

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, MARCH 17, 2009

The Council of the City of San José convened in regular session at 9:30 a.m. in the Council Chambers at City Hall.

Present: Council Members - Campos, Herrera, Liccardo, Nguyen, Oliverio, Pyle; Reed.

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

Upon motion unanimously adopted, Council recessed at 9:30 a.m. to a Closed Session in Room W133, to confer with Legal Counsel with respect to (A) to confer with Legal Counsel with respect to existing litigation pursuant to Government Code subsection (a) of Section 54956.9: (1) Naymark, et al. v. City, et al.; Names of Parties Involved: Janice Naymark, Ronald Naymark, City of San José, San José Police Department, Robert Davis, City of Campbell, Campbell Police Department, David Gullo, Town of Los Gatos, City of Monte Sereno, Los Gatos/Monte Sereno Police Department, Scott Seaman, City of Palo Alto, Lynn Johnson, City of Santa Clara, Santa Clara Police Department, Stephen H. Lodge, State of California, California Highway Patrol, Michael L. Brown, County of Santa Clara, Office of the Santa Clara County Sheriff, Laurie Smith and DOES 1 through 25; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV080008; Amount of Money or Other Relief Sought: Injunctive relief; (2) Grason v. City of San José, et al.; Names of Parties Involved: Kenneth Grason, City of San José, San José Police Chief Robert Davis, Police Officer Vida, #3404 and DOES 1 through 10; Court: U.S. District Court, Northern District of California; Case No: C07-03687 JW; Amount of Money or Other Relief Sought: Damages according to proof; (3) Valdez et al. v. City et al; Names of Parties Involved: Francisco Valdez, Ricardo Vasquez, City of San José, San José Police Chief Robert Davis, Officer R. Agaman and DOES 1-2500; Court: U.S. District Court, Northern District of California; Case No: C09 00176; Amount of Money or Other Relief Sought: Damages according to proof; (4) Paul Cicala, et al. v. City of San José, et al.; Names of Parties Involved: Paul Cicala, Enrico Sagullo, Erick Sanchez, City of San José, Police Chief Robert Davis, Officers Ordaz, Higgins, Marfia, Kyono, Siegel and DOES; Court: U.S. District Court, Northern District of California; Case No: C08-04032 PVT; Amount of Money or Other Relief Sought: Damages according to proof. (B) to confer with Legal Counsel with respect to anticipated litigation Claim Not Filed) pursuant to Government Code subsection (b) of Section 54956.9 in one

CLOSED SESSION (Cont'd.)

(1) matter of significant exposure. (C) 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. (8) San José Police Officers' Association (SJPOA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (9) International Association of Firefighters (IAFF), Local 230; Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters (IAFF), Local 230. (10) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3 (OE#3). How to obtain a copy of existing contract or MOA: web: <http://www.sanjoseca.gov/employeerelations/moa.asp>; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 11:50 a.m. and reconvened to Regular Session at 1:32 p.m. in the Council Chambers.

Present: Council Members - Chirco, Campos, Herrera, Liccardo, Nguyen, Oliverio, Pyle; Reed.

Absent: Council Members - Chu, Constant, Kalra. (Excused)

INVOCATION

San José Taiko, Japanese-American Drumming and Rhythm Artists, performed a traditional Japanese composition in honor of St. Patrick’s Day. (District 3)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Vice Mayor Chirco and carried unanimously, the Orders of the Day and the Amended Agenda were approved, and Items 3.2 and 3.3 were deferred to March 24, 2009. (8-0-3. Absent: Chu, Constant, Kalra.)

CLOSED SESSION REPORT

City Attorney Doyle disclosed the following Closed Session actions of March 17, 2009:

A. Authority to Seek Review by the California Supreme Court in a Litigation Case:

Case Name: County of Santa Clara, et al. v. The Superior Court of Santa Clara County and Janice Naymark, et al, Real Parties in Interest

Adverse Party or Parties: County of Santa Clara, et al.

Substance of Litigation: Plaintiffs seeking injunctive relief regarding alleged California Public Records Act violations.

Council Vote: Ayes: Campos, Herrera, Liccardo, Nguyen, Oliverio, Pyle; Reed.

Noes: None.
Disqualified: None.
Absent: Chirco, Chu, Constant, Kalra. (Excused)
Vacant: None.

CEREMONIAL ITEMS

- 1.1 Presentation of a commendation to Central Concrete and Supply Company for over 60 years of service in San José and their commitment to green technology. (Mayor/Liccardo/ Economic Development)**

1.1 (Cont'd.)

Action: Mayor Reed and Council Member Liccardo recognized and commended the Central Concrete and Supply Company for its 60 years of service in the City of San José and for their commitment to green technology.

