CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA **TUESDAY, DECEMBER 16, 2008**

The Council of the City of San José convened in regular session at 8:30 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 8:30 a.m. to a Closed Session in Room W133, to confer with Legal Counsel with respect to (A) Public Employee Performance Evaluation Pursuant to Government Code Section 54957: Title: City Manager; Name: Debra Figone. (B) Public Employee Performance Evaluation Pursuant to Government Code Section 54957: Title: Independent Police Auditor. (C) 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. (D) to confer with Legal Counsel with respect to existing litigation pursuant to Government Code subsection (a) of Section 54956.9; (1) In re Rauf; Amount of Money or Other Relief Sought: Administrative Appeal; (2) In re Franco; Amount of Money or Other Relief Sought: Administrative Appeal; (3) Savarese v. City; Names of Parties Involved: John Savarese, City of San José and DOES one through fifty; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-108904; Amount of Money or Other Relief Sought: Damages according to proof; (4) Sutter's Place, Inc. v. City of San José, et al. and Consolidated Actions; Names of Parties Involved: Sutter's Place, Inc. dba Bay 101, Frederick S. Wyle as Trustee for Garden City, Inc., City of San José; Court: Superior Court of California, County of Santa Clara; Case No: CV1-02-810068 (Consolidated with 1-02-CV810548, 1-02-CV795974 and 1-02-CV812404; Amount of Money or Other Relief Sought: Plaintiffs seeks declaratory relief that the provisions of Title 16 eliminating backline betting, prohibiting gaming between 2:00 a.m. and 6:00 a.m. and requiring payment of hearing fees are unconstitutional. Plaintiffs further seek writs of Administrative Mandamus challenging the denial of hardship extensions under San José Municipal Code Section 16.20.010, et seq; (5) Sutter's Place,

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.

CLOSED SESSION (Cont'd.)

Inc. v. City of San José, et al. and Consolidated Actions; Names of Parties Involved: Sutter's Place, Inc. dba Bay 101, Garden City, Inc., City of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-06-CV-065644 (Consolidated with Case No. 1-06-CV-068034; Amount of Money or Other Relief Sought: Plaintiffs seek declaratory relief regarding table fees. (E) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI; (2) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW; (3) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO; (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP; (5) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (6) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP; (7) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. 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 10:30 a.m. and reconvened to the Redevelopment Agency Board Meeting/Regular Session at 10:42 a.m. in the Council Chambers.

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

Absent: Council Members - None.

INVOCATION

Keivan Tehrani, Director, Compassion Bridges and the Bay Area Coordinator for the National Network of Youth Ministries, provided the Invocation. (Mayor)

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, and Ceremonial Item 1.7 was added to the afternoon Council Session. (10-0-1. Absent: Liccardo.)

CLOSED SESSION REPORT

Mayor Reed reported that Shivaun Nurre was appointed Interim Independent Police Auditor.

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

(d) Regular Minutes of September 23, 2008

(e) Regular Minutes of September 30, 2008

Documents Filed: (1) Regular Minutes dated September 9, 2008, September 16, 2008, September 23, 2008 and September 30, 2008. (2) Special Meeting Minutes of the Joint City Council/County/Redevelopment Agency Board, dated September 15, 2008.

Action: The Minutes were approved. (11-0.)

2.2 Final adoption of ordinances.

(a) ORD. NO. 28458 – 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. PDC07-083

Documents Filed: Proof of Publication of the title of Ordinance No. 28458 executed on December 9, 2008, submitted by the City Clerk.

2.2 (a) (Cont'd.)

Action: Ordinance No. 28458 was adopted. (11-0.) (First Reading: 9-1-1. Noes: Oliverio. Absent: Cortese.)

(b) ORD. NO. 28460 – 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.

Documents Filed: Proof of Publication of the title of Ordinance No. 28460 executed on December 9, 2008, submitted by the City Clerk.

Action: Ordinance No. 28460 was adopted. (11-0.)

(c) ORD. NO. 28461 – 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. PDC07-046

Documents Filed: Proof of Publication of the title of Ordinance No. 28461 executed on December 9, 2008, submitted by the City Clerk.

Action: Ordinance No. 28461 was adopted. (11-0.)

(d) ORD. NO. 28466 – Amending Ordinance No. 26136, which Ordinance approved a Development Agreement with Cisco Technology, Inc. relative to the development of real property in North San José and amending Ordinance No. 28339, which ordinance amended said Development Agreement to extend a certain occupancy deadline contained in the original Development Agreement and ratified the effectiveness of the original Development Agreement, in order to further amend the original Development Agreement, as amended, to modify a certain occupancy condition contained at Section 1.(c)(1) of the original Development Agreement and authorizing the City Clerk to execute the Second Amendment to Development Agreement.

Documents Filed: Proof of Publication of the title of Ordinance No. 28466 executed on December 12, 2008, submitted by the City Clerk.

Action: Ordinance No. 28466 was adopted. (11-0.)

2.2 (e) ORD. NO. 28467 – Rezoning certain real property situated at on the westerly corner of Junction Avenue and Charcot Avenue (521 Charcot Avenue) to LI(PD) Planned Development Zoning District. PDC08-030

Documents Filed: Proof of Publication of the title of Ordinance No. 28467 executed on December 12, 2008, submitted by the City Clerk.

Action: Ordinance No. 28467 was adopted. (11-0.)

2.3 Adopt a resolution authorizing the City Manager to:

(a) Negotiate and execute the Fifth Amendment to the 1732 North First Street Office Lease with RNM First Street Center, L.P., to reduce the leased square footage from 95,406 to 57,328, to reduce the monthly per square foot rental rate from $2.85 to $2.63 for the first year, and increasing 3% per year thereafter, and to extend the term for 5 years from January 1, 2010 through December 31, 2014.

(b) Exercise an option to extend the term for an additional 5 years from January 1, 2015 through December 31, 2019, at a monthly per square foot rental rate of $3.05 for the first year, and increasing 3% per year thereafter, subject to appropriation of funds by the City Council.

CEQA: Resolution Nos. 67380 and 71451, PP08-182. (Airport)

Documents Filed: Memorandum from Director of Aviation William Sherry, dated November 24, 2008, recommending adoption of a resolution.

Action: Resolution No. 74716, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Fifth Amendment to Extend the 1732 North First Street Office Lease with RNM First Street Center, L.P. and to Exercise an Option to Extend the Term for an Additional Five Years", was adopted. (11-0.)

2.4 Approve the settlement and authorize the City Attorney to negotiate and execute a Settlement Agreement and Release with Christine and Angel Rios providing for the settlement and dismissal of the lawsuit for the total amount of $70,000, considered by the City Council during the Closed Session held on October 21, 2008. CEQA: Not a Project. (City Attorney's Office)

Documents Filed: Memorandum from City Attorney Richard Doyle, dated December 4, 2008, recommending approval of the settlement and authorization for the City Attorney to proceed.

Action: The settlement was approved and the City Attorney was authorized to negotiate and execute a Settlement Agreement and Release with Christine and Angel Rios providing for the settlement and dismissal of the lawsuit for the total amount of $70,000, considered by the City Council during the Closed Session held on October 21, 2008. (11-0.)

2.5 Adopt a resolution authorizing the Director of Finance to negotiate and execute the first and second amendment to the agreement with ACS Government Systems to first extend the term of the agreement from December 31, 2007 to December 31, 2010, for payment of invoices and second to expand the scope of services for Accounts Receivable and Mobile Inspections functionality including software, installation, training and professional services and increase total compensation not to exceed $100,000, from $263,652 to $363,652. CEQA: Not a Project. (Finance)

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated November 24, 2008, recommending adoption of a resolution.

Action: Resolution No. 74717, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Finance to Negotiate and Execute a First and Second Amendment to the Agreement with ACS Government Solutions for the Purchase and Installation of an Integrated Fire Records Management System", was adopted. (11-0.)

2.6 Adopt a resolution authorizing the Director of Finance to execute the second amendment to the agreement with Ampco System Parking, Inc. for Airport Parking Facilities Management to decrease the rate of compensation from 17.45% to 16.36% of total Airport parking revenues for the period November 8, 2008 to November 7, 2009. CEQA: Resolution Nos. 67380 and 71451, PP08-175. (Finance)

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated November 24, 2008, recommending adoption of a resolution.

Action: Resolution No. 74718, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Finance to Execute a Second Amendment to the Agreement with AMPCO Parking Systems for the Airport Parking Facilities Management", was adopted. (11-0.)

2.7 Adopt a resolution authorizing the Director of Housing to negotiate and execute:

(a) A conditional grant of up to $600,000 to InnVision - The Way Home for the InnVision Villa, a 26-unit Single Room Occupancy housing project targeted to very low-income households.

(b) An amendment to the terms of the existing Housing Department loan from being repayable to be forgivable at the end of the term.

(c) An amendment to the affordability restriction to change the unit mix from 26 very low-income to 6 very low-income and 20 extremely low-income units, and extending the term of affordability by an additional 55 years.

CEQA: Negative Declaration, File No. PDC98-01-010. Council District 7. (Housing)

Documents Filed: Memorandum from Director of Housing Leslye Krutko, dated November 24, 2008, recommending adoption of a resolution.

Action: Resolution No. 74719, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Housing to Negotiate and Execute a Conditional Grant to InnVision the Way Home for the InnVision Villas", was adopted. (11-0.)

2.8 Approve the first amendment to the Park Maintenance Agreement with Hitachi Global Storage Technologies, Inc. to extend the term of the maintenance agreement beyond March 31, 2010 in the event that a Community Facilities District is not created to take over maintenance responsibilities for the three (3) areas designated as storm water detention facilities located within the future public parks associated with Planned Development Zoning No. PDC04-031, Master Planned Development Permit PD05-087 and Tentative Map No. PT05-108. CEQA: Resolution No. 72772. Council District 2. (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated November 24, 2008, recommending approval of the first amendment to the agreement.

Action: The first amendment to the Park Maintenance Agreement with Hitachi Global Storage Technologies, Inc. to extend the term of the maintenance agreement beyond March 31, 2010 in the event that a Community Facilities District is not created to take over maintenance responsibilities for the three areas designated as storm water detention facilities located within the future public parks associated with Planned Development Zoning No. PDC04-031, Master Planned Development Permit PD05-087 and Tentative Map No. PT05-108 were approved. (11-0.)

