real property located on the west side on Lincoln Avenue extending from W. San Carlos Street on the south to Pacific Avenue on the north, excluding the northwest corner of W. San Carlos Street and Lincoln Avenue (275, 285 Lincoln Avenue, 1141, 1165, 1177 W. San Carlos Street, 966 Pacific Avenue) to allow the demolition of existing structures and construction of up to 47 single-family attached residential units and 6 live/work lofts on a 1.16 gross acre site (James & Tina Jean, Owner). CEQA: Mitigated Negative Declaration.
PDC07-017 – District 6**

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on October 3, 2008, submitted by the City Clerk.

Action: Dropped per Applicant.

- 11.1 (d) **Consideration of an ordinance rezoning the real property located on the west side of Elwood Road, approximately 750 feet northerly of Trinidad Avenue (17601 Elmwood Road) from A Agriculture Zoning District to A(PD) Planned Development Zoning District to allow for the construction of three single-family detached residences on a 0.74 gross acre site (Bannister, Winston Trustee, Owner). CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0).**

PDC08-004 – District 10

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC08-004, dated October 1, 2008, recommending approval. (2) Proof of Publication of Notice of Public Hearing, executed on September 9, 2008, submitted by the City Clerk.

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

Action: Upon motion by Council Member Pyle, seconded by Council Member Williams and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, Ordinance No. 28446, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the West Side of Elwood Road, Approximately 750 Feet Northerly of Trinidad Avenue (17601 Elmwood Road) to A(PD) Planned Development Zoning District”, was passed for publication. (7-0-4. Absent: Chirco, Constant, Nguyen, Oliverio.)

- (e) **Consideration of a street naming of an easement located at 1064 Broadway Avenue to Julie Kate Place (Christopher Piekarski, et al, Owner). CEQA: Exempt. Director of Planning, Building and Code Enforcement recommends approval.**

ST08-004 – District 6

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated October 27, 2008, transmitting the Planning Commission recommendation of approval. (2) Proof of Publication of Notice of Public Hearing, executed on November 7, 2008, submitted by the City Clerk.

Mayor Reed opened the public hearing.

Public Comment: Chris Piekarski (Owner) explained that the private drive will be named after his two daughters Julie and Kate.

Mayor Reed closed the public hearing.

11.1 (e) (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, the recommendation of the Planning Director was approved, Resolution No. 74676, entitled: "A Resolution of the Council of the City of San José Naming a Private Drive Julie Kate Place to Provide an Address for an Existing Lot Located Behind 1064 Broadway Avenue", was adopted. (6-0-5. Absent: Campos, Chirco, Constant, Nguyen, Oliverio.)

END OF PUBLIC HEARINGS ON CONSENT CALENDAR

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

Citywide

(Continued from 10/28/08 – Item 11.2)

Documents Filed: (1) Memorandum from Council Member Liccardo, dated November 13, 2008, recommending acceptance of the Staff recommendations with modification as described in “Action”. (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel dated October 9, 2008, transmitting the Planning Commission recommendation. (3) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 13, 2008, transmitting the corrected exhibit of the Downtown Ground Floor Space Overlay area. (4) Proof of Publication of Notice of Public Hearing, executed on September 19, 2008 submitted by the City Clerk.

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

Action: Upon motion by Council Member Liccardo, seconded by Vice Mayor Cortese and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 28447, entitled: “An Ordinance of the City of San José Amending Chapter 20.70 of Title 20 of the San José Municipal Code to Amend Section 20.70.100 to Allow Business Support and Certain Office Uses with a Special Use Permit in Certain Areas in the Downtown, To Modify Parking Requirements for Live/Work Units and to Allow Animal Grooming as a Permitted use in Downtown Zoning Districts; To Amend Section 20.70.120 to Modify Residential Occupancy Requirements for Live/Work Units and to Make Other Related Clarifying or Technical Changes to Said Chapter”, was passed for publication, as amended: (1) Restrict to 20,000 square feet the aggregate amount of any future non-retail use granted development permits within the Downtown Ground Floor Zoning Overlay Area, such that any additional square footage would require a change in Council policy. (2) City Manager directed to return to Council with a report on all non-retail use granted development permits within the Downtown Ground Floor Zoning Overlay Area during the 12 month period following enactment of the proposed ordinance changes. (8-0-3. Absent: Chirco, Constant, Nguyen.)