**1.3 Presentation of a proclamation declaring the month of March 2009 as “Women’s History Month” in the City of San José. (Herrera/Campos/Chirco/Pyle)
(Rules Committee referral 3/11/09)**

Action: Mayor Reed, Vice Mayor Chirco and Council Members Herrera, Campos and Pyle recognized the month of March 2009 as “Women’s History Month” in the City of San José.

**1.4 Presentation of proclamation declaring March 18, 2009 as “Silicon Valley Science and Engineering Fair Day” in the City of San José to highlight the importance studies in both science and engineering are to improving the future of San José and Santa Clara County. (Pyle)
(Rules Committee referral 3/11/09)**

Action: Mayor Reed, Council Member Pyle and former Council Member Williams recognized March 18, 2009 as “Silicon Valley Science and Engineering Fair Day” in the City of San José.

**1.5 Presentation of a Proclamation declaring the week of March 22-28, 2009, as “Disaster Service Workers Week” in the City of San José. (Mayor)
(Rules Committee Referral 3/11/09)**

Action: Mayor Reed and Director of Office of Emergency Services Kimberly Shunk acknowledged the week of March 22 through March 28, 2009 as “Disaster Service Workers Week” in the City of San José.

CONSENT CALENDAR

Upon motion by Council Member Pyle, seconded by Vice Mayor Chirco and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (8-0-3. Absent: Chu, Constant, Kalra.)

2.1 Approval of minutes.

- (a) **Regular Minutes of December 2, 2008.**
- (b) **Three Year General Fund Deficit Elimination Plan Study Session Minutes of December 5, 2008.**
- (c) **Regular Minutes of December 9, 2008.**
- (d) **Regular Minutes of December 16, 2008.**
- (e) **Joint Council/San José Financing Authority Minutes of December 16, 2008.**

2.1 (Cont'd.)

Documents Filed: (1) The Regular Minutes dated December 2, 2008, December 9, 2008 and December 16, 2008. (2) The Three Year General Fund Deficit Elimination Plan Study Session Minutes dated December 5, 2008. (3) The Joint Council/San José Financing Authority Minutes dated December 16, 2008.

Action: The Minutes were approved. (8-0-3. Absent: Chu, Constant, Kalra.)

- 2.3 (a) **Adopt a resolution authorizing the Director of Aviation to negotiate and execute a lease of Airport premises with JetBlue Airways for terminal space at Mineta San José International Airport (“Airport”) on a month-to-month term, effective August 1, 2008 through June 30, 2012, at a space rental rate calculated pursuant to the terms of the signatory airline lease and operating agreement and subject to the twenty-five percent (25%) premium on all non-signatory airline rates and charges as provided in the signatory airline lease and operating agreement, with annual income to the City of \$333,360.84.**
- (b) **Adopt a resolution authorizing the Director of Aviation to negotiate and execute future leases for terminal space with non-signatory airlines operating at the Airport, at a space rental rate calculated pursuant to the terms of the signatory airline lease and operating agreement and subject to the twenty-five percent (25%) premium on all non-signatory airline rates and charges as provided in the signatory airline lease and operating agreement.**

CEQA: Resolution Nos. 67380 and 71451, PP 09-017. (Airport)

Documents Filed: Memorandum from Director of Aviation William Sherry, dated February 23, 2009, recommending adoption of resolutions.

Action: [Resolution No. 74832](#), entitled: “A Resolution of the Council of the City of San José Authorizing the Direction of Aviation to Negotiate and Execute a Lease with JetBlue Airways for Terminal Space at the Norman Y. Mineta San José International Airport from August 1, 2008 through June 30, 2012, with Annual Income to the City of \$333,360.84” and [Resolution No. 74833](#), entitled: “A Resolution of the Council of the City of San José Authorizing the Direction of Aviation to Negotiate and Execute Future Leases for Terminal Space with Non-Signatory Airlines at the Norman Y. Mineta San José International Airport”, were adopted. (8-0-3. Absent: Chu, Constant, Kalra.)

- 2.4 (a) **Adopt a resolution initiating proceedings and setting a public hearing on April 7, 2009 at 7:00 p.m. for the reorganization/annexation of territory designated as Berryessa No. 68 which involves the annexation to the City of San José of an approximately 15.3 gross acre County Pocket consisting of 2 parcels on the southwest corner of Capitol Avenue and Hostetter Road, implementation of the annexation would result in the detachment of properties within the annexation area from West Valley Sanitation, County Lighting County Service, Central Fire Protection, and Area No. 01 (Library Services) County Service. (Bianchi, Clara Trustee; Santa Clara Valley Transit Authority, owners). CEQA: Resolution No. 65459. Council District 4.**

2.4 (a) (Cont'd.)

Action: Item 2.4(a) was dropped per Administration.