2.9 Adopt a resolution authorizing the City Manager to:

(a) Submit a grant application to the State of California Resources Agency in the amount not to exceed $350,000 for Environmental Enhancement and Mitigation Program grant funding for construction of the Lower Guadalupe River Trail (Skyport Drive to Airport Parkway) project.

(b) Submit a grant application to the State of California Resources Agency in the amount not to exceed $350,000 for Environmental Enhancement and Mitigation Program grant funding for repair and reconstruction of the Highway 237 Bikeway (Zanker Road to Coyote Creek) project.

(c) Accept any grant funds and to negotiate and execute any and all documents relating to the grant funding from the State of California Resources Agency for the Lower Guadalupe River Trail (Skyport Drive to Airport Parkway) project and Highway 237 Bikeway (Zanker Road to Coyote Creek) project.

CEQA: Mitigated Negative Declaration, PP04-323. Council Districts 3 and 4. (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated November 24, 2008, recommending adoption of a resolution.

2.9 (Cont'd.)

Action: Resolution No. 74720, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager or Designee to Execute and Submit Applications to the State Resources Agency of California for Environmental Enhancement and Mitigation Grant Funds for the Lower Guadalupe River Trail (Skyport Drive to Airport Parkway) Project in an Amount Not To Exceed $350,000 and for the Highway 237 Bikeway (Zanker Road to Coyote Creek) Project in an Amount Not To Exceed $350,000, to Accept any Grants if Awarded and to Execute All Related Documents", was adopted. (11-0.)

2.10 Adopt resolutions authorizing the City Manager to:

(a) Submit a grant application in an amount not to exceed $900,000 under the River Parkways Grant program administered by the State of California Resources Agency for the Guadalupe Creek Trail (Almaden Expressway to Meridian Avenue).

(b) Submit a grant application in an amount not to exceed $225,000 to the Santa Clara Valley Open Space Authority for the Project to serve as a 20% local fund match for the River Parkways Grant application to the Resources Agency.

(c) Accept any grant funds awarded to the City and to negotiate and execute all necessary documents related to the grant awards.

CEQA: Negative Declaration, PP03-04-110. Council District 10. SNI: Hoffman/Via Monte. (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated November 24, 2008, recommending adoption of resolutions.

Action: Resolution No. 74721, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager or Designee to Execute and Submit an Application for Grant Funds for the California River Parkways Grant Program Under the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal, Protection Bond Act of 2006 for the Guadalupe Creek Trail (Almaden Expressway to Meridian Avenue) Project in an Amount Not To Exceed $900,000, to Accept any Grants if Awarded and to Execute All Related Documents" and Resolution No. 74722, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager or Designee to Execute and Submit an Application to the Santa Clara Valley Open Space Authority for a Grant for the Guadalupe Creek (Almaden Expressway to Meridian Avenue) Project in an Amount Not To Exceed $225,000, to Accept any Grant if Awarded and to Execute All Related Documents", were adopted. (11-0.)

2.11 Adopt a resolution authorizing the Director of Planning, Building and Code Enforcement to negotiate and execute an amendment or continuation agreement, as appropriate, to the August 24, 2006 Cooperation and Funding Agreement between the City of Santa Clara, the City of San José, and the Santa Clara Valley Transportation Authority (VTA) to:

(a) Extend the term of the agreement by one year to December 31, 2009.

(b) Add tasks to the original scope of work, including climate change analysis and additional traffic analysis, necessary for completion of the environmental impact report (EIR) for the Santa Clara Station Area Plan project.

(c) Increase the amount of funding for the project in the agreement by $25,000 to support additional costs associated with preparation of the EIR for the project, for a total City contribution not to exceed a total of $75,000.

CEQA: Exempt. Council Districts 3 and 6. (Planning, Building and Code Enforcement/Transportation)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel and Director of Transportation James Helmer, dated November 26, 2008, recommending adoption of a resolution.

Action: Resolution No. 74723, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Planning, Building and Code Enforcement to Negotiate and Execute a Continuation and First Amendment to the Cooperation and Funding Agreement with the City of Santa Clara and the Santa Clara Valley Transportation Authority for the Santa Clara BART Station Area Plan", was adopted. (11-0.)

2.12 Adopt an appropriation ordinance and funding sources resolution amendments in the General Fund:

(a) Establish a city-wide appropriation to the Police Department for the State Homeland Security Grant Program in the amount of $43,898;

(b) Increase the estimate for Earned Revenue from the Federal Government by $43,898.

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

Documents Filed: Memorandum from Police Chief Robert Davis and Budget Director Jennifer Maguire, dated November 24, 2008, recommending adoption of appropriation ordinance and funding sources resolution amendments.

Action: Ordinance No. 28468, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the General Fund for the State Homeland Security Grant Program; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" and Resolution No. 74724, 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. (11-0.)

2.13 Adopt an appropriation ordinance and funding sources resolution amendments in the General Fund:

(a) Increase the existing City-Wide appropriation to the Police Department for the Internet Crimes Against Children Task Force Grant in the amount of $125,000.

(b) Increase the Earned Revenue Estimate from the State of California by $125,000.

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

Documents Filed: Memorandum from Police Chief Robert Davis and Budget Director Jennifer Maguire, dated November 24, 2008, recommending adoption of appropriation ordinance and funding sources resolution amendments.

Action: Ordinance No. 28469, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the General Fund for the Internet Crimes Against Children Task Force Grant; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" and Resolution No. 74725, 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. (11-0.)

2.14 Approve the first amendment to the consultant agreement with RTKL Associates, Inc. for engineering design services for the New City Hall In-Building Wireless Reinforcement Design project to correct a typographical error and properly set forth the term of the agreement as being from December 31, 2008 to December 31, 2009, at no cost to the City. CEQA: Not a Project. (Public Works/Information Technology)

Documents Filed: Memorandum from Director of Public Works Katy Allen and Chief Information Officer Stephen Ferguson, dated November 24, 2008, recommending approval of the first amendment to the agreement.

Action: The first amendment to the consultant agreement with RTKL Associates, Inc. for engineering design services for the New City Hall In-Building Wireless Reinforcement Design project to correct a typographical error and properly set forth the term of the agreement as being from December 31, 2008 to December 31, 2009, at no cost to the City was approved. (11-0.)

2.15 Approve the first amendment to the agreement for consultant services for the Seven Trees Community Center and Branch Library with Rob Wellington Quigley, FAIA, modifying the scope of services and increasing the amount of compensation by $120,000, for a total agreement amount not to exceed $3,237,000. CEQA: Mitigated Negative Declaration, PP06-175. Resolution approved by Council on September 11, 2007. Council District 7. (Public Works/Library/Parks, Recreation and Neighborhood Services)

2.15 (Cont'd.)

Documents Filed: Memorandum from Director of Public Works Katy Allen, Director of Library Department Jane Light and Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated November 24, 2008, recommending approval of the first amendment to the agreement.

Action: The first amendment to the agreement for consultant services for the Seven Trees Community Center and Branch Library with Rob Wellington Quigley, FAIA, modifying the scope of services and increasing the amount of compensation by $120,000, for a total agreement amount not to exceed $3,237,000 was approved. (11-0.)

2.16 (a) 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:

(1) Increase the estimate for Earned Revenue by $254,404.

(2) Increase the appropriation to the General Services Department for the Children's Discovery Museum Exhibit Shop Infrastructure and Safety Improvements Project (PSM 533 Amendment #1) in the amount of $36,635.

(3) Establish an appropriation to the Department of Public Works for the Santa Clara Street Green Mobility Sidewalk Improvement Project (PSM 555) in the amount of $188,769.

(4) Establish an appropriation to the Department of Transportation for the Rocketship Mateo Sheedy Elementary School Improvements (PSM 558) in the amount of $29,000.

(b) Adopt resolutions making certain determinations regarding the related expenditure of Redevelopment Agency funds on certain public improvements in connection with:

(1) The Santa Clara Street Green Mobility Sidewalk Improvement Project as more specifically described in the memorandum from the Redevelopment Agency, dated October 28, 2008.

(2) The Rocketship Mateo Sheedy Elementary School Improvements Project as more specifically described in the memorandum from the Redevelopment Agency, dated October 16, 2008.

CEQA: Children's Discovery Museum Exhibit Shop Infrastructure and Safety Improvements Project: Resolution No. 72767, File No. PP08-082; Santa Clara Green Mobility Sidewalk Project: Exempt, File No. PP08-085; and Rocketship Mateo Sheedy Elementary School Improvements: Exempt, File No. PP06-171. Council District 3. (Public Works/Transportation/General Services/City Manager's Office)

2.16 (Cont'd.)

Documents Filed: Memorandum from Director of Public Works Katy Allen, Director of Transportation James Helmer, Director of General Services Peter Jensen and Budget Director Jennifer Maguire, dated November 24, 2008, recommending appropriation ordinance and funding sources resolution amendments and resolutions.

Action: Ordinance No. 28470, 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 Exhibit Shop Infrastructure and Safety Improvements Project, for the Santa Clara Street Green Mobility Sidewalk Improvement Project and for the Rocketship Mateo Sheedy Elementary School Improvements; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption"; Resolution No. 74726, 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. 74727, 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 Downtown Redevelopment Project Area" and Resolution No. 74728, 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 Washington Strong Neighborhoods Initiative Redevelopment Project Area", were adopted. (11-0.)

2.17 Adopt a resolution:

(a) Accepting the 2008-2009 Hazardous Vegetation Commencement Report compiled by the Santa Clara County Department of Agriculture and Resource Management

(b) Declaring that those certain noxious or dangerous seasonal and recurrent weeds, growing or likely to be growing, and refuse, situated or likely to be situated, on those properties identified in the report are a nuisance.

(c) Directing the Santa Clara County Department of Agriculture and Resource Management to mail notices of a public hearing before the City Council, on January 27, 2008 at 1:30 p.m., on the report to property owners of affected real properties, pursuant to Chapter 9.12 of Title 9 of the San José Municipal Code and the Weed Abatement Agreement between the City of San José and the County of Santa Clara.

