



MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, DECEMBER 2, 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, Constant, Cortese, Liccardo, Nguyen, Oliverio, Pyle, Williams; Reed.

Absent: Council Members None.

Upon motion unanimously adopted, Council recessed at 9:00 a.m. to a Closed Session in Room W133, (A) Public Employment/Public Employee Evaluation pursuant to Government Code Section 54957: Title: City Attorney; Name: Richard Doyle; (B) to confer with Legal Counsel – Anticipated Litigation: Significant exposure to litigation pursuant to subsection (b) of Section 54956.9 of the Government Code: Number of matter(s) to be discussed: one (1); (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Organization or Name and Title of Unrepresented Employees: San José Police Officers' Association; Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association; (2) Organization or Name and Title of Unrepresented Employees: Association of Building, Mechanical and Electrical Inspectors (ABMEI); Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and Association of Building, Mechanical and Electrical Inspectors (ABMEI); (3) Organization or Name and Title of Unrepresented Employees: International Brotherhood of Electrical Workers, Local 332 (IBEW); Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Brotherhood of Electrical Workers, Local 332 (IBEW); (4) Organization or Name and Title of Unrepresented Employees: Confidential Employee's Organization, AFSCME Local 101 (CEO); Name of Existing Contract or MOA: Memorandum of Agreement – Confidential Employees' Organization, AFSCME Local 101 and City of San José; (5) Organization or Name and Title of Unrepresented Employees: City Conditions, etc; Name of Existing Contract or MOA: Memorandum of

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CLOSED SESSION (Cont'd.)

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

By unanimous consent, Council recessed from the Closed Session at 11:15 a.m. and reconvened at 1:31 p.m. in the Council Chambers.

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

Absent: Council Members None.

INVOCATION

Diane Fisher of the Jewish Community Relations Council presented the Invocation.

PLEDGE OF ALLEGIANCE

Students of the Success Academy of San José and Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Vice Mayor Cortese and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Item 2.1 and 11.3 deferred to December 9, 2008. (11-0.)

CEREMONIAL ITEMS

1.1 Presentation of a commendation to Kerri Hamilton for her dedication and service to the City of San José. (Mayor/Cortese/Campos/Liccardo/Chu)

Action: Mayor Reed, Vice Mayor Cortese and Council Members Campos, Liccardo and Chu commended Kerri Hamilton for her dedication and service to the City of San José.

**1.5 Presentation of a commendation to the Leland Robotics Team for their outstanding achievements in the field of Robotics. (Pyle)
(Rules Committee referral 11/19/08)**

Action: Mayor Reed and Council Member Pyle commended the Leland Robotics Team for their outstanding achievements in the field of Robotics.

1.2 Presentation of a commendation to Cupertino Electric for recognizing and providing a high standard and leadership in Energy and Environmental Design. (Economic Development)

Action: Mayor Reed and Council Member Liccardo commended Cupertino Electric for recognizing and providing a high standard and leadership in Energy and Environmental Design.

1.3 Presentation of a commendation to Anil Kar, Water Pollution Control Plant Electrical Maintenance Division Manager, Plant Mechanic Sal Campos, and Energy Saving Rebate Check by PG&E for achieving significant energy savings under “Savings by Design” Program. (Environmental Services)

Action: Mayor Reed commended Anil Kar, Water Pollution Control Plant Electrical Maintenance Division Manager and the PG&E Team for achieving significant energy savings under “Savings by Design” Program. The City was presented with a check from the “Savings by Design” Program for \$164,864.

1.4 Presentation of a commendation to the Environmental Services Department - Water Resources Division for their leadership in becoming the first City of San José operation to develop and fully implement an Environmental Management System to the ISO 14001 (Environmental Services)

Action: Mayor Reed commended the Environmental Services Department - Water Resources Division for their leadership in becoming the first City of San José operation to develop and fully implement an Environmental Management System to the ISO 14001.

CONSENT CALENDAR

Upon motion by Council Member Pyle, seconded by Vice Mayor Cortese and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (11-0.)

2.1 Approval of minutes.

- (a) **Regular Minutes of September 9, 2008**
- (b) **Special Meeting Minutes of the Joint City Council/County/Redevelopment Agency Board Meeting of September 15, 2008**
- (c) **Regular Minutes of September 16, 2008**

Action: Deferred to December 9, 2008 per Orders of the Day.

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 28446 – Rezoning certain real property situated on the west side of Elwood Road, approximately 750 feet northerly of Trinidad Avenue (17601 Elwood Road) to A(PD) Planned Development Zoning District. PDC08-004**

Documents Filed: Proof of Publication of the title of Ordinance No. 28446 executed on November 18, 2008, submitted by the City Clerk.

Action: Ordinance No. 28446 was adopted. (11-0.)

- (b) **ORD. NO. 28447 – 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 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.**

Documents Filed: Proof of Publication of the title of Ordinance No. 28447 executed on November 18, 2008, submitted by the City Clerk.

Action: Ordinance No. 28447 was adopted. (11-0.)

2.2 (Cont'd.)

- (c) **ORD. NO. 28448** – 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.

Documents Filed: Proof of Publication of the title of Ordinance No. 28448 executed on November 18, 2008, submitted by the City Clerk.

Action: Ordinance No. 28448 was adopted. (11-0.)

- (d) **ORD. NO. 28449** – Amending certain 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.

Documents Filed: Proof of Publication of the title of Ordinance No. 28449 executed on November 18, 2008, submitted by the City Clerk.

Action: Ordinance No. 28449 was adopted. (11-0.)

- (e) **ORD. NO. 28450** – Rezoning certain real property situated on the north side of Story Road, approximately 80 feet easterly of Dominick Way (14671 Story Road) to A(PD) Planned Development Zoning District. PDC05-068

Documents Filed: Proof of Publication of the title of Ordinance No. 28450 executed on November 18, 2008, submitted by the City Clerk.

Action: Ordinance No. 28450 was adopted. (11-0.)

- 2.3 Approve an Automated Teller Concession Agreement with U.S. Bank for a term from January 1, 2009 to December 31, 2015, with a monthly concession fee to the Norman Y. Mineta San José International Airport beginning the first year of the agreement of \$1,500 per automated teller machine, for a total estimated annual first year concession fee to the Airport in the amount of \$144,000. CEQA: Resolution Nos. 67380 and 71451, PP 08-219. (Airport)**

Documents Filed: Memorandum from Director of Aviation William F. Sherry, dated November 11, 2008, recommending approval of an agreement.

Action: The Automated Teller Concession Agreement with U.S. Bank for a term from January 1, 2009 to December 31, 2015, with a monthly concession fee to the Norman Y. Mineta San José International Airport was approved. (11-0.)

- 2.4 Adopt a resolution authorizing the City Manager to negotiate and execute a Master Services Agreement with Construction Testing Services for Special Inspections and Material Testing Consultant Services for the Terminal Area Improvement Program (TAIP) at the Norman Y. Mineta San José International Airport in an amount not-to-exceed \$1,000,000 and authorizing the City Manager to negotiate and execute an agreement with lower ranked firms in order of their ranking should the City not be able to negotiate favorable terms with Construction Testing Services. CEQA: Resolution Nos. 67380 and 71451, PP08-235. (Airport/Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated November 10, 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 Negotiate and Execute an Agreement with Construction Testing Services for Special Inspections and Material Testing at the Norman Y. Mineta San José International Airport, in an amount not to exceed \$1 Million”, was adopted. (11-0.)

