

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, MARCH 24, 2009

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

Present: Council Members - Campos, Chu, Constant, Herrera, Kalra, Liccardo, Nguyen, Oliverio; Reed.

Absent: Council Members - Chirco, Pyle. (Excused)

Upon motion unanimously adopted, Council recessed at 9:32 a.m. to a Closed Session in Room W133, (A) to confer with Legal Counsel with respect to anticipated litigation pursuant to Government Code subsection (b) of Section 54956.9 in two matters of significant exposure: (1) In re Claim of Hildebrand; City Department: Department of Transportation; (2) In re Claim of Ghenis; City Department: Parks, Recreation and Neighborhood Services. (B) to confer with Real Property Designated Representatives pursuant to Government Code 54956.8: Property: 292 Stockton Avenue, San José, CA and 610 W. Julian Street, San José, CA; Negotiating Parties: Harry S. Mavrogenes for the Redevelopment Agency of the City of San José and Greg Jamison for Silicon Valley Sports and Entertainment; Under Negotiation: The direction will concern price and terms of payment; Likely Range of Value of Property: Negotiated price and terms of payment based on appraisal and comparable property values. (C) 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

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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. (5) City of San José v. Operating Engineers Local Union 3, et al; Names of Parties Involved: City of San José, Operating Engineers Local Union 3 and DOES 1-2000; Court: Court of Appeal, 6th Appellate District; Case No: H030272; Amount of Money or Other Relief Sought: Injunction to prevent strike/work stoppages; (6) Great Oaks Water, Inc. v. City, et al; Names of Parties Involved: Great Oaks Water Company., John W.S. Roeder, Betty B. Roeder, Betty B. Roeder Trust A and William C. Miller, Jr. and Betty B. Roeder, Trustees of the Walter S. Roeder Trust B, City of San José, San José Redevelopment Agency, Southbay Water Recycling, DOES 1 through 100; Court: Superior Court of California, County of Santa Clara; Case No: 1-04-CV012008; Amount of Money or Other Relief Sought: Damages according to proof; (7) Diaz, et al. v. City; Names of Parties Involved: Juan Diaz, Keith Keesling, Christopher Murphy, Gary Weekley, Karen Allen and other employees similarly situated, City of San José; Court: United States District Court, Northern District of California; Amount of Money or Other Relief Sought: Damages according to proof; (8) Welch, et al. v. City; Names of Parties Involved: Jeffrey Welch, Glen Bishop, Mitchell Witsinski, Robert Culbertson and other employees similarly situated, City of San José; Court: United States District Court, Northern District of California; Case No: C08-02132-JW; Amount of Money or Other Relief Sought: Damages according to proof; (9) La Blanc v. City of San José, et al; Names of Parties Involved: Julie La Blanc, City of San José and DOES 1 through 100; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV111250; Amount of Money or Other Relief Sought: In excess of \$25,000, according to proof; (10) Bernal, et al. v. City, et al; Names of Parties Involved: Mike C. Bernal, Susan R. Bernal, Nanetta Bernal, Lilian Bernal Auvinen, Katherine Lira, Diana Bernal-Tuyor, Mike A. Bernal, Gary James Bernal, Domenico Loverde, Tomas J. Martinez, Authur Paul Lira, Jr., Jerimiah Lira, Sommer Kai Espinosa, Lucia A. Bernal, Guillermo Espinosa, City of San José and DOES 1-25; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-116141; Amount of Money or Other Relief Sought: Damages according to proof; (11) City of San José v. Union Pacific Railroad Company; Names of Parties Involved: City of San José, Union Pacific Railroad Company, a Delaware Corporation and Does 1-15; Court: Superior Court of California, County of Santa Clara; Case No: 1-04-CV-026149; Amount of Money or Other Relief Sought: Seeking to obtain real property through eminent domain for fair market value; (12) De La Rosa, et al. v. City of San José, et al; Names of Parties Involved: Richard E. De La Rosa, Dennis Fong, Jose Mendoza, City of San José, Avo Makdessian and DOES 1-100; Court: Superior Court of California, County of Santa Clara Court, Court of Appeal, 6th Appellate District; Case No: 1-03-CV-817097 & H0331583; Amount of Money or Other Relief Sought: In excess