- (b) **Adopt a resolution initiating proceedings and setting a public hearing on April 7, 2009 at 7:00 p.m. for the reorganization/annexation of territory designated as Story No. 61, which involves the annexation to the City of San José of 3.21 gross acres of land located at the north side of Story Road, 780 feet westerly of Machado Lane, and the detachment of the same from the appropriate special districts including Central Fire Protection, and Area No. 01 (Library Services) County Service. CEQA: Resolution No. 65459. Council District 5.**
(Planning, Building and Code Enforcement)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated February 19, 2009, recommending adoption of a resolution.

Action: [Resolution No. 74834](#), entitled: “A Resolution of the Council of the City of San José Initiating the Reorganization Proceedings for Annexation and Detachment of Certain Inhabited Territory Designated as Story No. 61, Described More Particularly Herein and Setting the Date, Time and Place for Consideration of Such Reorganization”, was adopted. (8-0-3. Absent: Chu, Constant, Kalra.)

2.5 **Adopt a resolution repealing Resolution No. 74995 and authorizing the installation of bike lanes and bike route signage on Bird Avenue from Virginia Street to Malone Road. CEQA: Exempt, File No. PP08-293. Council District 6. SNI: Greater Gardner. (Transportation)**

Documents Filed: Memorandum from Director of Transportation James Helmer, dated February 23, 2009, recommending adoption of a resolution.

Council Member Oliverio expressed his enthusiasm and appreciation to Staff regarding the installation of the bike lanes and bike route signage along Bird Avenue from Virginia Street to Malone Road.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Liccardo and carried unanimously, [Resolution No. 74835](#), entitled: “A Resolution of the Council of the City of San José Designating Bicycle Lanes on Those Portions of Streets Specified Herein Pursuant to the Authority of California Vehicle Code Section 21207; and Repealing Resolution No. 74995”, was adopted. (8-0-3. Absent: Chu, Constant, Kalra.)

- 2.6 Report on bids and award of contract for the 2008-09 Curb Ramp Improvements in Low-to-Moderate Income Areas Project to the low bidder, Robert A. Bothman Inc., in the amount of \$658,257, and approval of a contingency in the amount of \$65,826. CEQA: Exempt, File No. PP08-186. Council Districts 3, 5 and 6. SNI: East Valley 680, Mayfair, Delmas Park, Spartan/Keyes, Five Wounds/Brookwood Terrace, Washington, Gateway East, Burbank/Del Monte and 13th Street. (Transportation)**

Documents Filed: Memorandum from Director of Transportation James Helmer, dated February 23, 2009, recommending award of the contract to the low bidder.

Action: The award of contract for the 2008-09 Curb Ramp Improvements in low-to-moderate income areas project to the low bidder, Robert A. Bothman Inc., in the amount of \$658,257, with related contingency was approved. (8-0-3. Absent: Chu, Constant, Kalra.)

- 2.7 (a) Approve travel by Mayor Reed to Boston, MA on October 21-23, 2009 to attend the San José/Silicon Valley Chamber of Commerce City-to-City Trip. Source of Funds: Mayor & Council Travel Fund.**
- (b) Request for an excused absence for Mayor Reed from the Regular Meeting of the Rules and Open Government Committee on October 21, 2009 due to Authorized City Business: 2009 San José/Silicon Valley Chamber of Commerce Annual City-to-City Trip in Boston, MA.**

(Mayor)

(Rules Committee referral 3/04/09)

Documents Filed: Memoranda from Mayor Reed, both dated February 25, 2009, requesting approval of travel and excused absence.

Action: The travel request for Mayor Reed was approved and the absence request for Mayor Reed was excused. (8-0-3. Absent: Chu, Constant, Kalra.)

- 2.8 Request for an excused absence for Vice Mayor Chirco from the Closed Session and Regular City Council Meeting on March 10, 2009 due to illness. (Chirco)**
(Rules Committee referral 3/11/09)

Documents Filed: Memorandum from Vice Mayor Chirco, dated March 10, 2009, requesting an excused absence due to illness.

Action: The absence for Vice Mayor Chirco was excused. (8-0-3. Absent: Chu, Constant, Kalra.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone announced that Collin O'Mara, Clean Tech Strategist and a key member of the Green Vision Team, has accepted the nomination of Secretary of Natural Resources and Environmental Control in the State of Delaware; and noted that he will be leaving the City of San José in mid April.

3.2 Report of the Rules and Open Government Committee – February 18, 2009 Mayor Reed, Chair

Action: Deferred to March 24, 2009 per Orders of the Day.

3.3 Report of the Rules and Open Government Committee – February 25, 2009 Mayor Reed, Chair

Action: Deferred to March 24, 2009 per Orders of the Day.

3.5 As recommended by the Rules and Open Government Committee on March 11, 2009, adopt a position of support for SB26 (Simitian), Home-Generated Pharmaceutical Waste. (Environmental Services) [Rules Committee referral 3/11/09 – Item 6.1(b)]

Documents Filed: Memorandum from City Clerk Lee Price, dated March 11, 2009, transmitting the recommendations of the Rules and Open Government Committee.