- 2.5 (a) Adopt a resolution authorizing the City Manager to allocate funds resulting from the Settlement Agreement with Browning-Ferris Industries of North America, Inc. and Allied Waste Services of North America, LLC to the following public school districts upon each district executing Waste Reduction and Recycling Cooperation Agreements with the City:**
- (1) San José Unified School District, in the amount of \$575,795;**
 - (2) Franklin-McKinley School District, in the amount of \$157,259;**
 - (3) Alum Rock Union School District, in the amount of \$150,972;**
 - (4) Cambrian School District, in the amount of \$63,210; and**
 - (5) Orchard School District, \$11,598.**

2.5 (Cont'd.)

- (b) **Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:**
- (1) **Establish a City-Wide Appropriation: Commercial Solid Waste Fees from Solid Waste Service to Public Schools, in the amount of \$1,449,250;**
 - (2) **Increase the revenue estimate for Other Revenue by \$958,834 to recognize the revenue from the Settlement Agreement with Browning-Ferris Industries of North America, Inc. and Allied Waste Services of North America, LLC; and**
 - (3) **Establish a Transfer from the Integrated Waste Management Fund in the amount of \$490,416.**
- (c) **Adopt the following Appropriation Ordinance Amendments in the Integrated Waste Management Fund (423):**
- (1) **Establish a Transfer to the General Fund of \$490,416 for Commercial Solid Waste Fees from Solid Waste Service to Public School; and**
 - (2) **Decrease the Ending Fund Balance by \$490,416.**
- CEQA: Not a Project. (Environmental Services/City Manager's Office)**

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean and Budget Director Jennifer Maguire, dated November 10, 2008, recommending adoption of a resolution and appropriation ordinance and funding sources resolution amendments.

Action: Resolution No. 74678, entitled "A Resolution of the Council of the City of San José Authorizing the City Manager to Allocate Funds from the Settlement Agreement with Browning-Ferris Industries of North America, Inc., and Allied Waste Services of North America, LLC to Several Public School Districts upon each District Executing Waste Reduction and Recycling Cooperation Agreements with the City", Ordinance No. 28451, entitled "An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the General Fund for the Commercial Solid Waste Fees from Solid Waste Service to Public Schools; and Providing that this Ordinance shall become effective immediately upon adoption", Resolution No. 74679, entitled "A Resolution of the Council of the City of San José Amending Resolution No. 74461 setting forth the Estimated Sources of Funds for the Fiscal Year 2008-2009 to Adjust Revenues in the General Fund", and Ordinance No. 28452, entitled "An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Integrated Waste Management Fund for the Transfer to the General Fund for Commercial Solid Waste Fees from Solid Waste Service to Public Schools; and providing that this Ordinance shall become effective immediately upon adoption", were adopted. (11-0.)

2.6 Report on Request for Proposals and adoption of a resolution authorizing the Director of Finance to:

- (a) Execute an agreement with Turbo Data Systems, Inc. (Tustin, CA) for Parking Citation Processing and Collection Services with a Customer Service Center for a one-year term and a maximum compensation not-to-exceed \$600,000.**
- (b) Exercise four one-year options to extend the agreement subject to appropriation of funds.**

CEQA: Not a Project. (Finance)

Documents Filed: Memorandum from Director of Finance Scott P. Johnson, dated November 10, 2008, recommending adoption of a resolution.

Action: Resolution No. 74680, entitled “A Resolution of the Council of the City of San José Approving an Agreement with Turbo Data Systems, Inc. for Parking Citation Processing and Collection Services”, was adopted. (11-0.)

2.7 Adopt a resolution authorizing the City Manager to:

- (a) Execute an agreement with DR Associates International to provide consultant services to perform pre-employment background investigation services as part of the hiring process for Fire Department personnel including Firefighter Recruits, Public Safety Dispatchers, and Student Interns for a one-year term beginning December 3, 2008 through December 2, 2009, in an amount not to exceed \$143,700.**
- (b) Amend the maximum compensation for the first year to provide for a greater quantity of background services subject to appropriation of funds.**
- (c) Exercise up to two one-year options to renew subject to appropriation of funds.**

CEQA: Not a Project. (Fire)

Documents Filed: Memorandum from Fire Chief Darryl Von Raesfeld, dated November 7, 2008, recommending adoption of a resolution.

Action: Resolution No. 74681, entitled “A Resolution of the Council of the City of San José Authorizing the City Manager to Execute an Agreement with DR Associates International for Pre-employment Background Investigation Services”, was adopted. (11-0.)

- 2.8 (a) **Approve the Third Contract Amendment for Don Dommer Associates, Inc. for the Fire Station No. 12 Project, increasing the agreement compensation by \$35,152 from \$347,929 to \$383,081 and extending the contract term by three months from March 1, 2009 to June 1, 2009.**
- (b) **Approve the Fourth Contract Amendment with Banducci Associates Architects, for the Fire Station No.17 Project, increasing the agreement compensation by \$30,275 from \$369,555 to \$399,830 and extending the contract term by three months from March 1, 2009 to June 1, 2009.**
- CEQA: Fire Station No. 12: Mitigated Negative Declaration, PP05-071. Fire Station No. 17: Exempt, PP05-275. Council Districts 9 and 10. (Fire/Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen and Fire Chief Darryl Von Raesfeld, dated November 10, 2008, recommending approval of amendments for consultant agreements.

Action: The Contract Amendments for Fire Stations No. 12 and 17 were approved. (11-0.)

- 2.9 **Adopt the following 2008-2009 Appropriation Ordinance amendments in the General Fund (001):**
- (a) **Decrease the Building Facilities Maintenance Backlog: 9-1-1 UPS System, PAB Chiller, Police Special Operations Unit Motors appropriation by \$200,000; and**
- (b) **Establish a Building Facilities Maintenance Backlog: Energy Management System for the 9-1-1 Communications Center appropriation in the amount of \$200,000.**

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

Documents Filed: Memorandum from Director of General Services Peter Jensen and Budget Director Jennifer Maguire, dated November 10, 2008, recommending adoption of appropriation ordinance amendments in the General Fund.

Action: Ordinance No. 28453, entitled "An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the General Fund for the Building Facilities Maintenance Backlog: Energy Management System for the 9-1-1 Communications Center; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. (11-0.)

- 2.10 Adopt the following Appropriation Ordinance amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District 10 (Fund 389):**
- (a) Establish an appropriation to the Parks, Recreation and Neighborhood Services Department in the amount of \$596,000 for the TRAIL: 7 Expressway Pedestrian Bridge; and**
 - (b) Decrease the Ending Fund Balance by \$596,000.**
- CEQA: Mitigated Negative Declaration, PP03-04-110. Council District 10. (Parks, Recreation and Neighborhood Services/City Manager’s Office)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso and Budget Director Jennifer Maguire, dated November 10, 2008, recommending adoption of appropriation ordinance amendments.