CEQA: Exempt, File No. PP06-196. (Planning, Building and Code Enforcement)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 24, 2008, recommending adoption of a resolution.

2.17 (Cont'd.)

Action: Resolution No. 74729, entitled: "A Resolution of the Council of the City of San José Accepting and Confirming the Hazardous Vegetation Commencement Report for the Year 2008-2009 Compiled by the Santa Clara County Department of Agriculture and Resource Management; Declaring Certain Noxious or Dangerous Seasonal and Recurrent Weeds Are Growing or Are Likely to Grow Upon Certain Public and Private Properties or that Refuse is Situated or Likely to be Situated Upon Certain Properties Within the City of San José; Declaring Such Seasonal and/or Recurrent Weeds and Refuse a Public Nuisance; and Directing that Notice of This Resolution and a Public Hearing on the Report on January 27, 2009 at 1:30 p.m. be Given Pursuant to Chapter 9.12 of the San José Municipal Code", was adopted. (11-0.)

2.18 (a) Approve an agreement with the Santa Clara Valley Transportation Authority for the transfer of properties supporting City facilities constructed by the Vasona Light Rail Transit Project.

(b) Adopt a resolution authorizing the Director of Public Works to execute all related documents and deed acceptances necessary to complete the transactions.

CEQA: Not a Project. Council Districts 3 and 6. SNI: Burbank/Del Monte/Delmas Park. (Public Works/Transportation)

Documents Filed: Memorandum from Director of Public Works Katy Allen and Director of Transportation James Helmer, dated November 24, 2008, recommending approval of an agreement and adoption of a resolution.

Action: An agreement with the Santa Clara Valley Transportation Authority for the transfer of properties supporting City facilities constructed by the Vasona Light Rail Transit Project was approved and Resolution No. 74730, entitled: "A Resolution of the Council of the City of San José Approving an Agreement for the Transfer of Properties Supporting City Facilities Constructed for the Vasona Light Rail Transit Project and Authorizing the Director of Public Works to Execute All Related Documents and Deed Acceptances Necessary to Complete the Transaction", was adopted. (11-0.)

2.19 Adopt a resolution authorizing the Director of Transportation to execute the State Route 237 (from Calabazas Creek to Coyote Creek) Freeway Maintenance Agreement between the State of California and the City of San José. CEQA: Route 237 EIR/EIS – Resolution Nos. 62428 – 62430, August 21, 1990. (Transportation)

Documents Filed: Memorandum from Director of Transportation James Helmer, dated November 24, 2008, recommending adoption of a resolution.

Action: Resolution No. 74731, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Transportation to Execute a Maintenance Agreement with the State of California for State Route 237 (From Calabazas Creek to Coyote Creek) Freeway", was adopted. (11-0.)

2.20 Request for an excused absence for Council Member Chirco from the regular meeting of the Rules and Open Government Committee of December 3, 2008 due to personal business. (Chirco)
(Rules Committee referral 12/3/08)

Documents Filed: Memorandum from Council Member Chirco, dated November 26, 2008, requesting an excused absence due to personal business.

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

2.21 (a) Designate Council Member Liccardo as the City's representative to the Silicon Valley Leadership Group Advocacy Trip on May 4-7, 2009.
(b) Approve travel by Council Member Liccardo to Washington, D.C. on May 4-7, 2009 to represent the City at the Silicon Valley Leadership Group Advocacy Trip. Source of Funds: Mayor/Council Travel Fund.
(Liccardo)
(Rules Committee referral 12/3/08)

Documents Filed: Memorandum from Council Member Liccardo, dated December 1, 2008, requesting approval of travel.

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

2.22 Request for excused absences for Council Member Constant from the regular meetings of the Rules and Open Government Committee of February 4, 2009, April 8, 2009, June 3, 2009, August 12, 2009, October 14, 2009 and December 9, 2009 due to authorized City Business: Santa Clara County LAFCO Meetings. (Constant)
(Rules Committee referral 12/10/08)

Documents Filed: Memorandum from Council Member Constant, dated December 8, 2008, requesting excused absences due to authorized City business.

Action: The absences for Council Member Constant were excused. (11-0.)

2.23 As recommended by the Rules and Open Government Committee of December 10, 2008, approve the appointment of David J. Mutuszak, Director of the Santa Clara Regional Occupational Program – South, Gilroy, California, to serve as a public sector representative on the Work2Future Board of Directors. (Mayor)
[Rules Committee referral 12/10/08 – Item F(1)]

Documents Filed: Memorandum from City Clerk Lee Price, dated December 12, 2008, transmitting the recommendations of the Rules and Open Government Committee.

Action: The appointment of David J. Mutuszak to serve as a public sector representative on the Work2Future Board of Directors was approved. (11-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

3.2 Report of the Rules and Open Government Committee – December 3, 2008
Mayor Reed, Chair

Documents Filed: The Rules and Open Government Committee Report dated December 3, 2008.

Action: Upon motion by Council Member Williams, seconded by Council Member Chirco and carried unanimously, the Rules and Open Government Committee Report and the actions of December 3, 2008 were accepted.

3.4 Report of the Rules and Open Government Committee – November 12, 2008
Mayor Reed, Chair

Documents Filed: The Rules and Open Government Committee Report dated November 12, 2008.

Action: Upon motion by Council Member Williams, seconded by Council Member Chirco and carried unanimously, the Rules and Open Government Committee Report and the actions of November 12, 2008 were accepted.

3.5 Report of the Rules and Open Government Committee – November 19, 2008
Mayor Reed, Chair

Documents Filed: The Rules and Open Government Committee Report dated November 19, 2008.

Action: Upon motion by Council Member Williams, seconded by Council Member Chirco and carried unanimously, the Rules and Open Government Committee Report and the actions of November 19, 2008 were accepted. (11-0.)

3.6 As recommended by the Rules and Open Government Committee of December 10, 2008, approve the 2009 Legislative Guiding Principles, Priorities and Advocacy Issues for the first year of the two-year Legislative Session in Sacramento and the 111th Congress. (City Clerk)
[Rules Committee referral 12/10/08 – Item G(2)]

Documents Filed: Memorandum from City Clerk Lee Price, dated December 12, 2008, transmitting the recommendations of the Rules and Open Government Committee.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Oliverio and carried unanimously, the 2009 Legislative Guiding Principles, Priorities and Advocacy Issues for the first year of the two-year Legislative Session in Sacramento and the 111th Congress was approved, with direction to Staff to return to the Rules and Open Government Committee with priorities and talking points. (11-0.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.2 Adopt a resolution:

(a) Authorizing the Director of Housing to Negotiate and Execute a Forbearance and Release Agreement between EHC, Comerica Bank, the County of Santa Clara, and the City in order to facilitate the sale of the identified EHC properties.

(b) Authorizing the Director of Housing to Negotiate and Execute a conditional grant agreement with Mid-Peninsula Housing Corporation in an amount not to exceed $1.4 million for the transfer of existing affordability restrictions at EHC's Gifford Avenue, 5th Street, and East Younger Avenue properties to Mid-Peninsula's Country Hills property, located at 124 Rancho Drive, to be paid from the proceeds of the sale of property.

(c) Approving the Relocation Impact Statement and Last Resort Housing Plan for EHC's Markham Terrace property at 2112 Monterey Road.

(d) Approving the Relocation Impact Statement and Last Resort Housing Plan for EHC's properties at Gifford Avenue, 5th Street, and East Younger Avenue.

(e) Authorizing the Director of Housing to expend up to $2.1 million for the relocation of tenants at the Markham Terrace site.

(f) Authorizing the Director of Housing to expend up to $400,000 in short-term operational assistance to replace the loss of rental income at Markham Terrace during tenant relocation.

(g) Authorizing the Director of Housing to negotiate and execute an amendment to the existing agreement with Associated Right of Way Relocation consultants by $450,000, from $129,000 to $579,000 to implement the EHC relocation plans.

(h) Authorizing the Director of Housing to negotiate and execute a $500,000 predevelopment loan to Charities Housing Development Corp. or its designated affiliate, for the redevelopment of the Markham Terrace site.

CEQA: Exempt, File No. PP08-270. Council Districts 3 and 7. (Housing)

Action: Deferred to January 27, 2009 per Administration.

4.3 Adopt a resolution approving a funding commitment of up to $3,680,000 of Low and Moderate Income Housing Funds (20% Funds) to the ROEM Development Corporation, or its legal affiliate, for a land acquisition loan for future development of the 92-unit Orvieto Family Apartments, an affordable multifamily rental project located at the Southeast corner of Montecito Vista Way and Montecito Vista Drive, to be made available to extremely low-income and very low-income households. CEQA: EIR Resolution No. 72768 adopted June 21, 2005, File Number PDC07-101. Council District 7. (Housing)

Documents Filed: Memorandum from Director of Housing Leslye Krutko, dated November 24, 2008, recommending adoption of a resolution.

4.3 (Cont'd.)

Council Member Oliverio maintained his position that he would not be in support of this motion because as previously stated his vote was based on no park fee, no ongoing property tax and no building and construction taxes.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried unanimously, Resolution No. 74732, entitled: "A Resolution of the Council of the City of San José Approving a Funding Commitment for Site Acquisition for the Orvieto Family Apartments Project", was adopted. (10-1. Noes: Oliverio.)

4.4 Adopt a resolution approving a funding commitment for site acquisition of up to $6,300,000 of 20% Housing Funds to the ROEM Development Corporation or its legal affiliate, for a land acquisition loan for the development of the 184-unit First and Rosemary Family Apartments, an affordable multifamily rental project located at the Southeast corner of Rosemary and North First Streets, to be made available to extremely low-income, very low-income, and low-income households. CEQA: EIR Resolution No. 72768 adopted June 21, 2005, File No. PDC07-101. Council District 3. (Housing)

Documents Filed: Memorandum from Director of Housing Leslye Krutko, dated November 25, 2008, recommending adoption of a resolution.

Council Member Oliverio reiterated he would not be in support as his vote was based on no park fee, no ongoing property tax and no building and construction taxes.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Constant and carried unanimously, Resolution No. 74733, entitled: "A Resolution of the Council of the City of San José Approving a Funding Commitment for Site Acquisition for the First and Rosemary Family Apartments Project", was adopted. (10-1. Noes: Oliverio.)