Action: Upon motion by Vice Mayor Chirco, seconded by Council Member Oliverio and carried unanimously, a position of support for SB26, Home-Generated Pharmaceutical Waste was adopted. (8-0-3. Absent: Chu, Constant, Kalra.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.2 Planning Staff recommends that the City Council direct the Administration to develop and bring back to City Council for consideration:

- (a) Amendments to Title 13 of the Municipal Code to streamline the Tree Removal Process for trees located on single-family and duplex private properties.
- (b) Amendments to City Council Policy 6-30; Public Outreach, relating to Tree Removal Permits.
- (b) A fee to recover the Administration's costs associated with administering that streamlined tree removal process.

CEQA: Not a Project. (Planning, Building and Code Enforcement)

Action: Deferred to March 24, 2009 per Administration.

4.3 Accept the Annual Progress Report on the Implementation of the San José 2020 General Plan Housing Element covering the period from January 2008 through December 2008. CEQA: Not a Project. (Planning, Building and Code Enforcement/Housing)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel and Director of Housing Leslye Krutko, dated February 23, 2009, recommending acceptance of the annual progress report.

Director of Housing Leslye Krutko responded to Council questions. A short discussion followed.

Public Comments: Ross Signorino spoke to the merits of affordable housing.

Action: Upon motion by Council Member Liccardo, seconded by Vice Mayor Chirco and carried unanimously, the Annual Progress Report on the Implementation of the San José 2020 General Plan Housing Element covering the period from January 2008 through December 2008 was accepted. (8-0-3. Absent: Chu, Constant, Kalra.)

4.4 Adopt a resolution to:

- (a) **Approve a request for early disbursement of \$603,435 of the existing funding commitment to San Carlos Willard Associates, L.P., or its designated affiliate, to finance the shared offsite development costs for the 100-unit San Carlos Bowl Seniors rental project located at 1523-1533 West San Carlos Street.**
- (b) **Authorize the Director of Housing to negotiate and execute all documents to effectuate this early disbursement.**

CEQA: Exempt, PD04-103. Council District 6. SNI: Burbank/Del Monte. (Housing) (Deferred from 3/3/09 – Item 2.3 and 3/10/09 – Item 4.6)

Documents Filed: (1) Memorandum from Director of Housing Leslye Krutko, dated February 9, 2009, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Housing Leslye Krutko, dated March 10, 2009, transmitting questions raised at the meeting of March 3, 2009 relating to the early disbursement of funds for the San Carlos Bowl Seniors Project. (3) Email from Chet Lockwood, dated March 16, 2009, regarding the early disbursement of funds. (4) Email from Terri Balandra, dated March 1, 2009, protesting the early disbursement of funds.

Public Comments: Terry Balandra expressed concern about the early disbursement of funds and unanswered questions; and Chet Lockwood agreed that outstanding questions have not been answered and requested that Council defer this item in order to address outstanding issues (Fiesta Lanes Action Group).

Director of Housing Leslye Krutko provided comments about the early disbursement of funds related to the existing funding commitment to San Carlos Willard Associates, L.P.

4.4 (Cont'd.)

Council Member Oliverio invited the members of the community for an additional sit-down meeting with Director of Housing Leslye Krutko and himself, in order to better understand the community's concerns and to provide additional clarification.

Mayor Reed and Council Members Campos and Liccardo provided meeting disclosures.

Action: Upon motion by Council Member Oliverio, seconded by Vice Mayor Chirco and carried unanimously, [Resolution No. 74836](#), entitled: "A Resolution of the Council of the City of San José To Allow Early Disbursement of the Existing Funding Commitment for the San Carlos Bowl Seniors Project and to Authorize the Director of Housing to Negotiate and Execute All Documents to Effectuate this Early Disbursement", was adopted. (8-0-3. Absent: Chu, Constant, Kalra.)

TRANSPORTATION & AVIATION SERVICES

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

Documents Filed: The Transportation and Environment Committee Report dated March 2, 2009.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the Report of the Transportation and Environment Committee and the actions of March 2, 2009 were accepted. (8-0-3. Absent: Chu, Constant, Kalra.)

6.2 As recommended by the Transportation and Environment Committee on March 2, 2009:

- (a) **Reconfirm the policy that only Type 1 landscaping be installed on City streets unless an alternate funding source has been identified for maintenance.**
- (b) **Direct Administration to consider as part of FY 2009-2010 Proposed Budget the funding needed to explore and develop alternate landscape maintenance funding sources.**

(Transportation)

[Transportation and Environment Committee referral 3/2/09 – Item 6.1(3)(4)]

Documents Filed: Memorandum from City Clerk Lee Price, dated March 5, 2009, transmitting the recommendations of the Rules and Open Government Committee.