- 11.3 Consideration of an ordinance of the City of San José amending portions of Title 20 of the San José Municipal Code: Chapter 20.30, Sections 20.30.500 to allow the square footage of accessory structures to match those of garages; Chapter 20.30, Sections 20.30.52 to clarify the minimum separation required for accessory buildings and accessory structures; Chapter 20.90, Section 20.90.220, to allow by right parking reductions to one car garages for single family residences located in the R-1, R.2 and R-M Residence Zoning Districts and Chapter 20.100, Section 20.100.500, to allow minor additions to two family dwellings provided current parking regulations are being allowed. CEQA: Exempt, PP08-174. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-1-0).**

Citywide

Documents Filed: (1) Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 6, 2008, transmitting the Planning Commission recommendation. (2) Proof of Publication of Notice of Public Hearing, executed on October 22, 2008 submitted by the City Clerk.

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

Action: Upon motion by Council Member Pyle, seconded by Council Member Liccardo and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 28448, entitled: “An Ordinance of the City of San José Amending Sections 20.30.500 and 20.30.520 of Chapter 20.30 of Title 20 of the San José Municipal Code to Modify the Square Footage and Minimum Separation Requirements of Accessory Structures, Amending Section 20.90.220 of Chapter 20.90 of Title 20 of the San José Municipal Code to Allow Certain Reductions to One Car Garages for Certain Single Family Residences and Amending Section 20.100.500 of Chapter 20.100 of Title 20 of the San José Municipal Code to Allow Minor Additions to Two Family Dwellings Where Current Parking Regulations Are Being Met”, was passed for publication. (8-0-3. Absent: Chirco, Constant, Nguyen.)

- 11.4 Consideration of an ordinance of the City of San José amending Title 20 of the San José Municipal Code, the Zoning Code, to amend Section 20.50.010 of Chapter 20.50 to establish the CIC combined Industrial/Commercial Zoning District and to clarify the IP Industrial Park, LI Light Industrial and HI Heavy Industrial Zoning Districts; amend Section 20.50.100 to change the “CM” Denotation to “C^{GP}” and to allow uses with the “C^{GP}” Denotation with a Conditional Use Permit on properties designated Mixed Industrial Overlay or Combined Industrial/Commercial by the General Plan, to establish use regulation for the CIC Combined Industrial/Commercial Zoning District, to allow Laboratory, Medium Manufacturing and Assembly, and Warehouse Uses as a permitted use in the IP Industrial Park Zoning District; to add Research and Development Office, Mortuary without Funeral Services, and Warehouse Retail as enumerated uses, to allow Crematory Uses with a**

11.4 (Cont'd.)

Conditional Use Permit in LI Light Industrial Zoning Districts, to eliminate Day Care Center as a conditional use in the HI Heavy Industrial Zoning District with a Mixed Industrial Overlay, and to add Autobroker, wholesale, No On-Site Storage as a permitted use in the IP Industrial Park Zoning District; add Section 20.50.113 to clarify use regulations for Public Eating Establishments in the LI Light Industrial or HI Heavy Industrial Zoning Districts; add Section 20.50.130 to establish regulations for Warehouse Retail; amend Section 20.50.200 to establish development regulations for the CIC Combined Industrial/Commercial Zoning District; amend Section 20.90.060 of Chapter 20.90 to establish parking requirements for Research and Development Office, Mortuary without Funeral Services, and Warehouse Retail; amend Section 20.100.500 of Chapter 20.100 to allow above-ground storage tanks 2,000 gallons or less with a permit adjustment; amend Section 20.200 to define Mortuary and Funeral Services, Mortuary without Funeral Services, Research and Development Office, and Warehouse Retail; and make other related clarifying changes and amendments. CEQA: Negative Declaration, PP08-124.