Action: Ordinance No. 28454, entitled “An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District No. 10 Fund for the Trail: Almaden Expressway Pedestrian Bridge; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”, was adopted. (11-0.)

- 2.11 (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 \$133,500.**
 - (b) Establish the appropriation to the Department of Public Works for the Transit Mall Paving Restoration Project (PSM 550) in the amount of \$54,000.**
 - (c) Establish the appropriation to the Parks, Recreation and Neighborhood Services Department for the Downtown for the Holidays Project (PSM 553) in the amount of \$79,500.**
- (2) Adopt a resolution making certain determinations regarding the related expenditure of Redevelopment Agency funds on certain public improvements in connection with the Transit Mall Paving Restoration Project as more specifically described in the memorandum from the Redevelopment Agency, dated September 3, 2008.**
- CEQA: Transit Mall Paving Restoration Project: Resolution No. 65459 and addenda thereto PP08-244; Downtown for the Holidays: Resolution No. 72767. Council District 3. (Public Works/Parks, Recreation and Neighborhood Services/ City Manager’s Office)**

2.11 (Cont'd.)

- (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 \$65,693.**
 - (b) **Establish an appropriation to the General Services Department for the Children's Discovery Museum Boiler Replacement Project (PSM 560) in the amount of \$65,693.**
- (2) **Adopt a resolution making certain determinations regarding the related expenditure of Redevelopment Agency funds on certain public improvements in connection with the Children's Discovery Museum Boiler Replacement Project as more specifically described in the memorandum from the Redevelopment Agency, dated October 31, 2008.**

CEQA: Children's Discovery Museum Boiler Replacement Project: Not a Project. Council District 3. (General Services/City Manager's Office)

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen, Director of Parks, Recreation and Neighborhood Services Albert Balagso, and Budget Director Jennifer Maguire, dated November 10, 2008, recommending adoption of appropriation ordinance amendments and funding sources resolution amendments. (2) Memorandum from Director of General Services Peter Jensen and Budget Director Jennifer Maguire, dated November 10, 2008 recommending adoption of appropriation ordinance amendments and funding sources resolution amendments.

Action: Ordinance No. 28455, 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 Transit Mall Paving Restoration Project and the Downtown for the Holiday Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", Resolution No. 74682, 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. 74683, 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 Merged Redevelopment Project Area", Ordinance No. 28456, 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 Children's Discovery Museum Boiler Replacement Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", Resolution No. 74684, 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 Funds", and Resolution No. 74685, 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", were adopted. (11-0.)

- 2.12 Adopt a resolution authorizing the City Manager to execute a Transportation Fund for Clean Air (TFCA) grant agreement with the Santa Clara Valley Transportation Authority (VTA) that will provide for the City's receipt of grant funds in an amount not to exceed \$595,450 for the following two transportation projects:**
- (a) Light Rail Transit (LRT) Controller Upgrade Phase II in an amount not-to-exceed \$545,450.**
 - (b) San José Bicycle Racks in an amount not-to-exceed \$50,000.**
- CEQA: Exempt, File No. PP08-225. Council Districts 3, 4, 5 and 6. SNI: 13th Street, Burbank/Del Monte, Delmas Park. (Transportation)**

Documents Filed: Memorandum from Director of Transportation, James R. Helmer, dated November 10, 2008, recommending adoption of a resolution.

Action: Resolution No. 74686, entitled "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute a Transportation Fund for Clean Air Grant Agreement with the Santa Clara Valley Transportation Authority to Receive Funding for Two Transportation Projects in a Total Amount Not to Exceed \$595,450", was adopted. (11-0.)

- 2.13 Approval of Councilmember Campos' travel to San Francisco, CA on January 9-11, 2009 to attend the League of California Cities Latino Caucus Annual Board Meeting. Councilmember Campos is a Board Member for the League of California Cities and a Past Latino Caucus President. Source of Funds: Mayor/Council Travel Fund. (Campos)
(Rules Committee referral 11/19/08)**

Documents Filed: Memorandum from Council Member Campos, dated November 12, 2008, requesting approval of business travel.

Action: The travel for Council Member Campos was approved. (11-0.)

- 2.14 Request for an excused absence for Councilmember Nguyen from the Closed Session, Regular Session and Evening Session of the City Council on November 18, 2008 due to illness. (Nguyen)
(Rules Committee referral 11/19/08)**

Documents Filed: Memorandum from Council Member Nguyen, dated November 18, 2008, requesting an excused absence.

Action: The excused absence for Council Member Nguyen was approved. (11-0.)

2.15 As recommended by the Rules and Open Government Committee of November 19, 2008:

- (a) **Appoint Kaushik Joglekar to fill the vacant position on the Early Care and Education Commission. (Chirco)**
- (b) **Re-appoint Kulwant Singh and David Parker and approve appointments of Andrae Macapinlac, Matthew Salcido and Donald Young to the Human Rights Commission. (Chu)**
- (c) **Re-appoint Bobby Yount to the remainder of a vacant, unexpired term on the Arts Commission. (Williams)**
- (d) **Appoint Robert Bailey, Hassan Kahn and Dan Wagner to the Advisory Commission on Rents. (Campos)**
- (e) **Appoint Patrick Hall and Bob Gill to the Senior Citizens Commission. (Constant)**

[Rules Committee referral 11/19/08 – Items F(1) – (5)]

Documents Filed: Memorandum from City Clerk Lee Price, dated November 20, 2008, submitting Rules and Open Government Committee recommendations for appointments to Boards, Commission and Committees.

Action: The appointments to Boards, Commission and Committees, as submitted by the City Clerk, were approved. (11-0.)

**2.16 As recommended by the Parks and Recreation Commission of November 5, 2008, name a new turnkey park located on the McKay Drive and Lundy Avenue residential project site as “Gran Paradiso”. (City Clerk)
(Rules in-Lieu referral 11/25/08)**

Documents Filed: Memorandum from City Clerk Lee Price, dated November 18, 2008, submitting a recommendation from the Parks and Recreation Commission to name a new park.

Action: The naming of a new turnkey park located on the McKay Drive and Lundy Avenue residential project site as “Gran Paradiso” was approved. (11-0.)

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone reported on the closure of the American Musical Theater of San José and impacts.

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

Documents Filed: The Rules and Open Government Committee Report dated October 22, 2008.

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Constant and carried unanimously, the Rules and Open Government Committee Report and the actions of October 22, 2008 were accepted. (11-0.)

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

Documents Filed: The Rules and Open Government Committee Report dated October 29, 2008.

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Constant and carried unanimously, the Rules and Open Government Committee Report and the actions of October 29, 2008 were accepted. (11-0.)

**3.4 Report of the Rules and Open Government Committee – November 5, 2008
Mayor Reed, Chair**

Documents Filed: The Rules and Open Government Committee Report dated November 5, 2008.

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Constant and carried unanimously, the Rules and Open Government Committee Report and the actions of November 5, 2008 were accepted. (11-0.)