Deputy Director Department of Transportation Kevin O'Connor provided an overview of the street landscape services.

6.2 (Cont'd.)

Director of Transportation James Helmer and Deputy Director Department of Transportation Kevin O'Connor responded to Council questions. A short discussion followed.

Council Member Oliverio suggested that Staff look at other options to clean up the medians and road sides.

Council Member Campos requested further information about the status for the recruiting and funding of the Urban Forestry Manager.

Action: Upon motion by Council Member Pyle, seconded by Council Member Liccardo and carried unanimously, the policy that only Type 1 landscaping be installed on City streets unless an alternate funding source has been identified for maintenance was reconfirmed and Administration was directed to consider as part of FY 2009-2010 Proposed Budget the funding needed to explore and develop alternate landscape maintenance funding sources. (8-0-3. Absent: Chu, Constant, Kalra.)

6.3 As recommended by the Transportation and Environment Committee on March 2, 2009:

- (a) **Adopt a resolution:**
 - (1) **Revising Ground Transportation administrative fees and charges for trips to and from the Airport to be effective on May 1, 2009.**
 - (2) **Readopting all other Airport Rates and Charges.**
 - (3) **Repealing Resolution No. 74655.**
- (b) **Direct the City Attorney's Office to draft an ordinance to grant the Director of Aviation the authority to stop accepting applications for door-to-door shuttles for providing On-Demand service at the Airport and to establish and implement controls on the access, staging and quantity of door-to-door shuttle vehicles serving the Airport, including alternate day or reduced day access options.**

**CEQA: Resolution Nos. 67380 and 71451, File No. PP09-009. (Airport)
[Transportation and Environment Committee referral 3/2/09 – Item 6.1(3)(6)]**

Action: Deferred to March 24, 2009 per Administration.

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 **Approve an ordinance of the City of San José amending Chapter 17.08 of Title 17 of the San José Municipal Code to adopt floodplain management regulations that meet the provisions of Paragraphs 60.3(d) and 60.3(e) of the National Flood Insurance Program regulations, and adopt floodplain management regulations and terminology required by an audit by the State of California Department of Water Resources. CEQA: Exempt; File No. PP09-020. (Public Works)**

7.1 (Cont'd.)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated February 23, 2009, recommending approval of an ordinance.

Action: Upon motion by Vice Mayor Chirco, seconded by Council Member Pyle and carried unanimously, [Ordinance No. 28512](#), entitled: "An Ordinance of the City of San José Amending Chapter 17.08 of Title 17 of the San José Municipal Code to Update the City's Special Flood Hazard Regulations", was passed for publication. (8-0-3. Absent: Chu, Constant, Kalra.)

7.2 For Council consideration as discussed by the Transportation and Environment Committee on March 2, 2009:

- (a) **Approve development of a Request for Proposals (RFP) to solicit and award an exclusive franchisee to collect and process commercial solid waste, recyclables and organic materials for each of the two service districts for an initial term of ten years with two options to extend the term, the first for three years and the second for two years for a total of five years.**
- (b) **Include living wage and employee retention requirements in the RFPs.**
- (c) **Direction to amend the City's Living Wage Policy to include exclusive commercial solid waste franchise services.**

CEQA: Exempt, File No. PP08-247. (Environmental Services)

[Transportation and Environment Committee referral 3/2/09 – Item 6.1(3)(3)]

Action: Deferred to March 24, 2009 per District 4.

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Joint Council/Redevelopment Agency Board convened at 2:37 p.m. to consider Item 9.1 in a Joint Session.

9.1 Review and discuss the FY 2009-2010 Mayor's March Budget Message. (Mayor)

Mayor Reed presented opening comments and summarized the FY 2009-2010 Mayor's March Budget Message and confirmed that there will be no Council action today.

Mayor Reed responded to Council questions and comments. A short discussion followed.

Council Member Nguyen requested information outlining remedies available to the City to ensure homes in foreclosure are adequately maintained.

The City Manager agreed to provide information about fleet fuel efficiencies, as compared to other cities, business incubator statistics and Staff efforts and programs to address the issue of home foreclosures.

9.1 (Cont'd.)

Public Comments: Ross Signorino suggested raising the sales tax one-quarter percent for specified programs and to put a sunset on the tax.

Dan Fenton, San José Convention Center and Visitors Bureau, urged Council to look at the value of marketing funds and the return of investment from the San José Convention Center and Visitor's Bureau.

Teresa Alvarado, Community Budget Working Group and Trish Glassey, Confidential Employees Organization, expressed support to the FY 2009-2010 Mayor's March Budget Message.

Erik Larsen, MEF/AFSCME Local 101, expressed opposition to the reduction of the Convention Visitor's Bureau funding through the General Fund and urged the Council to support the local economy.