Citywide

Action: Continued to December 2, 2008 per Administration.

- 11.5 Consideration of an ordinance of the City of San José amending Title 20 of the San José Municipal Code, the Zoning Code, to amend Section 20.40.100 of Chapter 20.40 to allow the sale of passenger vehicles, pick-up trucks not exceeding 25 feet in length, and motorcycles with a special use permit in the CN Commercial Neighborhood District, add retail art studios as an enumerated use, add outdoor dining incidental to a public eating establishment as an enumerated use; add Section 20.40.140 to establish regulations for retail art studios in commercial districts; amend Section 20.40.250 to revise the front setback exception for commercial districts; amend Section 20.40.520 to allow outdoor dining within 150 feet of residentially zoned property subject to certain restrictions; amend Section 20.80.1420 of Chapter 20.80 to revise the provisions for outdoor private property special events; amend Section 20.90.060 of Chapter 20.90 to establish parking requirements for retail art studios and outdoor dining incidental to a public eating establishment, and clarify parking requirements for private uses; amend Chapter 20.200 to define instructional art studios, retail art studios, and outdoor dining incidental to a public eating establishment; and to make other related clarifying changes and amendments. CEQA: Negative Declaration, PP08-124. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1).**

Citywide

Documents Filed: (1) Memorandum from Planning Commission Secretary Joseph Horwedel, dated October 27, 2008, transmitting the Planning Commission recommendation. (2) Proof of Publication of Notice of Public Hearing, executed on October 19, 2008 submitted by the City Clerk.

11.5 (Cont'd.)

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 Vice Mayor Cortese, seconded by Council Member Pyle and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 28449, entitled: “An Ordinance of the City of San José Amending Sections of Chapter 20.40 Commercial Zoning Districts, 20.80 Specific Use Regulations, 20.90 Parking and Loading and 20.200 Definitions, All of Title 20 of the San José Municipal Code and All to Streamline Requirements for Certain Commercial Uses Specified in the Ordinance and to Make Other Related Clarifying Changes to the Commercial Use Regulations”, was passed for publication. (8-0-3. Absent: Chirco, Constant, Nguyen.)

- 11.6 Consideration of an ordinance rezoning the real property located on the westerly corner between Charcot Avenue and Junction Avenue from LI(PD) Planned Development Zoning District to LI(PD) Planned Development Zoning District to allow 118,5000 square feet of light industrial uses on a 6.67 gross acre site (521 Charcot Avenue) (Club Auto Sport-Silicon Valley, LLC, Owner). CEQA: North San José EIR Resolution No. 72768 and Addenda thereto. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.**

PDC08-030 – District 4

Action: Continued to December 2, 2008 at the Applicant’s Request.

- 11.7 Consideration of an ordinance rezoning the real property located on the north side of Story Road, approximately 80 feet easterly of Dominick Way (14671 Story Road) from A Agriculture Zoning District to A(PD) Planned Development Zoning District to allow the construction of up to 11,844 square feet for religious assembly uses on a 1.0 gross acre site (Wat Lao Buddhaxinaram, Owner). CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0).**

PDC05-068 – District 5

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC05-068, dated October 15, 2008, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated October 27, 2008, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on October 3, 2008 submitted by the City Clerk. (4) Letter from Zoe Lofgren, Member of Congress, dated August 13, 2008, expressing support for the planning permit to rezone the property.

11.7 (Cont'd.)

Mayor Reed opened the public hearing.

Public Comment: Speaking to the merits of the project were Phillip Manithep and Peter Chittauong (Wat Lao Budhaxinarm Temple).

Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Campos, seconded by Council Member Williams and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 28450, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the North Side of Story Road, Approximately 80 Feet Easterly of Dominck Way (14671 Story Road) to A(PD) Planned Development Zoning District", was passed for publication. (8-0-3. Absent: Chirco, Constant, Nguyen.)