4.5 Adopt a resolution approving a funding commitment for site acquisition of up to $3,700,000 from the 20-percent Low and Moderate Income Housing Fund to the ROEM Corporation, or its legal affiliate, for a land acquisition loan for the development of the 106-unit First and Rosemary Senior Apartments, an affordable multifamily rental project on a 1.06-gross acre site located at the southeast corner of Rosemary and North First Streets, to be made available to extremely low-income and very low-income households. CEQA: EIR Resolution No. 72768 and Addendum thereto, PDC07-101. Council District 3. (Housing)

Documents Filed: (1) Memorandum from Director of Housing Leslye Krutko, dated November 25, 2008, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Housing Leslye Krutko, dated December 11, 2008, updating the Council on the result of recent negotiations regarding acquisition financing sources and security positions for the proposed Rosemary Family and Seniors Projects.

4.5 (Cont'd.)

Council Member Oliverio reiterated he would not be in support as his vote was based on no park fee, no ongoing property tax and no building and construction taxes.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Constant and carried unanimously, Resolution No. 74734, entitled: "A Resolution of the Council of the City of San José Approving a Funding Commitment for Site Acquisition for the First and Rosemary Family Apartments", was adopted. (10-1. Noes: Oliverio.)

4.6 (a) Adopt a resolution:

(1) Authorizing the Director of Housing to accept a $4,495,840 Infill Infrastructure Grant Program award from the California Department of Housing and Community Development to fund infrastructure improvements necessary for the Kings Crossing affordable housing family rental project.

(2) Authorizing the Director of Housing to negotiate and execute all necessary documents.

(b) Adopt the following amendments to the 2008-2009 Appropriation Ordinance and Funding Sources Resolution in the Multi-Source Housing Fund (Fund 448):

(1) Create the Infill Infrastructure Grant Program appropriation by $4,495,840.

(2) Increase the estimate for Grant Revenue in the amount of $4,495,840.

CEQA: Resolution No. 74196, File No. PDC07-015. Council District 3. (Housing/ City Manager's Office)

Documents Filed: (1) Memorandum from Director of Housing Leslye Krutko, and Budget Director Jennifer Maguire, dated November 25, 2008, recommending adoption of a resolution and appropriation ordinance and funding sources resolution amendments. (2) Supplemental memorandum from Director of Housing Leslye Krutko, dated December 11, 2008, updating the Council on the result of recent negotiations regarding acquisition financing sources and security positions for the proposed Rosemary Family and Seniors Projects.

Council Member Oliverio stated he would not be in support as his vote was based on no park fee, no ongoing property tax and no building and construction taxes.

4.6 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, Resolution No. 74735, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Housing to Accept an Infill Infrastructure Program Grant from the California Department of Housing and Community Development and to Negotiate and Execute all Necessary Documents to Finalize the Award and Provide Funding for the Approved Costs of the Kings Crossing Project"; Ordinance No. 28471, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Multi-Source Housing Fund for the Infill Infrastructure Grant Program; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" and Resolution No. 74736 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. (10-1. Noes: Oliverio.)

NEIGHBORHOOD SERVICES

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 and 12/2/08 – Item 5.2)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated December 1, 2008, recommending approval of the Memorandum of Understanding.

Director of Parks, Recreation and Neighborhood Services Albert Balagso provided the Staff report and responded to Council questions.

Action: Upon motion by Council Member Williams, seconded by Council Member Pyle and carried unanimously, the Memorandum of Understanding between the City of San José and the East Side Union High School District for the shared planning, development and operation of recreational facilities was approved. (11-0.)

5.3 Discussion on and consideration of a Citywide Inclusionary Housing Ordinance. (City Attorney's Office)

Action: Item 5.2 was dropped. The schedule will be considered at the January 14, 2009 Rules and Open Government Committee Meeting.

5.4 Adopt a resolution authorizing the City Manager to:

(a) Submit a grant application in an amount not to exceed $2,500,000 under the River Parkways Grant program administered by the State Resources Agency for the Guadalupe River Park & Gardens Circuit Pathways, Native Plants Installation and Interpretive Signage project.

(b) Accept any grant funds and to negotiate and execute all necessary documents related to the grant award.

CEQA: Negative Declaration, PP08-253. Council District 10. SNI: Hoffman/Via Monte. (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated November 24, 2008, recommending adoption of a resolution.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, Resolution No. 74737, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager or Designee to Execute and Submit an Application for Grant Funds for the California River Parkways Grant Program under the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 for the Guadalupe River Park & Gardens Circuit Pathways, Native Plants Installation and Interpretive Signage Project in an Amount Not To Exceed $2,500,000, To Accept Any Grant If Awarded and To Execute All Related Documents", was adopted. (10-0-1. Absent: Chu.)

TRANSPORTATION & AVIATION SERVICES

6.1 Report of the Transportation and Environment Committee – December 1, 2008
Council Member Williams, Chair

Documents Filed: The Transportation and Environment Committee Report dated December 1, 2008.

Action: Upon motion by Council Member Williams, seconded by Council Member Chirco and carried unanimously, the Report of the Transportation and Environment Committee and the actions of December 1, 2008 were accepted, with the clarification that Anthony Drummond is a member of District 2. (10-0-1. Absent: Pyle.)

6.2 Adopt a resolution amending City Council Policy 6-5 Street Naming and Renaming to allow a streamlined process for applications when the proposed change is not a serious, complicated matter, and will cause little or no disruption to existing businesses, residents or the post office; and allow per the discretion of the Director of Planning for such proposed street name changes to forego hearing by the Planning Commission and proceed directly to City Council. CEQA: Not a Project. (Planning, Building and Code Enforcement)

6.2 (Cont'd.)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 24, 2008, recommending adoption of a resolution.

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

Action: Upon motion by Council Member Campos, seconded by Council Member Oliverio and carried unanimously, Resolution No. 74738, entitled: "A Resolution of the Council of the City of San José Approving Updates and Revisions to City Council Policy 6-5, the City's Street Naming and Renaming Policy", was adopted, with Staff directed to incorporate into the policy, a 300 foot notice for the outreach of name changes for small to intermediate projects. (11-0.)

6.3 Approve an ordinance amending Chapter 13.28 of Title 13 of the San José Municipal Code to enable the City to invoice the property owner for emergency tree services performed on behalf of the adjacent property owner. CEQA: Not a Project. (Transportation)

Documents Filed: Memorandum from Director of Transportation James Helmer, dated November 24, 2008, recommending approval of an ordinance.

Director of Transportation James Helmer provided the Staff Report.

Action: Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, Ordinance No. 28472, entitled: "An Ordinance of the City of San José Amending Sections 13.28.010, 13.28.240, 13.28.250 and 13.28.260 of Chapter 13.28 of Title 13 of the San José Municipal Code and Adding a New Section 13.28.245 to Enable the City to Invoice a Property Owner for Emergency Tree Services Performed on Behalf of the Adjacent Property Owner", was passed for publication. (11-0.)

6.4 Adopt a resolution to replace the current Streetlight Conversion Policy (Council Policy Number 4-2) with the proposed revised policy in its place. CEQA: Exempt, File No. PP08-222. (Transportation)
[Transportation and Environment Committee referral 12/01/08 – Item 6.1(f)]

Documents Filed: (1) Memorandum from Senior Executive Analyst Vilcia Rodriguez, dated December 4, 2008, transmitting the recommendations of the Transportation and Environment Committee. (2) Staff presentation of the Proposed New Public Streetlighting Policy dated December 16, 2008.

Director of Transportation James Helmer presented the Staff Report and responded to Council questions.

6.4 (Cont'd.)

Public Comments: Larraine Harrington (Echelon) expressed support to the Staff recommendations.

Action: Upon motion by Council Member Williams, seconded by Council Member Oliverio and carried unanimously, Resolution No. 74739, entitled: "A Resolution of the Council of the City of San José Approving Revisions to City Council Policy 4-2, Regarding Public Streetlights", was adopted. (10-0-1. Absent: Constant.)

ENVIRONMENTAL & UTILITY SERVICES

7.1 (a) Approve the Zero Waste Strategic Plan, which outlines strategies the City is considering to achieve zero waste to landfill by 2022 and convert waste to energy.
(b) Approve the Proposed Zero Waste Work Plan.
CEQA: Exempt, File No. PP08-254. (Environmental Services)
[Transportation and Environment Committee referral 12/01/08 – Item 6.1(c)]

Documents Filed: (1) Memorandum from Senior Executive Analyst Vilcia Rodriguez, dated December 4, 2008, transmitting the recommendations of the Transportation and Environment Committee. (2) Staff presentation of the Zero Waste Strategic Plan dated December 16, 2008. (3) Two letters from the public both dated December 16, 2008, regarding the Zero Waste Strategic Plan.

Director of Environmental Services John Stufflebean provided the Staff Report and responded to Council questions.

Action: Upon motion by Council Member Williams, seconded by Council Member Oliverio and carried unanimously, the Zero Waste Strategic Plan and the Proposed Zero Waste Work Plan were approved. (11-0.)

RECESS/RECONVENE

The City Council recessed at 12:03 p.m. from the morning Council Session and reconvened at 1:30 p.m. in the Council Chambers, City Hall.

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

Absent: Council Members - None.

CEREMONIAL ITEMS

1.7 Presentation of a commendation to Hitachi, Inc. for their presence and for providing economic vitality to the City of San José. (Mayor/Williams) (Orders of the Day)

Action: Mayor Reed and Council Member Williams recognized and commended Hitachi, Inc. for their presence in the City of San José by providing economic vitality to the community.

1.4 Recognition of the Fire Station 35 Project Team for their dedication to providing San José residents with an exceptional Public Safety facility that achieved LEED Silver Certification. (Public Works)

Action: Mayor Reed and Council Member Williams recognized and commended the Fire Station 35 Project Team for their dedication to providing San José residents with an exceptional Public Safety facility that achieved LEED Silver Certification.