3.6 Approve the issuance of a Request for Proposals to select a developer for the vacant space on the ground floor of City Hall on 4th Street. CEQA: Not a Project. Council District 3. (Economic Development/General Services)

Documents Filed: Memorandum from Chief Development Officer Paul Krutko and Director of General Services Peter Jensen, dated November 10, 2008, recommending approval of a Request for Proposals (RFP) for City Hall Retail space.

Motion: Council Member Pyle moved approval of the Staff's recommendation. Council Member Williams seconded the motion.

Substitute Motion: Council Member Constant moved approval of the Request for Proposals as recommended by Staff with the labor peace provision removed from the final proposal. Council Member Oliverio seconded the motion.

Extensive Council discussion followed.

3.6 (Continued)

On a call for the question, the substitute motion failed (2-9-0. Noes: Campos, Chirco, Chu, Cortese, Liccardo, Nguyen, Pyle, Williams; Reed).

Public Comments: (1) Pat Dando (San José/Silicon Valley Chamber of Commerce) expressed disappointment over the lack of outreach to the Chamber of Commerce, asked that the Council not step away from the labor peace provision, and urged solid measurables be provided within four months. (2) Ross Signorino recommended that the space be held vacant to allow for the City's future needs.

Vice Mayor Cortese requested to amend the motion with the inclusion that the financial impact of in-house use be quantified. Council Members Pyle and Williams accepted the amendment.

Action: On a call for the question, the motioned carried, the issuance of a Request for Proposals to select a developer for the vacant space on the ground floor of City Hall on 4th Street was approved, as amended, with the labor peace provision removed from the final proposal. The Office of Economic Development was directed to provide an analysis on the cost benefit of in-house use. (9-2-0. Noes: Constant, Oliverio).

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.2 (a) **Public hearing and adopt a resolution designating the Ames House on a 0.16-acre site located at the east side of N. Fifteenth Street, approximately 90 feet south of E. Saint James Street (186 N. Fifteenth Street) as a landmark of special historic, architectural, cultural, aesthetic or engineering interest, or value of a historic nature. (City Landmark No. HL08-172)**
- (b) **Public hearing and adopt a resolution approving the Historical Property Contract (California Mills Act Contract No. MA08-004) between the City of San José and the owners of the Ames House (Hullene and Marcus Salomon). The proposed contract, which is available to owners of designated City Landmark buildings, would facilitate a property tax reassessment and partial tax relief in return for a binding agreement to rehabilitate and maintain the historical and architectural character of the property for at least a ten-year period.**

CEQA: Exempt. SNI: 13th Street. Council District 3. (Planning, Building and Code Enforcement)

Documents Filed: (1) Memorandum from Historic Landmarks Commission Secretary Joseph Horwedel, dated November 10, 2008, recommending a resolution designating the Ames House as a Historic Landmark. (2) Affidavit of Routing executed on December 11, 2008, and distributed by the City Clerk. (3) Proof of Publication of Notice of Public Hearing, executed on September 12, 2008, submitted by the City Clerk.

4.2 (Cont'd.)

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 Council Member Oliverio and carried unanimously, Resolution No. 74687, entitled “A Resolution of the Council of the City of San José Designating, Pursuant to the Provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, the Ames House located at 186 N. Fifteenth Street as a City Landmark of Special Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of a Historic Nature”, and Resolution No. 74688, entitled “A Resolution of the Council of the City of San José Approving a Historic Landmark Preservation Agreement with Marcus and Hullene Salomon for the Ames House (City Landmark No. HL08-172)”, were adopted. (11-0.)

- 4.3 (a) **HL08-173 – Public hearing and adoption of a resolution designating the Hobson House on a 0.146 acre site, located at the westerly side of N. Fifteenth Street, approximately 250 feet north of E. Julian Street (333 N. Fifteenth Street) as a landmark of special historic, architectural, cultural, aesthetic or engineering interest or value of an historic nature.**
- (b) **MA08-005 – Public hearing on the Historical Property Contract (California Mills Act contract) between the City of San José and the owners of Hobson House (City Landmark No. HL08-173) on a 0.146 acre site, located at the westerly side of N. Fifteenth Street, approximately 250 feet north of E. Julian Street (333 N. Fifteenth Street), (Rene T. and Claudia Correa, Property Owner) and adoption of a resolution approving the contract. The proposed contract, which is available to owners of designated City Landmark buildings, would facilitate a property tax reassessment and partial tax relief in return for a binding agreement to rehabilitate and maintain the historical and architectural character of the property for at least a ten-year period.**

CEQA: Exempt. Council District 3. (Planning, Building and Code Enforcement)

Documents Filed: (1) Memorandum from Historic Landmarks Commission Secretary Joseph Horwedel, dated November 10, 2008, recommending a resolution designating the Hobson House as a Historic Landmark. (2) Affidavit of Routing executed on December 11, 2008, and distributed by the City Clerk. (3) Proof of Publication of Notice of Public Hearing, executed on September 12, 2008, submitted by the City Clerk.

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

4.3 (Cont'd.)

Action: Upon motion by Council Member Constant, seconded by Council Member Oliverio and carried unanimously, Resolution No. 74689, entitled “A Resolution of the Council of the City of San José Designating, Pursuant to the Provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, the Hobson House located at 333 N. Fifteenth Street as a City Landmark of Special Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of a Historic Nature”, and Resolution No. 74690, entitled “A Resolution of the Council of the City of San José Approving a Historic Landmark Preservation Agreement with Claudia and Rene T. Correa for the Hobson House (City Landmark No. HL08-173) located at 333 North Fifteenth Street”, were adopted. (10-0-0-1. Disqualified: Liccardo)

- 4.4 (a) **HL08-174 – Public hearing and adoption of a resolution designating the Renzel House on a 0.70 acre site, located at the northeast side of Arroyo Way, approximately 250 feet east of S. Seventeenth Street (120 Arroyo Way) as a landmark of special historic, architectural, cultural, aesthetic or engineering interest or value of an historic nature.**
- (b) **MA08-006 – Public hearing on the Historical Property Contract (California Mills Act contract) between the City of San José and the owners of Renzel House (City Landmark No. HL08-174) on a 0.70 acre site, located at the northeast side of Arroyo Way, approximately 250 feet east of S. Seventeenth Street (120 Arroyo Way), (Donald Lieberman and Patricia A. Long Trustee & Et. Al., Property Owner) and adoption of a resolution approving the contract. The proposed contract, which is available to owners of designated City Landmark buildings, would facilitate a property tax reassessment and partial tax relief in return for a binding agreement to rehabilitate and maintain the historical and architectural character of the property for at least a 10-year period. CEQA: Exempt. (PBCE)**

Documents Filed: (1) Memorandum from Historic Landmarks Commission Secretary Joseph Horwedel, dated November 10, 2008, recommending a resolution designating the Renzel House as a Historic Landmark. (2) Affidavit of Routing executed on December 11, 2008, and distributed by the City Clerk. (3) Proof of Publication of Notice of Public Hearing, executed on October 24, 2008, submitted by the City Clerk.