11.8 **Consideration of an ordinance rezoning the real property located on the south side of Hamilton Avenue approximately 320 feet easterly of Meridian Avenue (Tomato Thyme Restaurant) (1560 Hamilton Avenue) from CN Commercial Neighborhood Zoning District to A(PD) Planned Development Zoning District to allow an outdoor dining patio for an existing restaurant on a 0.375 gross acre site (Smith, John D Trustee & Et Al, Owner). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement recommends denial and Planning Commission recommends approval. (4-1-1-1. Jensen opposed; Do disqualified, and Platten absent.)**

PDC07-046 – District 6

Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti presented opening comments. Senior Planner Michael Enderby provided the Staff report.

Mayor Reed opened the public hearing.

Public Comments: Joan Gallo (Hopkins & Carley), representing the Applicant, requested a continuance in order to see if Tomato Thyme Restaurant can move forward with the patio under the conditions as described in the memorandum from Council Member Oliverio. Jerry Strangis spoke in support to the Staff recommendations. John Smith (Owner of Tomato Thyme Restaurant), stated that being a small business owner, this dynamic patio will help his restaurant continue to grow and thrive.

Speaking in support to the outdoor dining patio were Ben Carlucci, Tom Myers, John Lester, George Reilly, Lee Stipp, David Tymn, Mark Bugna (Darrin Nelson), Anthony Cirone, Matt Pauli (Campbell Moose), Michelle McMinn, Kevin Cornell and Holly Smith who provided 4,000 signatures in support of the outdoor dining patio.

11.8 (Cont'd.)

Speaking in opposition to the outdoor dining patio because of the lack of parking, and the detrimental effects of the noise and smoke were Shig Hamamatsu, Stephanie Davidson, Cheryl Davidson, Mark Nishimura, Felicia Cheng, Grace Lowe and Norm Matteoni (on behalf of the Hudson Family).

Mayor Reed closed the public hearing.

Motion: Council Member Oliverio moved approval of the Planning Commission recommendation and his memorandum dated November 17, 2008, with conditions; including one additional amendment that the patio size not exceed 1,900 square foot and that the rear has a 40 foot setback. Council Member Liccardo seconded the motion.

Assistant Director of Planning, Building, and Code Enforcement Laurel Prevetti responded to Council questions. Extensive Council discussion followed.

Meeting disclosures were provided by Mayor Reed, Vice Mayor Cortese and Council Members Campos and Oliverio.

Council Member Chu requested a friendly amended to continue Item 11.8 for two weeks. Council Member Oliverio would not accept the amendment at this time.

On a call for the question, the original motion failed. (5-3. Noes: Campos, Pyle, Williams.)

Substitute Motion: Council Member Pyle moved to continue Item 11.8 for two weeks in order to obtain more information for all parties concerned. Council Member Chu seconded the motion. The motion failed. (4-4. Noes: Cortese, Liccardo, Oliverio; Reed.)

Assistant City Attorney Ed Moran stated that if there is no Council action at this time, a denial of the application will be deemed.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Chu and carried, Item 11.8 was continued to December 2, 2008. (6-2-3. Noes: Cortese, Oliverio. Absent: Chirco, Constant, Nguyen.)

Council Member Chirco arrived at the Council Meeting at 9:17 p.m.

PUBLIC SAFETY SERVICES

- 8.2 As referred by the Rules and Open Government Committee on November 5, 2008:**
- (a) Review and discuss the San José Police Department's policies for handling individuals who are intoxicated in public.**
 - (b) Review and discuss statistics and data related to public intoxication arrests. (Mayor/Campos/Nguyen)**
- [Rules Committee referral 11/5/08 – Item (g)(2)]**

Documents Filed: (1) Memorandum from Council Member Liccardo, dated November 17, 2008, recommending direction for Police practices and arrests under Penal Code Section 647(f). (2) Memorandum from City Clerk Lee Price, dated November 6, 2008, transmitting the recommendations of the Rules and Open Government Committee. (3) Memorandum from Independent Police Auditor Barbara Attard, dated November 10, 2008, recommending completion of a chemical test when an officer is making an arrest for 647(f). (4) Memorandum from Senior Executive Analyst Vilcia Rodriguez, dated November 7, 2008, stating the Public Intoxication Policy Review and Discussion will be a verbal presentation only, no written reports will be issued. (5) Staff presentation on Public Intoxication Policy and Service Model dated November 18, 2008. (6) Letter from De-Bug, dated November 14, 2008, regarding the Supplemental Report. (7) Five letters/comments/emails from members of the public each dated November 18, 2008.