Action: Upon motion by Vice Mayor Chirco, seconded by Council Member Pyle and carried unanimously, the action on the FY 2009-2010 Mayor's March Budget Message was continued to March 24, 2009. The City Attorney agreed to provide an information memorandum outlining remedies available to the City to ensure homes in foreclosure are adequately maintained. The City Manager agreed to provide information memoranda regarding: (1) Fleet fuel efficiencies, as compared to other cities. (2) Business incubator statistics. (3) Staff efforts and programs to address the issue of home foreclosures. (8-0-3. Absent: Chu, Constant, Kalra.)

The Joint Council/Redevelopment Agency Board was adjourned at 3:35 p.m.

OPEN FORUM

Documents Filed: Submitted by Bill James, JPods, dated March 17, 2009, regarding JPods and changing the economic lifeblood from oil to ingenuity.

- (1) Former Council Member Forrest Williams invited the Mayor and City Council to the Silicon Valley Science and Technology Championship, Wednesday, March 18, 2009, South Hall, San José Convention Center.
- (2) Bill James, JPods, submitted information about applying performance standards to power generation and transportation infrastructure aka "personal rapid transit" networks.
- (3) Ross Signorino wished the Mayor and City Council "Happy St. Patrick's Day."

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 3:39 p.m.

RECESS/RECONVENE

The City Council recessed at 3:39 p.m. from the afternoon Council Session and reconvened at 7:00 p.m. in the Council Chambers, City Hall.

Present: Council Members - Campos, Chirco, Herrera, Liccardo, Oliverio, Nguyen, Pyle; Reed.

Absent: Council Members - Chu, Constant, Kalra. (Excused)

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

CEREMONIAL ITEM

1.2 Presentation of a commendation to the American Legion in recognition of the Legion's 90 years of services to veterans. (Mayor)

Action: Mayor Reed and Council Member Herrera, who is also a Veteran, recognized and commended the American Legion in acknowledgment of their 90 years of services to Veterans.

PUBLIC HEARINGS ON CONSENT CALENDAR

Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried unanimously, the Public Hearings on Consent Calendar were approved and the below listed actions were taken as indicated. (7-0-4. Absent: Chu, Constant, Kalra, Oliverio.)

11.1 (a) Consideration of an ordinance rezoning the real property located on the northeast corner of Coleman Avenue and Taylor Street (702 Coleman Avenue) from R-2 Two Family Residence Zoning District and R-M Multiple Residence Zoning District to LI Light Industrial Zoning District to allow industrial use on a 1.01 gross acre site (Taylor Coleman Props LLC, Owner). CEQA: Resolution No. 65459. C09-001 – District 3

Action: Continued to April 7, 2009 per Administration.

- 11.1 (b) **Consideration of an ordinance rezoning the real property located at the southeast corner of Morrill Avenue and Landess Avenue (2148 Morrill Avenue, 3102 Landess Avenue) from CO Commercial Office Zoning District on 0.8 acres (APN: 092-20-139) and R-2 Two Family Residence Zoning District on 0.16 acres (APN: 092-20-008) to CP Commercial Pedestrian Zoning District to allow commercial uses on a 0.96 gross acre site (Klifo Family Invs LLC, Owner). CEQA: Negative Declaration. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.**
C07-084 – District 4

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C07-084, dated February 18, 2009, recommending approval. (2) Proof of Publication of Notice of Public Hearing, executed on February 13, 2009, 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: The recommendation of the Planning Director was approved, [Ordinance No. 28513](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Southeast Corner of Morrill Avenue and Landess Avenue (2148 Morrill Avenue, 3102 Landess Avenue) to CP Commercial Pedestrian Zoning District”, was passed for publication. (7-0-4. Absent: Chu, Constant, Kalra, Oliverio.)

- (c) **Consideration of an ordinance rezoning the real property located at the southeast corner of the intersection of The Alameda and Bush Street (746 The Alameda) from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow 2,800 square feet of commercial uses and up to eight residential units in a mixed-use development or, as an interim use, commercial uses in an existing 7,568 square foot building on a 0.24 gross acre site (746 The Alameda LLC, Owner). CEQA: Addendum to a Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0).**
PDC08-062 – District 6

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PC08-062, dated January 30, 2009, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated February 11, 2009, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing, executed on January 23, 2009, 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.

11.1 (c) (Cont'd.)

Action: The recommendation of the Planning Commission and the Planning Director was approved, and [Ordinance No. 28514](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Southwest Corner of the Intersection of the Alameda and Bush Street (726 The Alameda) to A(PD) Planned Development Zoning District”, was passed for publication. (7-0-4. Absent: Chu, Constant, Kalra, Oliverio.)