1.2 Presentation of a commendation to the Strong Neighborhoods Initiative staff acknowledging the National League of Cities recognition of the Strong Neighborhoods Initiative, and its receipt of the 2008 Gold Award for Municipal Excellence at the League's Congress of Cities and Expositions in Florida on November 13, 2008. (Mayor)

Action: Mayor Reed recognized and commended the Strong Neighborhoods Initiative for its receipt of the 2008 Gold Award for Municipal Excellence at the League's Congress of Cities and Expositions in Florida on November 13, 2008.

1.3 Presentation of a proclamation declaring January 11, 2009 as "National Day of Human Trafficking Awareness" in the City of San José. (Police)

Action: Mayor Reed and Police Chief Robert Davis recognized January 11, 2009 as "National Day of Human Trafficking Awareness" in the City of San José.

1.6 Presentation of the Energy Alternative Chanukah Menorah to the Mayor and City Council on behalf of the Simon Wiesenthal Center. (Mayor)
(Rules Committee referral 12/10/08)

Action: The Energy Alternative Chanukah Menorah was presented to Mayor Reed and City Council on behalf of the Simon Wiesenthal Center.

NEIGHBORHOOD SERVICES

5.5 (a) Authorize staff to conduct an exclusive negotiation with East Side Union High School District for a lease agreement of the former Berryessa Library building at 3311 Noble Avenue.
(b) If the lease negotiations are not successful, direct staff to return to Council with actions to demolish the building and improve for parking to serve Noble Park and the new Berryessa Branch Library.
CEQA: Not a Project. Council District 4. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated November 24, 2008, recommending an exclusive negotiation.

Director of Public Works Katy Allen responded to Council questions.

Public Comments: Bob Nunes, Maria Pacen and Erica Nelson expressed support to the Staff recommendations which included a parking lot.

Action: Upon motion by Council Member Chu, seconded by Council Member Campos and carried unanimously, Staff was authorized to conduct an exclusive negotiation with East Side Union High School District for a lease agreement of the former Berryessa Library building at 3311 Noble Avenue and if the lease negotiations are not successful, Staff was directed to return to Council with actions to demolish the building and improve for parking to serve Noble Park and the new Berryessa Branch Library. Staff was also directed to return to Council within 90 days. (11-0.)

ENVIRONMENTAL & UTILITY SERVICES

7.2 (a) Report on bids and award of contract for the construction of the Environmental Services Building Repair Project to the lowest responsible bidder, Zolman Construction & Development, Inc., in the amount of $3,600,000, and approval of a contingency in the amount of $540,000.

7.2 (b) Adopt a resolution authorizing the City Manage to negotiate and execute the second amendment to the agreement with Allana Buick & Bers, Inc. for professional services related to the repair and modifications of the San José/Santa Clara Water Pollution Control Plant's Environmental Services Building, modifying the scope of services and increasing the compensation by an amount not to exceed $200,000 for a total maximum amount not to exceed $787,495, and extending the term of the agreement by five months to December 31, 2010.

CEQA: Exempt, PP08-157. (Public Works/Environmental Services)

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen and Director of Environmental Services John Stufflebean, dated November 24, 2008, recommending award of the contract and adoption of a resolution. (2) Letter from the Treatment Plant Advisory Committee, dated December 16, 2008, stating concurrence with the Staff recommendation.

Action: Upon motion by Council Member Pyle, seconded by Vice Mayor Cortese and carried unanimously, the award of contract for the construction of the Environmental Services Building Repair Project to the lowest responsible bidder, Zolman Construction & Development, Inc., in the amount of $3,600,000, with related contingency, was approved and Resolution No. 74740, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Second Amendment to the Consultant Agreement with Allana Buick & Bers, Inc. for Services Related to the Repair and Modification of the Environmental Services Building at the Santa Clara Water Pollution Control Plant, to Modify the Scope of Services, Increase Maximum Compensation in an Amount Not To Exceed $200,000 and Extend the Term Through December 31, 2010", was adopted. (11-0.)

PUBLIC SAFETY SERVICES

8.1 (a) Accept the Independent Police Auditor's 2008 Mid-Year Report. (IPA)
(b) Administration's response to the Independent Police Auditor's 2008 Mid-Year Report. (City Manager's Office/Police)

Documents Filed: (1) Memorandum from City Manager Debra Figone, dated December 11, 2008, recommending acceptance of the Independent Police Auditor's 2008 Mid-Year Report. (2) Memorandum from Independent Police Auditor Barbara Attard, dated December 5, 2008, transmitting the Independent Police Auditor's 2008 Mid-Year Report. (3) Memorandum from Independent Police Auditor Barbara Attard, dated December 10, 2008, transmitting the corrected Page 3 of the report.

Independent Police Auditor Barbara Attard provided the Staff Report. City Manager Debra Figone presented comments.

Police Chief Robert Davis and Independent Police Auditor Barbara Attard responded to Council questions. Extensive Council discussion followed.

8.1 (Cont'd.)

Public Comments: Ross Signorino congratulated Independent Police Auditor Barbara Attard and Police Chief Robert Davis for their hard work for the community.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried unanimously, Independent Police Auditor's 2008 Mid-Year Report and the Administration's response to the Independent Police Auditor's 2008 Mid-Year Report were accepted. (11-0.)

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Joint Council/Redevelopment Agency convened at 2:46 p.m. to consider Items 9.2 and 9.3 in a Joint Session.

9.1 Accept staff's proposal to implement Budget Principle #8 pertaining to Capital Improvement Projects with annual operating and maintenance costs affecting the General Fund. CEQA: Not a Project. (City Manager's Office)

Action: Deferred to January 13, 2009 per Administration.

9.2 Council discussion on a development policy that allows projects to move forward on an "as ready" basis for North San José Area. (Planning, Building and Code Enforcement).
(Deferred from 12/9/08 – Item 9.1)

Documents Filed: (1) Memorandum from Mayor Reed and Council Members Liccardo and Chu, dated December 12, 2008, recommending as outlined on Page 27 in "Action". (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 24, 2008, providing background on the development policy. (3) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated December 5, 2008, transmitting the staff recommendations. (4) Staff presentation of the North San José Residential Unit Cap dated December 16, 2008.

Director of Planning, Building and Code Enforcement Joseph Horwedel provided the Staff Report and responded to Council questions and concerns.

Motion: Council Member Liccardo moved approval of the memorandum he cosigned with Mayor Reed and Council Member Chu, dated December 12, 2008. Council Member Chu seconded the motion.

Public Comments: Jean Marlowe spoke in support to the recommendations as outlined in the memorandum from Mayor Reed and Council Members Liccardo and Chu. Don Bragg, Irvine Company, expressed concern about the additional units to move forward on an "as ready" basis. Ross Signorino spoke off topic.

9.2 (Cont'd.)

Council Member Oliverio expressed reservations about amending the development policy.

Action: On a call for the question, the motion carried, the memorandum from Mayor Reed and Council Members Liccardo and Chu, dated December 12, 2008 was approved, including the following: (1) Accept the Staff recommendation solely as to paragraphs (b) and (c) in the December 5, 2008 memorandum. (2) Direct City Attorney to work with the administration to draft an "Economic Emergency Amendment" to the North San José Area Development Policy to: (a) Allow for the reservation of a maximum of 500 additional residential units, in the aggregate, within Phase I for any project(s) that meet all of the following criteria: [1] Has a Planned Development Permit application on file as of the effective date of the amendment. [2] Meets the objectives of the North San José Area Development Policy for site and building design, based on the existing scoring system. [3] Agrees to adhere to the joint agreement between the City and the Santa Clara Unified School District regarding school impacts fees for projects within the boundaries of the Santa Clara Unified School District. [4] Has demonstrated to the Administration a readiness and ability to proceed with the project by virtue of obtaining necessary financing commitments. (b) Maintain the current residential cap of 8,000 units that receive Building Permits in Phase I. (c) Expire on July 1, 2009. (3) Direct Staff to return in Spring 2009 with a strategy establishing priorities for redistribution of Phase I units of expired permits. (10-1. Noes: Oliverio.)

9.3 As referred by the Rules and Open Government Committee of December 10, 2008, approve City Council and Redevelopment Agency Committee appointments. (Mayor)
[Rules Committee referral 12/10/08 – Item A(1)(a)(1)]

Documents Filed: Memorandum from Mayor Reed, dated December 4, 2008, recommending approval of the appointments as detailed in Attachment A.

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Pyle and carried unanimously, the City Council and Redevelopment Agency Committee appointments were approved. (11-0.)

The Joint Council/Redevelopment Agency was adjourned at 3:06 p.m.

OPEN FORUM

David Wall and Ross Signorino congratulated and commended Vice Mayor Cortese and Council Member Williams for their years of dedicated service.

RECESS/RECONVENE

The City Council recessed at 3:11 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, Cortese, Liccardo, Oliverio, Nguyen, Pyle, Williams; Reed.

Absent: Council Members - None.

City Clerk Lee Price read the requests for continuance of the applications. Upon motion by Council Member Pyle, seconded by Council Member Liccardo, and carried unanimously, the below noted continuances and actions were taken as indicated. (11-0.)

CEREMONIAL ITEMS

1.5 Presentation of a commendation to the Seven Trees Coalition for coming together to advance and advocate for important issues affecting the Seven Trees community. (Nguyen)
(Rules Committee referral 12/3/08)

Action: Mayor Reed and Council Member Nguyen recognized and commended the Seven Trees Coalition for coming together to advance and advocate for important issues affecting the Seven Trees community.

1.1 Presentation of a commendation to Jim Zito for his years of dedication to the City of San José and District 8 community via the District 8 Community Roundtable. (Cortese)

Action: Mayor Reed and Vice Mayor Cortese recognized and commended Jim Zito for his years of commitment to the City of San José and the District 8 Community Roundtable.

SPECIAL CEREMONIAL ITEM

Action: Mayor Reed and the Council Members recognized and commended Vice Mayor Cortese and Council Member Williams for their invaluable service to the Mayor, City Council, City Staff and the citizens of the City of San José.

Deacon Sal Alvarez thanked Vice Mayor Cortese and Council Member Williams for their excellent service to the community.

PUBLIC HEARINGS

11.2 Conduct public hearing and consider approval of the following actions:

(a) Adopt a resolution, to take effect *immediately*, to update the existing Evergreen Development Policy, together with all revisions thereto, and adopt an Updated Evergreen-East Hills Development Policy. CEQA: Resolution to be adopted.