City Manager Debra Figone outlined the concerns of the Latino community regarding the 647(f) Public Intoxication Law, which included possible biased based policing. She added there had been a disproportionate number of arrests among Latinos under 647(f) and complaints regarding a lack of objectivity in applying 647(f).

Police Chief Robert Davis provided an overview of Public Intoxication 647(f), service delivery model of the City of San José and other cities, and described the next steps. Assistant Police Auditor Shivaun Nurre provided the Staff report.

Mayor Reed invited several groups to speak at the podium regarding the issue of public intoxication.

Expressing points about the need for sobering stations, implementing breath analyzer tests, instituting a task force that would analyze and interpret the data, disappointment about racial tones and a problem with the police behavior in the Downtown areas, disproportionate arrests of the Latino population, and the lack of transparency in the Police Department, were Andrea Flores Shelton and Eddie Garcia (Latino Coalition). Raj Jayadev (DeBug), Esau Herrera (Silicon Valley Latino Democratic Forum), Sylvia Alvarez (La Raza Roundtable), Skyler Forrest (ACLU), Father John Pettigrew (PACT), Blanca Alvarado (Supervisor, Santa Clara County) and George Shirakawa (Incoming Supervisor, Santa Clara County).

8.2 (Cont'd.)

Public Comments: Other speakers expressing comments included, Ross Signorino, Tony Cisneros, Adrian Flores (Building Respect through Dance), Melissa Kelley, Victor Cristobou, Adam Welch, Charles Lostaunau (American GI Forum), Ed Bellezza, Ernest Glave, Darcie Green, Teresa Avila-Burns, Olivia Soza Mendiola, Xavier Campos (MASCA, Silicon Valley Democratic Forum), Alfonso Juarez, Jaime Alvarado (Somas Mayfair), Doug Choupek, Mauricio Mejia, Ali Rahnoma, Brian Helurle (DeBug), Alfredo Morales, Richard Santos, Fernando Perez, Maria Dolores Castillo, Anthony Castillo, Diana Castillo, Betsy Wolf-Graves, Maria Martinez, Bea Mendez, Linda Ramirez Jones (Silicon Valley Democratic Forum), Manny Diaz, Aaron Resendez, Ricardo Cavallera (Law Office of Cavallera Immigration), Dolores Marquez, Gina Gates, Steve Arevalo, Karl Soltero, Scott Knies (San José Downtown Association), David Parker, Calixto Manriquez, Manual Herrera, Art Calderon, Maria Razo, Gil Villagran, Jeanne Lucchesi, Loretta Lopez, Steve Smith, Jose Guzman, Jose Rangel, Mario Sanchez (MACSA), Hermelinda Sapien, Laura Aguilera, Lurdes Rivera, Lupe Friez, Humberto Ozuna, Rick Gomez, Edgar De Leon and Andrea Flores Shelton (Latino Colation of Silicon Valley).

City Manager Debra Figone, Police Chief Robert Davis and Assistant Police Auditor Shivaun Nurre responded to Council questions.

Extensive Council discussion followed with the final direction as noted in “Action” on Pages 31 and 32.