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of \$25,000 according to proof; (13) San José Silicon Valley Chamber of Commerce Political Action Committee, et al. v. City of San José; Names of Parties Involved: San José Silicon Valley Chamber of Commerce Political Action Committee, COMPAC issues Fund, Sponsored by the San José Silicon Valley Chamber of Commerce, City of San José, San José Elections Commission and DOES 1-10; Court: United States District Court, Northern District of California; Case No: C-06-04252 HRL; Amount of Money or Other Relief Sought: Challenge to SJMC 12.06.310; (14) Vietnamese-American Community of Northern California v. City of San José, et al; Names of Parties Involved: Vietnamese-American Community of Northern California, City of San José, City Council of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-107082; Amount of Money or Other Relief Sought: For declaratory and injunctive relief according to proof; (15) City v. Housing & Development Software; Names of Parties Involved: City of San José, Housing and Development Software, LLC and DOES 1-20; Court: Superior Court of California, County of Santa Clara; Case No: C04-05140 JF; Amount of Money or Other Relief Sought: Damages according to proof; (16) Sutter's Place, Inc. v. City, et al; Names of Parties Involved: Sutter's Place Inc., dba Bay 101, Garden City, Inc., City of San José and Hon. Read Ambler; 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 seek 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; (17) Sutter's Place, Inc. v. City, et al; 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; (18) Paixao v. City, et al; Names of Parties Involved: Michael Paixao, City of San José and DOES 1 through 10; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-121597; Amount of Money or Other Relief Sought: Damages according to proof; (19) Berg & Berg Enterprises, LLC v. City, et al; Names of Parties Involved: Berg & Berg Enterprises, LLC, City of San José, San José City Council and DOES 1-50; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV-091955; Amount of Money or Other Relief Sought: Damages according to proof; (20) Rancho San Vicente LLC v. City, et al; Names of Parties Involved: Rancho San Vicente LLC, City of San José, San José City Council and Joseph Horwedel, sued herein in his capacity of Director of Planning, Building and Code Enforcement of the City of San José and DOES 1-30; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV081056; Amount of Money or Other Relief Sought: Damages according to proof; (21) Calderon, et al. v. City, et al; Names of Parties Involved: Ascencion Calderon and Samuel Santana, City of San José, San José Police Department, Officer Kepler, Officer McAlavey and DOES 1 through 20; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV088285; Amount of Money or Other Relief Sought: Damages according to proof; (22) Diamond Enterprises, et al. v. City of San José, et al; Names of Parties