(b) Approve an ordinance establishing the Evergreen-East Hills Traffic Impact Fee based on the prepared "The Evergreen-East Hills Traffic Impact Fee Study", dated November, 2008. CEQA: Resolution to be adopted.

(c) Approve an ordinance rescinding Ordinance No. 24899 and Ordinance No. 25658 which established the procedures and transportation methodology for transportation analysis in the Evergreen Development Policy area. CEQA: Resolution to be adopted.

CEQA Resolution No. 74742 adopted.

SNI: K.O.N.A, West Evergreen and East Valley/680 Communities. Council Districts 5, 7, and 8. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-0). (Planning, Building and Code Enforcement)

Documents Filed: (1) Memorandum from Mayor Reed, Vice Mayor Cortese and Council Members Williams, Liccardo and Chu, dated December 10, 2008, recommending approval of the staff recommendations with modifications. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 6, 2008, transmitting the Planning Commission recommendation and the Evergreen-East Hills Development Policy and Supplemental EIR, certified December 2006, as prepared and in compliance with CEQA. (3) Proofs of Publications of Notices of Public Hearings, executed on November 19, 2008 and December 5, 2008 submitted by the City Clerk. (4) Staff presentation of the Evergreen-East Hills Development Policy dated December 16, 2008. (5) Letter from Allen Matkins Leck Gamble Mallory & Natsis LLP, dated December 16, 2008, regarding the Evergreen-East Hills Development Policy and Supplemental EIR.

Mayor Reed opened the public hearing.

Mayor Reed provided meeting disclosures.

Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti presented the Staff Report.

Motion: Vice Mayor Cortese moved approval of the memorandum he cosigned with Mayor Reed and Council Members Williams, Liccardo and Chu, dated December 10, 2008. Council Member Chu seconded the motion.

Public Comments: Speaking to the merits of the Evergreen-East Hills Development Policy and Supplemental EIR were Mark Lazzarini (DAL Properties LLC) and Carol Ashman. Bonnie Mace (District 8 Community Roundtable) suggested that transportation mitigation improvement be addressed.

11.2 (Cont'd.)

Mayor Reed closed the public hearing.

Vice Mayor Cortese requested to amend the motion to direct Staff to return to Council with an implementation update in one year. Council Member Chu accepted the amendment.

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, Resolution No. 74741, entitled: "A Resolution of the Council of the City of San José Repealing the Revised Evergreen Development Policy and Amendments Thereto and Adopting the Evergreen-East Hills Development Policy to Authorize a Limited Increase in Residential, Commercial and Office Development in the Evergreen-East Hills Development Area Subject to Specified Measures to Address Development Related Impacts on Traffic Capacity Within the Evergreen-East Hills Policy Area" and CEQA Resolution No. 74742, entitled: "A Resolution of the Council of the City of San José Making Certain Findings Concerning Significant Environmental Impacts and Related Mitigation Measures, Adopting a Mitigation Monitoring and Reporting Program, Making Finings Concerning Alternatives and Adopting a Statement of Overriding Considerations for the Repeal of the Existing Evergreen Development Policy, Together With All Revisions Thereto and Adoption of an Updated Evergreen-East Hills Development Policy, For Which a Final Environmental Impact Report, Together with a Supplemental Environmental Impact Report, Has Been Prepared in Accordance with the California Environmental Quality Act of 1970, As Amended", were adopted; Ordinance No. 28473, entitled: "An Ordinance of the City of San José Amending Title 14 of the San José Municipal Code to Add a New Chapter 14.33 in Order to Adopt a Traffic Impact Fee on New Office, Commercial and Residential Development Within the Evergreen-East Hills Development Policy Area" and Ordinance No. 28474, entitled: "An Ordinance of the City of San José Repealing Ordinance No. 24899 and Ordinance No. 25658 Which Established the Procedures and Transportation Methodology for Transportation Analysis in the Evergreen-East Hills Development Policy Area", were passed for publication; The memorandum from Mayor Reed, Vice Mayor Cortese and Council Members Williams, Liccardo and Chu, dated December 10, 2008, was approved, as amended: (1) Approving Staff recommendations for the ordinances establishing the Evergreen-East Hills Traffic Impact Fee based on the prepared "The Evergreen-East Hills Traffic Impact Fee Study", dated November, 2008 and rescinding Ordinance No. 24899 and Ordinance No. 25658 which established the procedures and transportation methodology for transportation analysis in the Evergreen Development Policy area. (2) Approve Staff recommendations to adopt a resolution to take effect immediately, to update the existing Evergreen Development Policy, together with all revisions thereto and to adopt an Updated Evergreen-East Hills Development Policy, with the following modifications: (a) Eliminate the provision of affordable housing as one of the criteria for qualifying for "large project" status on the operative date of the City of San José's inclusionary housing policy, or in any redevelopment area. (b) Reinforce that development proposals for projects located inside redevelopment areas will continue to remain subject to the

11.2 Action (Cont'd.)

Redevelopment Agency's requirements for affordable housing development and therefore will not be considered for large project status on the basis of incorporation of affordability. (c) Stipulate that projects falling under the "Other Land Uses" (Pages 15-16 of the Policy) category of any proposed capacity are encouraged to apply so long as they meet at least one of the two criteria below: [1] They do not exceed the trip generation equivalency of a residential project of 35 units or less; [2] They would otherwise qualify for large project status based on the criteria identified in the development policy and modified herein. (d) As to the prioritization process identified by Staff (Pages 28-29 of the Policy) to be utilized in the event there is more demand for residential development in the policy area than the 500 residential pool allows for, make the following modifications: [1] Add the following sentence to "Implementation Goals": "In no case shall the total number of units distributed by application of these goals exceed the overall cap of 500 units established in this amendment"; [2] Modify definition of "Community Services" to include both existing and future services, including those approved via City Council action such as found in masterplans, specific plans and SNI plans; [3] Modify definition of "Mass Transit" to include "proximity to bus routes with frequent headway". (e) Add a statement about school impact that strongly encourages project applicants to talk with affected school districts during the review and processing of their applications by the City to ensure such parties are aware of pending development. (3) Direct the Administration to promptly consider and process pending applications. Such processing in no way constitutes project approval or any amount of allocations from the pool. (4) Staff to return to Council with an implementation update in one year. (11-0.)

GENERAL PLAN PUBLIC HEARINGS ON CONSENT CALENDAR

10.1 (a) Tentative approval of a General Plan amendment request to change the San José 2020 General Plan Land Use/Transportation Diagram designation from Industrial Park to Combined Industrial/Commercial on an 8.5-acre site located on the southeast corner of Montague Expressway and O'Toole Avenue (1010-1060 Rincon Circle) (Carr NP Properties, LLC and Equity Properties Tax Group, LLC, Owner/City of San José, Applicant). Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-0). CEQA: Addendum to the North San José Policies Update EIR, Resolution No. 72768.
GP08-04-01 – District 4

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP08-04-01, dated November 12, 2008, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 24, 2008, transmitting the Planning Commission recommendation. (3) Staff presentation of the General Plan Amendments for Items 10.1(a), 10.2, 10.3 and 10.4 dated December 16, 2008.

Public Comments: 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 Chirco and carried unanimously, the Staff/Planning recommendation was tentatively approved. (11-0.)

END OF GENERAL PLAN PUBLIC HEARINGS ON CONSENT CALENDAR

GENERAL PLAN PUBLIC HEARINGS

10.2 Tentative approval of a General Plan text amendment request to add a new Land Use/Transportation Diagram designation to the text of the San José 2020 General Plan to encourage vertical mixed-use development near transit while preserving commercial employment lands in San José. No land use change affecting any specific site is identified or included in the proposed General Plan text amendment. (City of San José, Applicant). Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-0). CEQA: Addendum to the San José 2020 General Plan EIR, Resolution No. 65459.
GP08-T-07 – Citywide

Documents Filed: Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 24, 2008, transmitting the Planning Commission recommendation of approval and the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File GP08-T-07, dated November 12, 2008.

Director of Planning, Building and Code Enforcement Joseph Horwedel provided the staff report.

Mayor Reed opened the public hearing

Public Comments: Speaking in support to the Staff recommendations were Terri Balandra and Chet Lockwood (FLAG).

Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and carried unanimously, the Staff/Planning recommendation was tentatively approved. (11-0.)

10.3 Tentative deferral to Spring 2009 of a General Plan amendment request to change the San José 2020 General Plan Land Use/Transportation Diagram designation from Medium High Density Residential (12-25 DU/AC) to General Commercial on a 2.37-acre site located on the north side of Parkmoor Avenue, approximately 1,070 feet west of Meridian Avenue, in the rear lot (1555 Parkmoor Avenue) (Chiechi Park West III/Hope Services, Owner/City of San José Housing Department, Applicant). Director of Planning, Building and Code Enforcement and Planning Commission recommend deferral to Spring 2009 General Plan Hearing (6-0-0). CEQA: Negative Declaration. SNI: Burbank/Del Monte.
GP08-06-01 – District 6

Action: Continued to the Spring 2009 General Plan Hearing per Administration.

10.4 Tentative approval of a General Plan amendment request to change the San José 2020 General Plan Land Use/Transportation Diagram designation from Low Density Residential (5 DU/AC) to Office on an approximately 0.69-acre portion and Private Open Space on an approximately 0.92-acre portion of a 2.98-acre parcel located on the west side of San Felipe Road, approximately 600 feet southerly of Delta Road (4203 San Felipe Road) (Dennis Wong, Owner/Reyad Katwan, Hawkstone, LLC, Applicant). CEQA: Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval of Office on an approximately 0.69-acre portion and Private Open Space on an approximately 0.92-acre portion of a 2.98-acre parcel (6-0-0). CEQA: Negative Declaration.
GP08-08-05 – District 8

Documents Filed: (1) Memorandum from Vice Mayor Cortese, dated December 11, 2008, recommending approval of the Staff recommendations. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 24, 2008, transmitting the Planning Commission recommendation of approval and the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File GP08-08-05, dated November 13, 2008.