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

4.4 (Cont'd.)

Action: Upon motion by Council Member Chirco, seconded by Council Member Oliverio and carried unanimously, Resolution No. 74691, entitled “A Resolution of the Council of the City of San José Designating, Pursuant to the Provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, the Renzel House located at 120 Arroyo Way as a City Landmark of Special Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of a Historic Nature”, and Resolution No. 74692, entitled “A Resolution of the Council of the City of San José Approving a Historic Landmark Preservation Agreement with Donald A. Lieberman and Patricia A. Long for the Renzel House (City Landmark No. HL08-174)”, were adopted. (11-0.)

- 4.5 (a) **HL08-175 – Public hearing and adoption of a resolution designating the Somers House on a 0.143 acre site in the Reed City Landmark Historic District located at the west side of S. Sixth Street, approximately 420 feet southerly of E. Reed Street (675 S. Sixth Street) as a landmark of special historic, architectural, cultural, aesthetic or engineering interest or value of an historic nature.**
- (b) **MA08-007 – Public hearing on the Historical Property Contract (California Mills Act contract) between the City of San José and the owners of Somers House (City Landmark No. HL08-175) 0.143 acre site in the Reed City Landmark Historic District located at the west side of S. Sixth Street, approximately 420 feet southerly of E. Reed Street (675 S. Sixth Street), (Jason K. Rowand and Batsirai M. Mutasa, Property Owner) and adoption of a resolution approving the contract. The proposed contract, which is available to owners of designated City Landmark buildings, would facilitate a property tax reassessment and partial tax relief in return for a binding agreement to rehabilitate and maintain the historical and architectural character of the property for at least a ten-year period.**

CEQA: Exempt. SNI: University. Council District 3. (PBCE)

Documents Filed: (1) Memorandum from Historic Landmarks Commission Secretary Joseph Horwedel, dated November 10, 2008, recommending a resolution designating the Somers House as a Historic Landmark. (2) Affidavit of Routing executed on December 11, 2008, and distributed by the City Clerk. (3) Proof of Publication of Notice of Public Hearing, executed on October 24, 2008, submitted by the City Clerk.

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

4.5 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, Resolution No. 74693, entitled “A Resolution of the Council of the City of San José Designating, Pursuant to the Provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, the Somers House located at 675 S. Sixth Street as a City Landmark of Special Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of a Historic Nature”, and Resolution No. 74694, entitled “A Resolution of the Council of the City of San José Approving a Historic Landmark Preservation Agreement with Jason K. Rowan and Batsirai M. Mutasa for the Somers House (City Landmark No. HL08-175)”, were adopted. (11-0.)

- 4.6 (a) **Accept the status report on the negotiations with Team San José for an additional five-year term for the period July 1, 2009 through June 30, 2014 for the management of the Convention Center and Cultural Facilities; and**
- (b) **Direct the City Manager to negotiate an agreement based on the key business terms identified within this report.**

CEQA: Not a Project. (Economic Development)

Documents Filed: (1) Memorandum from Council Members Constant, Campos, Nguyen and Williams, dated November 25, 2008, recommending negotiations with Team San José for an additional five-year term. (2) Memorandum from Chief Development Officer Paul Krutko, dated November 13, 2008, recommending negotiations with Team San José for an additional five-year term.

Chief Development Officer Paul Krutko offered a verbal report on the status of negotiations with Team San José. Dan Fenton of Team San Jose responded to questions from Council.

Motion: Council Member Constant moved approval of the memorandum he cosigned with Council Members Campos, Nguyen and Williams recommending negotiations with Team San José for an additional five-year term. Council Member Campos seconded the motion.

Director of Employee Relations Alex Gurza and Chief Development Officer Paul Krutko responded to questions from the Council.

Extensive Council discussion ensued.

4.6 (Cont'd.)

Public Comment: Erik Larsen (AFSCME), Michael Mulcahy (Team San José), Gay Gayle (CAMP) and Pat Dando (San José/Silicon Valley Chamber of Commerce) spoke in support of the Staff's recommendation. David Wahl spoke in opposition to the contract renewal. Marc Casto (SJCVB Board Chair) spoke in support of the contract renewal but expressed concern in regard to timing. Cyril Isnard (Manager, Fairmont Hotel) spoke in support of the contract renewal but urged that Team San José be closely monitored.

Action: On a call for the question, the motion carried, the report was accepted with direction provided to the City Manager to negotiate the contract and return on January 27, 2009 with the contract as outlined in the Joint Memorandum dated November 25, 2008, whereby (1) the contract include two three-year renewal options; (2) Performance Measures: Recognize the importance of the Convention Center and cultural facilities in supporting the local economy and community and ensure the highest weight to measure performance be based on economic benefit through economic impact, hotel room night bookings, attendance and other associated measures; and (3) San José Convention Center and Visitor's Bureau Funding: Defer this discussion until contract negotiations with SJCVB begin to further understand performance and other impacts with slowly reducing the General Fund portion of the TOT dedicated to the SJCVB. (10-1-0: Noes: Liccardo.)

4.7 **As referred by the Rules and Open Government Committee of October 29, 2008, consider adopting a resolution to encourage smoke-free multi-unit housing in the City of San José. (Williams/Chu) (Rules Committee referral 11/19/08)**

Documents Filed: Joint memorandum from Council Member Williams and Council Member Chu, dated November 13, 2008, recommending adoption of a resolution.

Action: Upon motion by Council Member Williams, seconded by Council Member Constant, Resolution No. 74695, entitled "A Resolution of the Council of the City of San José Promoting Smoke-Free Multi-Unit Housing", was adopted. (11-0.)

NEIGHBORHOOD SERVICES

5.1 **Report of the Neighborhood Services and Education Committee – November 13, 2008. Councilmember Chirco, Chair.**

Documents Filed: Neighborhood Services and Education Committee Report of November 13, 2008.

Action: Upon motion by Council Member Chirco, seconded by Council Member Pyle and carried unanimously, the Neighborhood Services & Education Committee Report and actions of November 13, 2008 were accepted. (11-0.)

- 5.2 **Approve the Memorandum of Understanding (MOU) between the City of San José and the East Side Union High School District for the shared planning, development and operation of recreational facilities. CEQA: Not a Project. Council Districts 2, 3, 4, 5, 7 and 8. SNI: Mayfair, KONA, West Evergreen. (Parks, Recreation and Neighborhood Services)**
(Deferred from 10/28/08 – Item 5.3)

Action: Deferred to December 16, 2008 per Administration.