- (d) **Consideration of an ordinance of the City of San José rezoning the real property located at/on the north side of Camden Avenue, approximately 300 feet east of Paso Los Cerritos (APN: 575-16-053) from R-1-5 Single-Family Residence Zoning District to A(PD) Planned Development Zoning District to allow up to 8 single-family residences on a 3.68 gross acre site (Corte De Rosa Homes LLC, Owner). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval with recommendation to work with applicant at the Planned Development permit stage to minimize cross slope grading for new roadway (7-0-0).**

PDC07-078 – District 10

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC07-078, dated February 4, 2009, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated February 13, 2009, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing, executed on January 30, 2009, 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: The recommendation of the Planning Commission and the Planning Director was approved, and [Ordinance No. 28515](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated at the North Side of Camden Avenue Approximately 300 Feet East of Paso Los Cerritos (APN: 575-16-053) from the R-1-5 Single Family Residence Zoning District to A(PD) Planned Development Zoning District”, was passed for publication. (7-0-4. Absent: Chu, Constant, Kalra, Oliverio.)

END OF PUBLIC HEARINGS ON CONSENT CALENDAR

PUBLIC HEARINGS

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

CP08-035 & ABC08-006 - District 3
(Continued from 2/24/09 – Item 11.2)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, Item 11.2 was continued to April 7, 2009 per District 3. (7-0-4. Absent: Chu, Constant, Kalra, Oliverio.)

- 11.3 Consideration of an ordinance rezoning the real property located at/on the east side of S. 10th Street approximately 90 feet north of Margaret Street (684 S 10th Street) from the R-M Multiple Residence Zoning District to the A(PD) Planned Development Zoning District to allow three single-family detached residences on a 0.2 gross acre site (Rodriguez, Maritza, Owner). SNI: University. CEQA: Exempt. Director of Planning, Building and Code Enforcement recommends approval. Planning Commission recommends approval with recommendation for staff to work with applicant at the Planned Development permit stage to improve the site layout (4-2-1; Cahan & Jensen Opposed; Platten Absent).**
PDC07-094 – District 3

Action: Upon motion by Council Member Liccardo, seconded by Vice Mayor Chirco and carried unanimously, Item 11.3 was continued to April 7, 2009 per District 3. (8-0-3. Absent: Chu, Constant, Kalra.)

- 11.4 Consideration of an ordinance rezoning the real property located on the west side of North 11th Street approximately 300 feet north of East Santa Clara Street (55 N 11th Street) from R-M Multiple Residence Zoning District to A(PD) Planned Development Zoning District for a renovation and addition to (also relocation on-site for) an existing single-family residence, listed as a Structure of Merit on the Historic Resources Inventory, and construction of three (3) single-family attached residential units on a 0.19 gross acre site. SNI: 13th Street. CEQA: Exempt. Director of Planning, Building and Code Enforcement recommends approval. Planning Commission recommends approval for up to 3 units (existing plus 2 additional units) to provide more opportunity for parking on-site (6-0-1; Platten absent).
PDC08-005 – District 3**

Action: Upon motion by Council Member Liccardo, seconded by Vice Mayor Chirco and carried unanimously, Item 11.4 was continued to April 24, 2009 in the afternoon per District 3. (8-0-3. Absent: Chu, Constant, Kalra.)

- 11.5 Consideration of an ordinance rezoning the real property located on the north side of Michigan Avenue, approximately 350 feet easterly of North 1st Street (APN 015-05-082) from CN Commercial Neighborhood Zoning District to A(PD) Planned Development Zoning District to allow up to 4 single family detached residences on a 0.48 gross acre site. CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement recommends approval. Planning Commission recommends approval with (1) no interior partitions in garage ground level; (2) and suggestion of working to reduce building foot print at planned development permit stage, and incorporate green building principles and native plantings; (3) and suggestion for city to review flood policy in Alviso to take into account potential effects of climate change (6-0-1; Platten absent).
PDC06-018 – District 4**

Action: Continued to March 24, 2009 in the afternoon per Rules & Open Government Committee.

- 11.6 Consideration of an ordinance rezoning the real property located on the southwest corner of Hostetter Road and Frost Drive (1728 Hostetter Road) from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow the addition of a 400 square foot outdoor uncovered patio to an existing retail commercial building on a 0.63 gross-acre site (Frost LLC, Owner). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement recommends approval. Planning Commission recommends approval with recommendations at the Planned Development permit stage to address landscape treatment/shrub border, trash receptacles with lids, signage regarding parking on street, and facilitate department of transportation review for possible permit parking on Frost Avenue (7-0-0).
PDC08-022 – District 4**

Action: Continued to March 24, 2009 in the afternoon per Rules & Open Government Committee.