Responding to Vice Mayor Cortese, Director of Planning, Building and Code Enforcement Joseph Horwedel clarified that the setback of 50 feet will avoid significant impact in the riparian.

Motion: Vice Mayor Cortese moved approval of his memorandum dated December 11, 2008, recommending approval of the Staff recommendations. Council Member Pyle seconded the motion.

Mayor Reed opened the public hearing

Public Comments: Speaking in support to the General Plan Amendment request were Bonnie Mace (District 8 Community Roundtable) and Douglas Vierra.

Mayor Reed closed the public hearing.

Action: On a call for the question, the motion carried unanimously, the memorandum from Vice Mayor Cortese, dated December 11, 2008, approving the Staff/Planning recommendation, was tentatively approved. (11-0.)

Mayor Reed announced that Vice Mayor Cortese resigned from the District Office 8 at 8:22 p.m.

10.5 Adopt a resolution approving all General Plan amendment actions taken on December 2 and December 16, 2008, and adoption of CEQA resolutions. (Planning, Building and Code Enforcement)

Documents Filed: 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.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Williams and carried unanimously, Resolution No. 74743, entitled: "A Resolution of the Council of the City of San José Specifying the Council's Determinations on Proposed Amendments to the San José 2020 General Plan Pursuant to Title 18 of the San José Municipal Code", was adopted. (10-0-1. Absent: Cortese.)

END OF GENERAL PLAN PUBLIC HEARINGS

PUBLIC HEARINGS ON CONSENT CALENDAR

11.1 (a) Consider 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) and 11/18/08 – Item 11.1(a)]

Documents Filed: (1) Memorandum from Planning Commission Secretary Joseph Horwedel, dated October 9, 2008, transmitting the Planning Commission recommendation. (2) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated October 29, 2008, responding to questions raised regarding the process required by Street Renaming City Council Policy 6-5 and to clarify that the suffix should be Court instead of Way, as it is a dead-end street. (3) Proof of Publication of Notice of Public Hearing, executed on October 3, 2008, submitted by the City Clerk.

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

Action: Upon motion by Council Member Williams, seconded by Council Member Pyle and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, Resolution No. 74744: entitled: "A Resolution of the Council of the City of San José Renaming a Private Drive Located South of Tierra Encantada Way Approximately 200 Feet Southeasterly of the Intersection of Alum Rock Avenue and McCreery Avenue, Currently Named Tierra Encantada Court, to Bob Hansen Court", was adopted. (10-0-1. Absent: Cortese.)

END OF PUBLIC HEARINGS ON CONSENT CALENDAR

PUBLIC HEARINGS

11.3 Consider an ordinance rezoning the real property located at the northeast corner of North First Street and East Hedding Street (900 N. First Street) from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow commercial uses and 24-hour operations for a bailbonds establishment on 0.67-gross acre site (Sarwat S. and Colette J. Fahmy, et al, Owner). CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-0).
PDC08-040 – District 3

Documents Filed: (1) Memorandum from Council Member Liccardo, dated December 15, 2008, recommending approval of the Staff recommendations with conditions. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC08-040, dated November 12, 2008, recommending approval. (3) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated December 12, 2008, providing information to Council about the three zoning protests that were filed against the zoning application. (4) Proof of Publication of Notice of Public Hearing, executed on November 7, 2008, submitted by the City Clerk.

Motion: Council Member Liccardo moved approval of his memorandum dated December 15, 2008. Council Member Constant seconded the motion.

Mayor Reed opened the public hearing.

Public Comments: La Coby Phillip, the Applicant, Aladdin Bail Bonds and Stewart Fahmy, the Owner, spoke about the merits of the rezoning to allow commercial uses and 24-hour operations for a bailbonds establishment on 0.67-gross acre site.

Speaking about increased traffic, litter, bad language and the impacts to the quality of life and safety in the area were Kathleen Kraskonslas, Willdene Rathje, Robert Rathje, Jeff Ray, Susan Lapsys, Peira Pino, Antonia Ettone, Neil MacNeale, Sarah Brouillelle, Babara Honda, Angelina Gable, Greg Gable, Ron Cochran, Erik Schoennauer, Michael Salah, Tina Morrill, Lou Chiaramonte and Joseph Fota.

Mayor Reed closed the public hearing.

Council Member Liccardo requested to amend the motion to direct the City Manager to submit a workload assessment to the Rules & Open Government Committee to determine whether zoning changes might better regulate bail bond businesses in the future. Council Member Constant accepted the amendment.

11.3 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, the memorandum from Council Member Liccardo, dated December 15, 2008, was approved, with the following conditions: (1) Rezoning shall not include 24 hour use and shall be closed between the hours of midnight and 6:00 a.m. (2) The driveway providing ingress/egress to Second Street shall be closed to both automobiles and pedestrians and landscaped. Should the requirement for construction of any barrier and landscaping unduly delay the occupancy and operation of the business, the applicant shall conform to a construction schedule established by the City Manager, such that the construction of the barrier shall be completed by no later than May 1, 2009. (3) City Manager directed to submit a workload assessment to the Rules & Open Government Committee to determine whether zoning changes might better regulate bail bond businesses in the future and Ordinance No. 28475, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Northeast Corner of North First Street and East Hedding Street (900 North First Street) to A(PD) Planned Development Zoning District", was passed for publication. (10-0-1. Absent: Cortese.)

11.4 Consider an ordinance rezoning the real property located on the south side of East San Antonio Street, approximately 950 feet east of South 24th Street (1338 E. San Antonio Street) from R-1-8 Residence Zoning District to A(PD) Planned Development Zoning District to allow up to 84 attached residential units on a 1.92 gross acre site (Neighborhood Housing Services Silicon Valley, Owner). SNI: Five Wounds/Brookwood Terrace. CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-0).
PDC08-038 – District 3

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 24, 2008, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC08-038, dated November 12, 2008, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated December 4, 2008, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on November 7, 2008 submitted by the City Clerk.

Motion: Council Member Liccardo moved approval of the Staff recommendations with the condition that additional parking be made available for bikes and to enhance the bike parking to two spaces for every four units. Council Member Pyle seconded the motion.

Council Member Oliverio objected to the motion and pointed out that there is an outstanding issue of parks.

Mayor Reed opened the public hearing.

11.4 (Cont'd.)

Public Comments: Jim Rendler, Owner/Developer, (Roem Development) spoke to the values of the project.

Mayor Reed closed the public hearing.

Action: On a call for the question, the motion carried, the recommendation of the Planning Commission and the Planning Director was approved, Ordinance No. 28476, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated at the South Side of East San Antonio Street, Approximately 95 Feet East of South 24th Street (1338 East San Antonio Street) to A(PD) Planned Development Zoning District", was passed for publication, with the condition that additional parking be available for bikes and to enhance the bike parking to two spaces for every four units. (9-1-1. Noes: Oliverio. Absent: Cortese.)

11.5 Conduct an Administrative Hearing and consider an appeal of the Planning Commission's decision to deny a conditional use permit and determination of public convenience or necessity to allow the off-sale of alcoholic beverages at a proposed grocery store (Fresh & Easy) located at the southeast corner of Saratoga Avenue and Payne Avenue. CEQA: Exempt. The Director of Planning, Building and Code Enforcement recommends the City Council overturn the mandatory denial by the Planning Commission and approve the subject Conditional Use Permit and make a Determination of Public Convenience or Necessity by finding that the required findings for a Determination of Public Convenience or Necessity can be made and that there is a significant overriding public benefit served by the proposed off-sale of alcohol.
CP08-059 & ABC08-006 – District 1

Documents Filed: (1) Memorandum from Council Member Constant, dated December 12, 2008, recommending approval of the Staff recommendation to overturn the mandatory denial by the Planning Commission and approve the Conditional Use Permit and make a Determination of Public Convenience or Necessity. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP08-059 & ABC08-006, dated October 28, 2008. (3) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 24, 2008, recommending overturning the mandatory denial by the Planning Commission.

As part of the Administrative Hearing, meeting disclosures were provided by Mayor Reed and Council Members Pyle, Nguyen, Liccardo, Chirco, Chu and Campos.

Motion: Council Member Constant moved approval of his memorandum dated December 12, 2008, to overturn the mandatory denial by the Planning Commission and approve the Conditional Use Permit and make a Determination of Public Convenience or Necessity. Council Member Liccardo seconded the motion.

Mayor Reed opened the public hearing.

11.5 (Cont'd.)

Public Comments: Alex Eagle (Fresh and Easy Neighborhood Market), pointed out the advantages of the Conditional Use Permit allowing the off-sale of alcoholic beverages at the grocery store. Anne Wilde, Jason Klawitter (Hathaway Neighborhood Association), Steven Loomis and Ken Kelly (Blackford NAC) also expressed full support for the Conditional Use Permit.

Mayor Reed closed the public hearing.

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

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Director was approved, Resolution No. 74745, "A Resolution of the Council of the City of San José Approving a Conditional Use Permit and a Request for a Determination of Public Convenience or Necessity to Use Certain Real Property Described Herein for the Purpose of Off Sale of Alcoholic Beverages at a Grocery Store Located at the Southeast Corner of Saratoga Avenue and Payne Avenue", was adopted. (10-0-1. Absent: Cortese.)

11.6 Conduct an Administrative Hearing and consider an appeal of the Planning Commission's decision to deny a conditional use permit to allow the off-sale of alcohol (beer, wine and liquor) at an existing retail store within a shopping center on a 0.92 gross acre site in the CP-Commercial Pedestrian zoning district located on the northeast corner of Meridian Avenue and Branham Lane. CEQA: Exempt. The Director of Planning, Building and Code Enforcement recommends the City Council uphold the Planning Commission's decision to deny the subject Conditional Use Permit.
CP08-050 – District 9

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP08-050, dated October 15, 2008. (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 24, 2008, recommending upholding the Planning Commission to deny the Conditional Use Permit.

Director of Planning, Building and Code Enforcement Joseph Horwedel noted that the denial was based upon the fact that there would be three Conditional Use Permits in that area.

Mayor Reed opened the public hearing.

Rami S. Shamieh, Esquire, representing the Owner/Applicant, Behroz Niaza, presented an argument about allowing the Conditional Use Permit at this establishment and alleged that Staff provided an inaccurate analysis.