Action: Upon motion by Council Member Campos, seconded by Council Member Williams and carried unanimously, (1) The City Manager was directed to initiate a task force that will be charged with addressing the issue of arrests for public intoxication. The City Manager’s Office is charged with identifying key stakeholders to be included in this process, including: a representative from each stakeholder group represented at this Council meeting, Police Chief Robert Davis, City Attorney Richard Doyle, the District Attorney’s Office, Public Defenders Office, County Department of Corrections and County Supervisor District #2. Other interested parties should contact the City Manager’s Office. (2) The following directions from the memorandum from Council Member Liccardo, dated November 18, 2008, were referred to the task force for further discussion and input from the broader base of stakeholders: (a) City Manager and City Attorney directed to investigate and return to Council or to the appropriate Council Committee with a set of recommendations for non-criminal sanctions and diversionary approaches that might apply to some persons who might otherwise face arrest under Penal Code Section 647(f). These alternatives should include, but not be limited to: (1) Sobering stations for intoxicated persons. (2) Enforcement of Municipal Code provisions that entail non-criminal sanctions, particularly where police response costs can be recovered under Municipal Code Section 10.16.100. Such provisions might include Section 10.12.010 (drinking in public), Section 10.10.010 (sitting or lying down on downtown sidewalks), Section 10.12.110 (public urination), Section 10.16.010 (disturbing the peace) or others. (3) Enforcement of any new or proposed Municipal Code provisions that Council might create to impose fines or other non criminal penalties. (b) City Manager directed to return

8.2 (Cont'd.)

to Council or the appropriate Council Committees with additional procedures that an officer should satisfy to obtain objective evidence to support his or her findings to arrest under Penal Code Section 647(f). Such recommendations might include but are not limited to: (1) Requiring officers to offer PAS testing to arrestees but ensuring that a suspect's refusal could be documented in the Officer's report. (2) Requiring officers to offer blood or urine chemical testing at the option of the arrestee, but with the expense of such test incurred by the arrestee. (3) Conducting coordination tests, such as line walking and standing balance tests, in all Section 647(f) arrests in which a person appears to have sufficient control over their motor skills. (3) City Manager directed to bring forward recommendations on the composition, process and expected outcomes of the task force to the Public Safety, Finance and Strategic Support Committee (PSFSS) at the December 18, 2008 meeting for approval. Upon Committee approval, the task force will convene for a period of no more than 90 days, at which time the City Manager will report back to the PSFSS Committee on the findings and recommendations of the task force. With the PSFSS Committee's approval, those findings and recommendations will then be referred to the Council at the next appropriate Council Meeting for final adoption. (4) As outlined in the memorandum from Council Member Liccardo, dated November 18, 2008, the Council referred to the Administration: (a) A request to present to the Council any proposal of cost sharing of police expenditures with nightclubs, and a public discussion of San José Police Department's nighttime Entertainment Zone personnel deployment strategy and costs; (b) Direction to ascertain how and whether the City can accurately survey the demographic characteristics, including race, ethnicity, gender and approximate age, of the people in the downtown Entertainment Zone during key hours of heavy nightclub activity, preferably under the auspices of an unaffiliated third party; and (5) Reaffirmed previous direction to form a community-based advisory group to facilitate the action items recommended in the Hospitality Zone Assessment report to ensure that new and existing policies are working to make downtown a vibrant, hospitable and safe entertainment center. (9-0-2. Absent: Constant, Nguyen.)

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>
9981	NE corner of Willow Glen Way and Cross Way	6	Falcon Development LLC	10 Lots / 9 Units	SFA	Approve

OPEN FORUM

- (1) Elaine McKenzie complained about not enough shelters for the homeless, herself included. A member of City Staff was requested to speak with her.

ADJOURNMENT

The Council of the City of San José was adjourned at 11:48 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

smd/11-18-08 MIN

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

JOINT REDEVELOPMENT AGENCY ITEMS

The Joint Redevelopment Agency Board convened at 3:47 p.m. to consider Items 8.1 and 8.2 in a Joint Session.