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Involved: Jenny Wolfes Diamond Enterprises, SJ dba Studio 8, City of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-06-CV071844; Amount of Money or Other Relief Sought: Damages according to proof; (23) Fisher, et al. v. City of San José, et al; Names of Parties Involved: Steven Fisher, Sandra Fisher, City of San José, City of San José Police Department, Officer Barnet, Officer Boler, Officer Correa, Officer Esquivel, Officer Honda, Officer Kinsworthy, Officer O'Brien, Officer Ryan and Officer Nguyen; Court: United States District Court, Northern District of California and U.S. Court of Appeals, 9th Circuit; Case No: C01-21192 PVT and 04-16095; Amount of Money or Other Relief Sought: Damages according to proof; (24) Kerkeles v. City of San José, et al; Names of Parties Involved: Michael Kerkeles, aka Michael Kerk, City of San José, Matthew Christian and DOES 1-25; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV103523; Amount of Money or Other Relief Sought: Damages according to proof; (25) Moscoso v. City of San José, et al; Names of Parties Involved: Aleyda Maritza Moscoso, Personal Representative of the Estate of Jorge Luis Truillo, Robert L. Davis, City of San José, John DOES 1 through 25; Court: United States District Court, Northern District of California; Case No: C07 02998 JF; Amount of Money or Other Relief Sought: Damages according to proof; (26) Salinas v. City of San José, et al; Names of Parties Involved: Noreen Salinas, City of San José, Chief Robert Davis, Taser International, Inc. and DOES 1 to 10; Court: United States District Court, Northern District of California; Case No: C08-02625 RS; Amount of Money or Other Relief Sought: Damages according to proof; (27) Salinas, et al. v. City of San José, et al; Names of Parties Involved: Roberta Salinas, by and through her guardian ad litem, Carlos Salinas, George Salinas, Frances Salinas, Carlos Salinas, Olivia Salinas, Loretta Salinas and the Estate of Steve Salinas, City of San José, a municipal corporation and DOES 1-50; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-116174; Amount of Money or Other Relief Sought: Damages according to proof; (28) Watson, et al. v. City of San José, et al; Names of Parties Involved: Tracy Watson, Renee Stalker, Olivia Stalker, Shafer Watson Riley Watson, County of Santa Clara, County of Santa Clara Department of Family and Children Services; County of Santa Clara Department of County Counsel; County of Santa Clara District Attorney's Office; Santa Clara Valley Medical Center; Evergreen School District; City of San José, San José Police Department, Norma Sparks, Yazmina Letona, Sharon Burgan, Jewels Ramirez, Vu Tran, Ann Miller Ravel, Rima Singh, Aaron West, George Kennedy, Clifton Black, Rose Real, Robert Pruitt, Cheryl Harms, Claudia Blodgett, Gary Kishimoto, John Hamilton, Anita Noble, Janet Kahle, Mary Ritter, David Kearns, Rajul Kazi, Rob Davis, William Hoyt and Craig Blank; Court: United States District Court, Northern District of California; Case No: C06-04029 RMW; Amount of Money or Other Relief Sought: Damages according to proof; (29) Williams, et al. v. City of San José, et al; Names of Parties Involved: Thomas Williams and Nancy Williams, individually and as joint personal representatives of the Estate of Ty Williams, Todd Williams, Trina Williams and Keith Lusk, City of San José, Cristiano Bindi, individually and in his capacity as a police officer for the City of San José, Gregory Salas, individually and in his capacity as a police officer for the City of San José and DOES 3-10; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV100074; Amount of Money or Other Relief Sought: Damages according to proof; (30) Lefall, et al. v. City of San José;

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Names of Parties Involved: Dion Lefall, George Louie, Gloria Vaughn and Derrick Jackson for themselves and on behalf of all others similarly situated, City of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV-094037; Amount of Money or Other Relief Sought: Damages according to proof; (31) Licking Enterprises, Inc. v. City, et al; Names of Parties Involved: Licking Enterprises, Inc., City of San José, a municipal corporation, San José City Council, Ron Gonzales, Cindy Chavez, Pat Dando, Ken Yeager, Chuck Reed, Forrest Williams, Linda J. LeZotte, Nora Campos, George Shirakawa, Jr., David Cortese, John DiQuisto, sued in their official capacities; Court: United States District Court, Northern District of California; Case No: C07-00735 RMW (PVT); Amount of Money or Other Relief Sought: Damages according to proof; (32) Smith v. City of San José, et al; Names of Parties Involved: Ted Smith, City of San José, San José Elections Commission and DOES 1-20; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV-089167; Amount of Money or Other Relief Sought: Damages according to proof; (33) International Association of Firefighters, et al. v. City; Names of Parties Involved: City of San José, International Association of Firefighters, Local Union 230 and DOES 1-50 and San José Police Officers' Association; Court: Superior Court of California, County of Santa Clara and Court of Appeal, 6th Appellate District; Case No: 1-06-CV-075858 and H032097; Amount of Money or Other Relief Sought: Damages according to proof; (34) Bojcic, et al. v. City of San José, et al; Names of Parties Involved: Estate of Zaim Bojcic, Ajnija Bojcic, City of San José, San José Police Department, Officer Donald Guess; Court: United States District Court, Northern District of California and U.S. Court of Appeals, 9th Circuit; Case No: C05-03877 RS; Amount of Money or Other Relief Sought: Damages according to proof; (35) City of San José, et al. v. Alvarez, et al; Names of Parties Involved: City of San José and Santee Neighborhood Property Owners; Court: Superior Court of California, County of Santa Clara; Case No: 1-06-CV-759667 and related cases; Amount of Money or Other Relief Sought: Permanent injunction; (36) Barrera, et al. v. City, et al.; Names of Parties Involved: Bernardino Barrera, Dolores Barrera, Maria Barrera, Jose Barrera, A.B., a minor child, by and through her Guardian ad Litem, Dolores Barrera, City of San José; Court: United States District Court, Northern District of California; Case No: C09-00858 PVT; Amount of Money or Other Relief Sought: Damages according to proof. (D) 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;

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(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 11:55 a.m. and reconvened to Regular Session at 1:35 p.m. in the Council Chambers.