TRANSPORTATION & AVIATION SERVICES

6.2 Adopt a Resolution

- (a) **Authorizing the Director of Finance to execute the second amendment to the Integrated Systems Agreement with Air-Transport IT Services, Inc., to expand the system into Terminals A and B; extend the term of the agreement by an additional two years from December 31, 2008 to December 31, 2010; and increase the total compensation by \$2,431,846 from \$6,492,877 to \$8,492,723 to include all hardware, installation, and all applicable sales tax.**
- (b) **Increasing the contingency amount by \$468,154 from \$850,000 to \$1,318,154 and authorizing the Director of Finance to execute change orders as required to cover unanticipated changes in the system design and/or installation.**
- (c) **Amending Council Resolution No. 73082 to amend the Director of Finance’s authority to execute the remaining three option years for ongoing maintenance and support without further Council action other than the appropriation of funds, with total compensation not to exceed the following amounts for the periods listed below:**
- (1) **Year 3 (01/09 - 12/09) – \$1,252,139.**
 - (2) **Year 4 (01/10 - 12/10) – \$1,352,266.**
 - (3) **Year 5 (01/11 - 12/11) – \$1,506,141.**

CEQA: Resolution Nos. 67380 and 71451, PP 08-224. (Finance)

Documents Filed: Memorandum from Director of Finance Scott P. Johnson, dated November 10, 2008, recommending adoption of a resolution.

Deputy Director of Aviation David Maas responded to questions from Council.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Oliverio and carried unanimously, Resolution No. 74696, entitled “A Resolution of the Council of the City of San José Authorizing the Director of Finance to Execute the Second Amendment to the Agreement with Air-Transport IT Services, Inc.”, was adopted. (11-0.)

- 6.3 (a) **Approve a Second Amendment to the Agreement with the Santa Clara Valley Water District (SCVWD) for the construction of the Airport Parkway Under-Crossing Trail project to increase funding for the project in the amount of \$125,000 for a total contract amount not-to-exceed \$2,450,980.**
- (b) **Adopt the following Appropriation Ordinance amendments in the Subdivision Park Trust Fund (Fund 375):**
- (1) **Establish an appropriation to the Parks, Recreation and Neighborhood Services Department in the amount of \$49,000 for the TRAIL: Airport Parkway Under-Crossing; and**
 - (2) **Decrease the Reserve: Future PDO/PIFO Projects by \$49,000.**

CEQA: Mitigated Negative Declaration, File No. PP04-323. Council District 4. (Parks, Recreation and Neighborhood Services/City Manager's Office)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso and Budget Director Jennifer Maguire, dated November 10, 2008, recommending approval of a Second Amendment to the Agreement with the Santa Clara Valley Water District and adoption of an appropriation ordinance amendment.

Division Manager of Parks, Recreation and Neighborhood Services Matt Cano responded to questions from Council.

Action: Upon motion by Council Member Chirco, seconded by Council Member Liccardo and carried unanimously, a Second Amendment to the Agreement with the Santa Clara Valley Water District (SCVWD) for the construction of the Airport Parkway Under-Crossing Trail project to increase funding for the project in the amount of \$125,000 for a total contract amount not-to-exceed \$2,450,980, and Ordinance No. 28457 entitled "An Ordinance of the City of San José amending Ordinance No. 28349 to Appropriate Monies in the Subdivision Park Trust Fund for the Trail: Airport Parkway Under-Crossing Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. (11-0.)

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Redevelopment Agency Board was convened to consider Item 9.1 in a Joint Session.

9.1 Accept the Status Report on the Citywide Capital Improvement Program, including Parks, Library, Public Safety Bond projects and Strong Neighborhoods Initiative projects funded by the City and Redevelopment Agency. CEQA: Not a Project. (City Manager's Office/Redevelopment Agency)

Documents Filed: Status Report of the Citywide Capital Improvement Program and Strong Neighborhoods Initiative Projects.

Deputy City Manager Ed Shikada introduced the Status Report on the Citywide Capital Improvement Program.

Action: Upon motion by Council Member Williams, seconded by Council Member Chirco and carried unanimously, the Status Report of the Citywide Capital Improvement Program and Strong Neighborhoods Initiative Projects was accepted. (10-0-1. Absent: Pyle.)

OPEN FORUM

- (1) Residents of District 8, Vaidhi Nathan, Nitin Dandia, Anod Nathan, Agata Dobrota and Michael Pham, spoke in opposition to a T-Mobile cell tower being constructed in their neighborhood and submitted a petition with 80 signatures in opposition to the project.
- (2) Joshua DeVincenzi Melander spoke in opposition to the elimination of funding for San Pedro Square.
- (3) David Wall spoke in opposition to the contract renewal for Team San José.

RECESS/RECONVENE

The City Council recessed at 5:36 p.m. from the afternoon Council Session and reconvened at 7:03 p.m. in the Council Chambers, City Hall.

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

Absent: Council Members - Cortese. (Excused)

City Clerk Lee Price read the requests for continuance of the applications. Upon motion by Council Member Chirco, seconded by Council Member Oliverio, and carried unanimously, the below noted continuances and actions were taken as indicated. (10-0-1. Absent: Cortese.)

**5.3 Approve the final draft of the Community Sports Field Study. CEQA: Not a Project. (Parks, Recreation and Neighborhood Services)
[Neighborhood Services and Education Committee referral 11/13/08 – Item (d)]**

Documents Filed: Memorandum from Senior Executive Analyst Vilcia Rodriguez, dated November 17, 2008, submitting the November 13, 2008 staff report on Community Sports Field Study to the Neighborhood Services & Education Committee.

Deputy Director of Parks, Recreation and Neighborhood Services Cynthia Bojorquez offered a presentation on the Community Sports Field Study.

Public Comment: Jeff Dixon (USA Flag Football) and Don Gagliardi (Soccer Silicon Valley) spoke in support of the Community Sports Field Study.

Action: Upon motion by Council Member Pyle, seconded by Council Member Campos and carried unanimously, the final draft of the Community Sports Field Study was accepted. (10-0-1. Absent: Cortese.)

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

CEQA: Strong Neighborhoods Initiative Program EIR Resolution No. 71045. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-1). Council Districts 3 and 7. SNI: Spartan Keyes. (Parks, Recreation and Neighborhood Services/City Manager's Office/Planning, Building and Code Enforcement/Redevelopment Agency)

Documents Filed: (1) Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 10, 2008, recommending approval of the Spartan Keyes SNI Neighborhood Improvement Plan Amendment. (2) 2008 Spartan Keyes Neighborhood Improvement Plan.

Strong Neighborhoods Initiative (SNI) Manager Laura Lam and SNI Planner Jerry Yoshida offered an overview of the Spartan Keyes Neighborhood Improvement Plan, dated December 2, 2008.

Public Comments: Julian Peeples, Judy Roberto and Rita Torres, representing the Spartan Keyes Neighborhood Advisory Committee (NAC) outlined the top ten goals of the plan and urged acceptance of the Spartan Keyes Neighborhood Improvement Plan Amendment.

5.4 (Cont'd.)\

Action: Upon motion by Council Member Liccardo, seconded by Council Member Oliverio and carried unanimously, the Strong Neighborhoods Initiative (SNI) Spartan Keyes Neighborhood Improvement Plan Amendment was approved, and Spartan Keyes area residents, property owners and community members were encouraged to continue to dedicate their time, energy and resources towards the Plan Amendment while continuing with their community-building activities. (10-0-1. Absent: Cortese.)