- 8.1**
- (a) Adoption of a resolution by the City Council making certain determinations required by Redevelopment Law, Health and Safety Code Section 33445, for Agency funding of the proposed improvements in the SoFA Sidewalk Demonstration Project.**
 - (b) Adoption of a resolution by the Redevelopment Agency Board awarding a contract to Bugler Construction for the SoFA Sidewalk Demonstration Project, the low bidder in the amount of \$374,400, and authorizing a construction contingency in the amount of \$37,440 for a total construction budget not to exceed \$411,840.**

CEQA: Final EIR San Jose Downtown Strategy 2000, Resolution No 72767, File No. PP08-119. [MARKET GATEWAY]

Documents Filed: Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated November 6, 2008, recommending adoption of resolutions.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, Resolution No. 74674, entitled: "A Resolution of the Council of the City of San José Making Certain Determinations Required by Redevelopment Law, Health and Safety Code Section 33445, for Agency Funding of Public Improvements in the SoFA Sidewalk Demonstration Project" and Redevelopment Agency Resolution No. 5873 were adopted. (9-0-2. Absent: Constant, Nguyen.)

- 8.2**
- (a) Adoption of a resolution by the Redevelopment Agency Board:**
 - (1) Authorizing the issuance of Merged Area Redevelopment Project Tax Allocation Bonds, in one tax-exempt series, in an aggregate principal amount not to exceed \$38,855,000 (the 2008A Bonds); and approving in substantially final form the Thirteenth Supplemental Indenture of Trust with Union Bank, as Trustee.**
 - (2) Authorizing the competitive sale of the 2008A Bonds.**
 - (3) Approving in substantially final form the Preliminary Official Statement, Notice of Intention to Sell Bonds and Official Notices Inviting Bids and authorizing Agency staff to distribute the POS.**
 - (4) Authorizing the General Counsel to negotiate and execute a first amendment to the agreement for Bond Counsel Services, in an amount not to exceed \$45,000 for a total contract amount not to exceed \$135,000, for Series 2008A and Series 2008 B Bonds.**
 - (5) Authorizing all officers, agents and employees to take such actions and execute such documents necessary and desirable to accomplish issuance of the 2008A Bonds.**
 - (b) Adoption of a resolution by the City Council approving the issuance of Merged Area Redevelopment Project Tax Allocation Bonds, in one tax-exempt series, in an aggregate principal amount not to exceed \$38,855,000.**

8.2 (Cont'd.)

Documents Filed: Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated November 6, 2008, recommending adoption of resolutions.

Action: Upon motion by Council Member Pyle, seconded by Council Member Campos and carried unanimously, Redevelopment Agency Resolution No. 5874 and Resolution No. 74675, entitled: "A Resolution of the Council of the City of San José Approving the Issuance and Sale of Not To Exceed Aggregate Principal Amount of Merged Area Redevelopment Project Tax Allocation Bonds, Series 2008A", was adopted. (9-0-2. Absent: Constant, Nguyen.)

The Joint Redevelopment Agency Board was adjourned at 3:50 p.m.

RECESS/RECONVENE

The Joint Redevelopment Agency Board recessed at 3:50 p.m. from the afternoon session and reconvened at 7:12 p.m. in the Council Chambers, City Hall to consider Item 8.3 in a Joint Session.

JOINT REDEVELOPMENT AGENCY ITEM

8.3 **Joint Public Hearing on the Redevelopment Agency's Proposed FY 2008-2009 Capital Budget and 2009-2013 Capital Improvement Program.**

Documents Filed: The Redevelopment Agency's Proposed FY 2008-2009 Capital Budget and 2009-2013 Capital Improvement Program (available online only).

The Public Hearing was held.

Speaking in favor of Capital funding for the San José Municipal Stadium were, Clayton Tanner, Shirley Madsen, Hilton Graef, Roger Carter, Lance Choy, Skylar Phoenix, Len Grilli, Robert Day, Ronald Castro, Stewart Peebles, Sharon Laughlin, Steve Smith, Julie McDonald, Fred Shirey, Geoff Alexander and Andy Dymore.

John Mitchell requested funds be appropriated for the restoration of the San José Clock Tower.

The Joint Redevelopment Agency Board was adjourned at 7:32 p.m.