11.6 (Cont'd.)

Public Comments: Speaking in support and to the values of the issuance of the Conditional Use Permit were Ray Sartor, Joe Andreatta, Kyle Farris, Lelamarie Sandoval, Khalil Rahim, Behroz Niazi (Discount Cigarettes), Pziz Ahmed, Lloyd Cox II, Bruce Mills, Lori McGarry (Discount Liquor), J.R. Mass and Stephen Toney.

George J. Silvestri Jr., General Counsel (Lunardi's Supermarkets) spoke in opposition to issuance of the Conditional Use Permit as it may affect businesses in the area. Mayor Reed closed the public hearing.

City Attorney Richard Doyle responded to Council questions and addressed the comments from Mr. Silvestri.

Action: Upon motion by Council Member Chirco, seconded by Council Member Constant and carried unanimously, Resolution No. 74746, entitled: "A Resolution of the Council of the City of San José Denying a Conditional Use Permit to Allow the Off Sale of Alcohol at an Existing Retail Store on the Property Located on the Northeast Corner of Meridian Avenue and Branham Lane (4614 Meridian Avenue) on a 0.92 Gross Acre Site", was adopted. **(**10-0-1. Absent: Cortese.)

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Joint Council/Redevelopment Agency convened at 10:25 p.m. to consider Item 9.4 in a Joint Session.

9.4 As referred by the Rules and Open Government Committee of December 10, 2008, appoint Council Member-elect Rose Herrera, in the event of a vacant District 8 seat, for the remainder of the term.
[Rules Committee referral 12/10/08 – Item A(1)(a)(2)]

Documents Filed: Memorandum from Mayor Reed, dated December 4, 2008, recommending the appointment of Council Member Herrera in the event of a vacant District 8 seat for the remainder of the term.

Mayor Reed announced that Vice Mayor Cortese's resignation was received at 8:22 p.m.

Action: Upon motion by Council Member Campos, seconded by Council Member Constant and carried unanimously, the appointment of Council Member Herrera in the event of a vacant District 8 seat for the remainder of the term was approved. (10-0-1. Absent: Cortese.)

The Joint Council/Redevelopment Agency was adjourned at 10:26 p.m.

COMMUNITY & ECONOMIC DEVELOPMENT

4.7 (a) Conduct a public hearing and election for the establishment of the Willow Glen Community Benefit and Improvement District and authorize the City Clerk to tabulate ballots;

(b) Authorize the City Clerk to cast a ballot on behalf of the City Council in favor of the establishment of the Willow Glen Community Benefit and Improvement District and the imposition of an assessment upon the two City-owned parcels within the proposed District, APN 429-17-036 and APN 429-17-107;

(c) Direct the City Clerk to report the results of the tabulation of ballots;

(d) If the proposed District is approved by property owners, adopt a resolution taking certain actions relating to the establishment of the Willow Glen Benefit and Improvement District including the adoption of the Management Plan and Engineer's Report and setting the assessment as detailed therein.

CEQA: Exempt, File No. PP08-097. Council District 6. (Public Works)

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen, dated November 24, 2008, recommending conducting a public hearing and adoption of a resolution. (2) Proof of Publication of Notice of Public Hearing, executed on December 5, 2008, submitted by the City Clerk.

Mayor Reed opened the public hearing.

Director of Public Works Katy Allen provided the Staff report.

Public Comments: Speaking in opposition to the establishment of the Willow Glen Community Benefit and Improvement District as it may force the small stores to close because of the hardship of paying higher fees were Judy Froom, Sophia Louretas, Colleen Hudgen and Scott Sevih (Small Business Owners).

Speaking in favor were Michael Mulcahy (SDS Nexgen Partners), Tom Trudell (Truberg Associates, LP) and Alex Byer (Paja Investments).

City Attorney Richard Doyle responded to Council questions and discussion followed.

Council Member Campos objected to the establishment of the Community Benefit and Improvement District in Willow Glen and added it was unfair to burden the small businesses.

4.7 (Cont'd.)

Action: Upon motion by Council Member Oliverio, seconded by Council Member Pyle and carried, the City Clerk was authorized to cast a ballot on behalf of the City Council in favor of the establishment of the Willow Glen Community Benefit and Improvement District and the imposition of an assessment upon the two City-owned parcels within the proposed District, APN 429-17-036 and APN 429-17-107. (9-1-1. Noes: Campos. Absent: Cortese.)

Mayor Reed closed the public hearing.

City Clerk Lee Price reported the results of the tabulation of the property owner ballots for the Willow Glen Community Benefit District. She stated the property owners with votes totaling $72,103.15 which represent 50.6% of ballots cast, support the formation of the Willow Glen Community Benefit District and the levy of annual assessments.

City Clerk Lee Price stated that property owners with votes totaling $70,500.45 which represent 49.4% of ballots cast, oppose the formation of the Willow Glen Community Benefit District and the levy of annual assessments.

City Clerk Lee Price pointed out that Council may proceed to vote on the formation of the District and the levy of assessments.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Oliverio and carried, Resolution No. 74747, entitled: "A Resolution of the Council of the City of San José Approving the Willow Glen Community Benefit District Management Plan and Engineer's Report and Approving and Imposing the Respective Assessments", was adopted. (10-1-1. Noes: Campos. 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
9952	Area generally bounded by Cottle Rd, Monterey Hwy, Hwy 85 & Manasas Rd.	2	Hitachi Global Storage Technologies, Inc.	13 Lots	Residential, Commercial, Industrial Park	Approve
9986	N/W corner Zanker Rd & E Tasman Dr.	4	Fairview Tasmen, LLC	2 Lots / 704 Units	MFA	Approve

ADJOURNMENT

The Council of the City of San José was adjourned at 10:30 p.m. in memory of Joe Scaglione, Public Works Principal Construction Inspector, a City employee of over 23 years.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

smd/12-16-08 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 10:54 a.m. to consider Items 8.1, 8.2, 8.3 and 8.4 in a Joint Session.

8.1 Adoption of resolutions by the City Council and Agency Board pertaining to the Agency's annual budgets and public improvements as follows:

(a) Adoption of resolutions by the Redevelopment Agency Board:

(1) Amending the FY 2008-2009 Appropriations Resolution and Revenue Resolution to reflect various modifications to the FY 2008-2009 Revenue, Capital Budget; and,

(2) Adopting a Two-Year Spending Plan ending FY 2009-2010.

(b) Adoption of a resolution by the City Council making certain determinations regarding the expenditure of Agency funds on public improvements in the FY 2008-09 Capital Budget.

Documents Filed: (1) Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated December 11, 2008, recommending adoption of resolutions. (2) Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated December 15, 2008, transmitting replacements for the incorrect enclosures provided previously.

Action: Upon motion by Council Member Pyle, seconded by Council Member Liccardo and carried unanimously, Redevelopment Agency Resolution No. 5878; Redevelopment Agency Resolution No. 5879 and Resolution No. 74714, entitled: "A Resolution of the Council of the City of San José Making Certain Determinations Regarding the Expenditure of Redevelopment Agency Funds on Public Improvements Specified in the Agency's FY 2008-2009 Capital Budget", were adopted. (11-0.)

8.2 Acceptance by the City Council and Agency Board of the Annual Report of Financial Transactions of community redevelopment agencies for FY 2007-08 for the purpose of forwarding the annual report to the State Controller, in accordance with Community Redevelopment Law, Section 33080.1.

Documents Filed: Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated December 4, 2008, recommending acceptance of the annual report.

Action: Upon motion by Council Member Williams, seconded by Council Member Pyle and carried unanimously, the Annual Report of Financial Transactions of community redevelopment agencies for FY 2007-08 for the purpose of forwarding the annual report to the State Controller, in accordance with Community Redevelopment Law, Section 33080.1, was accepted. (11-0.)

8.3 City Council and Redevelopment Agency Board approval of:

(a) The second amendment to the Cooperation Agreement between the Redevelopment Agency and the City of San Jose, extending the term for the loan and employment of an Agency employee to the Office of the Mayor to serve as Senior Policy Advisor, Economic Development and Land Use by one year.

(b) The second amendment to the Cooperation Agreement between the Redevelopment Agency and the City of San Jose, extending the term for the loan and employment of an Agency employee to the Office of the Mayor to serve as Schedule Coordinator by one year.

CEQA: Not a Project.

Documents Filed: Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated December 4, 2008, recommending approval of the second amendments to the cooperation agreements.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and carried unanimously, the second amendment to the Cooperation Agreement between the Redevelopment Agency and the City of San Jose, extending the term for the loan and employment of an Agency employee to the Office of the Mayor to serve as Senior Policy Advisor, Economic Development and Land Use by one year and the second amendment to the Cooperation Agreement between the Redevelopment Agency and the City of San Jose, extending the term for the loan and employment of an Agency employee to the Office of the Mayor to serve as Schedule Coordinator by one year, were approved. (11-0.)

8.4 (a) The City Council adopt a resolution authorizing the City Manager to negotiate and execute a Cooperation Agreement with the Redevelopment Agency, allowing the Executive Director of the Agency to complete and submit an application to the State Housing and Community Development Department to expand the current Enterprise Zone and authorizing the Redevelopment Agency to administer the Enterprise Zone on behalf of the City.

(b) The Redevelopment Agency Board adopt a resolution authorizing the Executive Director to negotiate and execute a Cooperation Agreement with the City of San Jose, allowing the Redevelopment Agency to complete and submit an application to the State Housing and Community Development Department and to administer the Enterprise Zone on behalf of the City, and making certain findings required by redevelopment law.

CEQA: [MERGED]

Documents Filed: Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes and City Manager Debra Figone, dated December 11, 2008, recommending adoption of resolutions.

8.4 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and carried unanimously, Resolution No. 74715, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Cooperation Agreement with the Redevelopment Agency, Allowing the Executive Director of the Agency to Complete and Submit an Application to the State Housing and Community Development Department to Expand the Current Enterprise Zone and Authorizing the Redevelopment Agency to Administer the Enterprise Zone on Behalf of the City" and Redevelopment Agency Resolution No. 5882 were adopted. (11-0.)

The Council of the City of San José and Redevelopment Agency Board was adjourned at 10:56 a.m.