GENERAL PLAN PUBLIC HEARINGS ON CONSENT CALENDAR

Upon motion by Council Member Chu, seconded by Council Member Constant, and carried unanimously, the General Plan Public Hearings on Consent Calendar were tentatively approved and the below listed actions were taken as indicated. (10-0-1. Absent: Cortese.)

10.1 Tentative approval of General Plan Consent Calendar items.

- (a) **Accept Status Report on the Framework for Preservation of Employment Lands. Director of Planning, Building and Code Enforcement recommends the following actions: Adopt a resolution to consolidate into one document: (1) The text of the Framework originally adopted by City Council on October 23, 2007, and (2) The further implementation direction for the Framework set forth by City Council on that same date, as memorialized in that certain memorandum dated October 19, 2007 from Mayor Reed and Councilmembers Nguyen, Pyle, and Williams, and also to change the term “Extraordinary Economic Benefit” to “Extraordinary Benefit” in order to make the Framework consistent with that certain memorandum dated October 19, 2007, which recognizes that extraordinary benefits should not only be limited to those that are economic in nature, none of which actions are intended to create any substantive changes to the Framework as approved by City Council on October 23, 2007. (Continued from 5/6/08 – Item 10.2)**

Action: Dropped per Administration.

- 10.1 (b) **Amendment on approximately 0.96 acres on the southeast corner of Landess Avenue and Morrill Avenue (3102 Morrill Avenue). Tentative approval of a General Plan amendment request to change the San José 2020 General Plan Land Use/ Transportation Diagram designation from Medium Density Residential (8-16 DU/AC) on 0.6 acres and Medium Low Density Residential (8 DU/AC) on 0.36 acres to Neighborhood/Community Commercial on a 0.96-acre site located on the southeast corner of Landess Avenue and Morrill Avenue (3102 Morrill Avenue) (Klifo Family Invs LLC, Owner/CFC Commercial Finance Corp, Applicant). Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-1, Platten absent). CEQA: Negative Declaration. GP07-04-03 – District 4**

10.1 (b) (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP07-04-03, dated October 29, 2008, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 10, 2008, transmitting the Planning Commission recommendation.

Public Comment: Mayor Reed opened the public hearing. There was no testimony from the floor. Mayor Reed closed the public hearing. Meeting disclosures were provided by Mayor Reed.

Action: The Staff/Planning recommendation was tentatively approved. (10-0-1. Absent: Cortese.)

**10.1 (c) Text amendment on approximately 5.4 acres on the northeast corner of Samaritan Drive and South Bascom Avenue (2581 Samaritan Drive). Tentative approval of a General Plan text amendment request to revise the text of the General Plan to increase the maximum allowable building height from 50 feet to 70 feet above ground level on an approximately 5.4-acre site located at the northeast corner of Samaritan Drive and South Bascom Avenue (2581 Samaritan Drive) (Samaritan Medical Center, Owner/Applicant). Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-1, Platten absent). CEQA: Negative Declaration.
GP08-T-01 – District 9**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP08-T-01/PDC08-014, dated October 29, 2008, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 10, 2008, transmitting the Planning Commission recommendation.

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

Action: The Staff/Planning recommendation was tentatively approved. (10-0-1. Absent: Cortese.)

END OF GENERAL PLAN PUBLIC HEARINGS ON CONSENT CALENDAR

GENERAL PLAN PUBLIC HEARINGS

- 10.2 (a) **Tentative approval of a minor modification to the City of San José's Greenline/Urban Growth Boundary (UGB) to include approximately 3.2 acres of unincorporated territory located at the northeasterly quadrant of the intersection of Piercy Road and Silicon Valley Road. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (4-1-2, Kinman opposed, Campos and Zito absent). UGB06-001 – District 2**
- (b) **Tentative denial of a General Plan amendment and Urban Service Area (USA) expansion request to change the General Plan land use designation from Rural Residential (0.2 dwelling units per acre) to High Density Residential (25-50 dwelling units per acre) on an approximately 3.2-acre site. Director of Planning, Building and Code Enforcement and Planning Commission recommend denial (5-0-2, Campos and Zito absent). GP06-02-02 – District 2**
- (Barbaccia Investments, Owner/Jack Previte, Applicant). CEQA: Negative Declaration. (Continued from 5/20/08 – Item 10.2)**

Documents Filed: (1) Memorandum from Council Member Williams, dated December 2, 2008, recommending Greenline/Urban Growth Boundary modification. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. UGB06-001/GP06-02-02, dated April 14, 2008, recommending approval. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated April 28, 2008, transmitting the Planning Commission recommendation. (4) Supplemental memorandum from Director, Planning, Building and Code Enforcement Joseph Horwedel, dated November 10, 2008, deferring the General Plan amendment request to the Fall 2008 General Plan hearing in response to request for clarification made by applicant and Council Member Williams. (5) Memorandum from Chair, Parks and Recreation Commission Melanie Richardson, dated October 15, 2008, transmitting the Commission's comments regarding the General Plan Amendment. (6) Letters from Norman E. Matteoni (Matteoni, O'Laughlin & Hechtman), dated May 15, November 21, and November 25, 2008, regarding the General Plan Amendment approval request.

Director, Planning, Building and Code Enforcement, Joseph Horwedel responded to questions from Council.

Public Comment: Mayor Reed opened the public hearing. Norman Matteoni, representing the applicant, and Thomas Cooke (Thomas Cooke Associates) offered a presentation on the urban growth boundary expansion. Mayor Reed closed the public hearing.

Motion: Council Member Chirco moved approval of the Staff's recommendation. Council Member Pyle seconded the motion.

10.2 (a) (Cont'd.)

Substitute Motion: Council Member Williams moved approval of his memorandum of December 2, 2008, recommending approval of Item 10.2 (b), General Plan amendment and Urban Service Area (USA) expansion request to change the General Plan land use designation from Rural Residential to High Density Residential. Council Member Chu seconded the motion.

On a call for the question, the substitute motion failed. (2-8-1. Noes: Campos, Chirco, Constant, Liccardo, Nguyen, Oliverio, Pyle; Reed. Absent: Cortese.)

Action: On a call for the question, the original motion carried, the recommendation of the Planning Director was tentatively approved. (9-1-1. Noes: Williams. Absent: Cortese.)

10.3 Continuance of all General Plan amendment actions from December 2, 2008 to December 16, 2008. (Planning, Building and Code Enforcement)

Documents Filed: Proof of Publication of Notice of Public Hearing, submitted by the City Clerk.

Action: Upon motion by Council Member Constant, seconded by Council Member Chirco and carried unanimously, all General Plan amendment actions from December 2, 2008 to December 16, 2008 were continued to December 16, 2008. (10-0-1. Absent: Cortese.)

PUBLIC HEARINGS ON CONSENT CALENDAR

Upon motion by Council Member Chirco, seconded by Council Member Liccardo, and carried unanimously, the Public Hearings on Consent Calendar were approved and the below listed actions were taken as indicated. (10-0-1. Absent: Cortese.)