- 11.7 Consideration of an ordinance rezoning the real property located at the west terminus of Fleming Avenue and Nob Hill Drive from Unincorporated County to A(PD) Planned Development Zoning District to allow up to 6 single-family detached residences on a 1.25 gross acre site (Constructive Investments, Owner). CEQA: Mitigated Negative Declaration.
PDC06-007 – District 5**

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on February 6, 2009, submitted by the City Clerk.

Action: Dropped per Administration.

- 11.8 Consideration of an ordinance rezoning the real property located on the northeast corner of Juliet Park Drive and Rosemar Avenue (Tract 8735) from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow up to 17 single family detached residences on a 26.4 gross acre site (Rosemar Enterprises Corp, Owner). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-1-0; Jensen opposed).
PDC06-063 – District 5
(Continued from 1/27/09 – Item 11.3, 2/10/09 – Item 11.2, and 3/10/09 – Item 4.2)**

Documents Filed: (1) Memorandum from Council Member Campos, dated March 16, 2009, recommending approval of the rezoning to allow up to 13 single family detached residences on a 26.4 acre site with conditions as depicted in “Action”. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC06-063, dated January 7, 2009, recommending approval. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated January 15, 2009, transmitting the Planning Commission recommendation. (4) Proof of Publication of Notice of Public Hearing, executed on November 21, 2008, submitted by the City Clerk. (5) Letter from Gerry De Young, Ruth and Going, Inc., dated January 22, 2009, regarding continuing the rezoning from January 27, 2009 to February 10, 2009.

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

Mayor Reed opened the public hearing.

Public Comments: Gerry De Young, representing Rosemar Enterprises, spoke about the merits of the project. He stated that over the last 5 years there had been numerous meetings with the community and added that the Planning Director/Planning Commission recommended up to 17 single family residences. He asked that the Council consider an approval of 17 single family residences or a compromise of 15 single family residences.

Mayor Reed closed the public hearing.

11.8 (Cont'd.)

Motion: Council Member Campos moved approval the Staff/Planning recommendations and her memorandum dated March 16, 2009, to allow up to 13 single family detached residences on a 26.4 acre site with further conditions described in “Action”. Council Member Liccardo seconded the motion.

A short discussion followed.

Council Member Campos pointed out that in the beginning of this project, the developer was only allowed 7 single family residences and that is she not opposed to the higher density. She asked her colleagues to support the motion on the floor and the increase of the units to 13 single family residences.

Action: On a call for the question, the memorandum from Council Member Campos, dated March 16, 2009, and the Staff supplemental conditions were approved, as follows: (1) Approve the proposed Conventional Planned Rezoning to allow up to 13 single family detached residences on a 26.4 acre site. The development of each of these units is subject to a Planned Development Permit Amendment for each lot, which would be reviewed in detail against the General Plan Hillside Development Policies, Single Family Design Guidelines and Residential Design Guidelines and approved by the Planning Director. (2) Prior to the issuance of a Public Works clearance, the developer shall deposit funds with the City to be used for adding shoulder striping and a center line stripe on Rosemar Avenue. Funding may also be used to conduct outreach with the property owners fronting on Rosemar Avenue subject to the striping work. (3) Prior to the issuance of a grading permit, the developer shall have surveyed property owners on both sides of Rosemar Avenue between Fleming Avenue and Juliet Park Drive of interest in constructing additional paved areas located in the public right of way. The new paved areas would not be allowed where it required removal of trees, or any part of retaining walls, fences or irrigation systems. The developer would construct at the time of similar on-site work improvements. (4) Development of any proposed lot with a single level houses shall only occur on the existing pad areas. Lots proposed on areas with grades in excess of 5% shall be developed as natural lots. Houses on such lots shall be processed individually through a Planned Development Permit Amendment. Such lots are allowed a single two car wide driveway and a two car garage. The house plans shall be designed to follow the existing slope of the land. Retaining walls shall not exceed 5 feet when located behind the building and 3 feet when located on the street side of the building or on the side of the building. Pony walls of up to 4 feet are allowed on the exterior of the building; the recommendation of the Planning Commission and the Planning Director was approved, and [Ordinance No. 28516](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the West Side of Rosemar Avenue, North of Juliet Park Drive to A(PD) Planned Development Zoning District”, was passed for publication. (8-0-3. Absent: Chu, Constant, Kalra.)

NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS

In accordance with Sec. 19.16.140d of the San José Municipal Code, this is notice of the City Engineer's pending decision on the following Final Maps:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/ Units</u>	<u>Type</u>	<u>Proposed Decision</u>
9974	E/S of Radio Ave, 160' N of Lincoln Ct	6	Radio Homes, LLC	15 Lots/ 14 Units	SFAD	Approve

OPEN FORUM

Javier Prieto Velez pointed out that homeless people are living under the bridge at Capitol Expressway and Monterey Road. The speaker was referred to the City Manager.

ADJOURNMENT

The Council of the City of San José was adjourned at 7:24 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

smd/3-17-09 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.