- 11.1 (a) Consideration of an ordinance rezoning the real property located on the southeast corner of Southwest Expressway and Leigh Avenue (1030 Leigh Avenue) from CP Commercial Pedestrian Zoning District to A(PD) Planned Development Zoning District to allow up to 64 multi family residential units for senior affordable housing, over 7,500 square foot dental office and surface parking on a 0.97 gross acre site (Barry Mirkin, Owner). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-0). PDC07-083 – District 6**

11.1 (a) (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC07-083, dated October 29, 2008, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 10, 2008, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on October 24, 2008 submitted by the City Clerk.

Council Member Oliverio pulled Item 11.1 (a) for further discussion.

Public Comment: Mayor Reed opened the public hearing. Applicant Jeff Oberdorfer and Shiloh Ballard (Silicon Valley Leadership Group) spoke on the merits of the proposal.

Planning, Building and Code Enforcement Director Joseph Horwedel responded to questions from Council.

Council Member Oliverio expressed concerns regarding the fiscal viability of the project and its adherence to existing policies.

Action: The recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 28458, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Southeast Corner of Southwest Expressway and Leigh Avenue (1030 Leigh Avenue) to A(PD) Planned Development Zoning District", was passed for publication. (9-1-1. Noes: Oliverio. Absent: Cortese.)

**11.1 (b) Consideration of an ordinance rezoning the real property located on the northeast corner of Samaritan Drive and South Bascom Avenue (2581 Samaritan Drive) from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow for construction of 74,800 square feet for medical office uses and an expansion of the an existing parking structure on a 6.32 gross acre site (Samaritan Medical Center, Owner). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-0).
PDC08-014 – District 9**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC08-014, dated October 29, 2008, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 10, 2008, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on October 24, 2008 submitted by the City Clerk.

Mayor Reed provided a meeting disclosure.

11.1 (b) (Cont'd.)

Action: The recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 28459, entitled “An Ordinance of the City of San José Rezoning Certain Real Property on the Northeast Corner of Samaritan Drive and South Bascom Avenue (2581 Samaritan Drive) to A(PD) Planned Development Zoning District”, was passed for publication. (10-0-1. Absent: Cortese.)

END OF PUBLIC HEARINGS ON CONSENT CALENDAR

PUBLIC HEARINGS

- 11.2 Consideration of an ordinance of the City of San José amending Title 20 of the San José Municipal Code, the Zoning Code, to amend Section 20.50.010 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 “CGP” and to allow uses with the “CGP” 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 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. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-0).
Citywide (Continued from 11/18/08 – Item 11.4)**

Documents Filed: (1) Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 21, 2008, transmitting the Planning Commission recommendation. (2) Proof of Publication of Notice of Public Hearing, executed on September 24, 2008 submitted by the City Clerk.

11.2 (Cont'd.)

Motion: Council Member Chu moved an amendment to the Ordinance allowing for crematory use with a condition that proposed location be greater than 500 feet from existing schools, child care facilities and residential uses. Council Member Williams seconded the motion.

Planning, Building and Code Enforcement Director Joseph Horwedel responded to questions from Council.

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

Action: On a call for the question, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 28460, entitled: “An Ordinance of the City of San José Amending Provisions of Chapter 20.50, Chapter 20.90, Chapter 20.100 and Chapter 20.200, all of Title 20 of the San José Municipal Code, to Streamline Requirements for Certain Specified Industrial Uses Within Industrial Zoning Districts and to make other Related Technical or Clarifying Changes”, was passed for publication as amended (allows for crematory uses as a conditional use with a limitation that must be located greater than 500 feet from existing schools, child care facilities and residential uses). (10-0-1. Absent: Cortese.)

- 11.3 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
(Continued from 11/18/08 – Item 11.6)**

Action: Continued to December 9, 2008 per Administration.

- 11.4 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
(Continued from 11/18/08 – Item 11.8)**

11.4 (Cont'd.)

Documents Filed: (1) Memorandum from Council Member Oliverio, dated November 17, 2008, recommending acceptance of the Staff's report with additional conditions as outlined. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC07-046, dated October 16, 2008, recommending approval. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated October 27, 2008, transmitting the Planning Commission recommendation. (4) Proof of Publication of Notice of Public Hearing, executed on October 3, 2008 submitted by the City Clerk. (5) Letter from Norman E. Matteoni, dated November 12, 2008, outlining rezoning specifications with staff proposed limitations. (6) Letter from Joan R. Gallo (Hopkins & Carley), dated November 13, 2008, urging adoption of PD zoning without staff proposed limitations. (7) Letter from John and Holly Smith (owners, Tomato Thyme), dated November 18, 2008, urging zoning approval. (8) Letters from Joan R. Gallo (Hopkins & Carley), dated November 18, 2008, requesting deferral of the PD Zoning on the 11/18/08 agenda and December 1, 2008, proposing modifications set forth by Council Member Oliverio. (9) Petition from Veranda Homeowner's Association opposing Tomato Thyme's request for a zoning variance. (10) Extensive (700+) emails from constituents supporting the rezoning proposal.

Public Comment: Mayor Reed opened the public hearing. Joan Gallo, representing the Applicant, spoke in support of the ordinance with changes as outlined in her memorandum of December 1, 2008. Norm Matteoni and Erik Schoennauer (representing the Hudson family) spoke in opposition to the rezoning proposal. Mayor Reed closed the public hearing.

Motion: Council Member Oliverio moved approval of his memorandum of November 17, 2008, recommending acceptance of the Staff's report with additional conditions as outlined below. The motion was seconded by Council Member Constant.

Action: On a call for the question and carried unanimously, the recommendation of the Planning Commission was approved with additional conditions that (1) Maximum square footage allowed for all tenants: 5,295 gross square feet (4,500 net square feet). This includes all permanent storage areas except small prefabricated, freestanding storage sheds; and (2) Parking Ratio: (a) Restaurant-Interior areas. 1:225 (one parking space for 225 square feet of net floor area). This includes all interior areas as noted in item #1 above. (b) Exterior dining patio areas: 1:2.5 (one parking space for every 2.5 seats). The exterior dining patio may only be used upon the approval of a Planned Development Permit for an off-site parking arrangement (including shared parking, easements, covenant of easement, or parking contracts) that provides for required parking for the patio seating as noted above, and Ordinance No. 28461, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property on the South Side of Hamilton Avenue Approximately 320 Feet Easterly of Meridian Avenue (1560 Hamilton Avenue) to A(PD) Planned Development Zoning District", was passed for publication. (10-0-1. Absent: Cortese.)

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:

Tract	Location	Council District	Developer	Lots/Units	Type	Proposed Decision
10003	Northwest corner of State Highway 237 and Gold Street	4	Legacy III SJ America Center I, LLC	6 Lots	Commercial	Approve
10014	Southwest corner of Cinnabar Street and Stockton Avenue	6	Morrison Park Apartments, LLC	1 Lot / 250 Units	Multi-Family Attached	Approve

ADJOURNMENT

The evening session of the Council of the City of San José was adjourned at 8:47 p.m. in memory of Officer Delia Julia Bravo-Carney, a beloved public servant. Delia was a San José Police Department Officer who worked in District 5 and suddenly passed away on Friday, November 21, 2008. (Campos)

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

rmk/12-02-08MIN

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