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

Absent: Council Members - Chirco. (Excused)

INVOCATION

Talented thirteen year old Elise Gillum, Ballet San José School, provided a brilliant performance. (District 3)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Council Member Constant and carried unanimously, the Orders of the Day and the Amended Agenda were approved, Items 4.2 (evening) and 5.1 were deferred to April 7, 2009, and Joint Council/ Redevelopment Agency Board Item 8.2 was heard and action was continued to April 7, 2009. (10-0-1. Absent: Chirco.)

CEREMONIAL ITEMS

1.1 Presentation of a proclamation in honor of the Assyrian New Year in the City of San José. (Chu/Pyle/Kalra)

Action: Mayor Reed and Council Members Chu, Pyle and Kalra recognized Assyrian New Year in the City of San José.

1.2 Presentation of a proclamation in honor of the Iranian New Year in the City of San José. (Chu/Pyle/Kalra)

Action: Mayor Reed and Council Members Chu, Pyle and Kalra recognized the Iranian New Year in the City of San José.

1.3 Presentation of a proclamation declaring March 25, 2009 as “Greek Independence Day” in the City of San José. (Constant)

Action: Mayor Reed and Council Member Constant acknowledged March 25, 2009 as “Greek Independence Day” in the City of San José.

1.4 Presentation of a proclamation recognizing the month of April 2009 as “Donate Life California Month” in the City of San José. (Mayor)

Action: Mayor Reed recognized the month of April 2009 as “Donate Life California Month” in the City of San José.

1.5 Presentation of a proclamation declaring March 28, 2009 as “SWAN (Support Women Artists Now) Day” in the City of San José. (Mayor) (Rules Committee referral 3/11/09)

Action: Mayor Reed recognized March 28, 2009 as “SWAN (Support Women Artists Now) Day” in the City of San José.

CONSENT CALENDAR

Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (10-0-1. Absent: Chirco.)

- 2.1 Approval of minutes.**
- (a) **Regular Minutes of January 13, 2009.**
 - (b) **Special Minutes of January 20, 2009.**
 - (c) **Regular Minutes of January 27, 2009.**

Documents Filed: (1) The Regular Minutes dated January 13, 2009 and January 27, 2009.
(2) The Special Minutes dated January 20, 2009.

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

- 2.2 (a) ORD. NO. 28511 – Amending Part 2 of Chapter 18.08 of Title 18 of the San José Municipal Code, entitled “Procedures,” to add a new Section allowing the withdrawal of, or deeming withdrawn, applications to amend the General Plan under certain specified circumstances, and to make other non-substantive technical clarifications to said Part 2 of Chapter 18.08 of Title 18, amending Section 20.100.390 of Chapter 20.100 and Section 20.120.070 of Chapter 20.120, all of Title 20 of the San José Municipal Code, to allow certain development permit or approval applications or rezoning applications to be deemed withdrawn under certain circumstances of inactivity, and amending Section 20.100.170 of Chapter 20.100.170 of Chapter 20.100 of Title 20 of the San José Municipal Code to clarify that applicants of development permits or approvals may withdraw applications.**

Documents Filed: Proof of Publication of the title of Ordinance No. 28511 executed on March 17, 2009, submitted by the City Clerk.

Action: [Ordinance No. 28511](#) was adopted. (10-0-1. Absent: Chirco.)

- 2.3 As recommended by the Parks and Recreation Commission on March 4, 2009, name a plaza located in Evergreen Park at the corner of San Felipe and Yerba Buena Roads as John J. Montgomery Plaza. (City Clerk)**

Documents Filed: Memorandum from City Clerk Lee Price, dated March 9, 2009, transmitting the recommendations of the Parks and Recreation Commission.

Council Member Herrera acknowledged the efforts of former Vice Mayor Cortese to name the plaza after John J. Montgomery, an aviation pioneer, inventor and professor at Santa Clara College.

Public Comments: Gordon Lund spoke in support to the staff recommendations and noted that the plaza is an important symbol of creativity.

Action: Upon motion by Council Member Herrera, seconded by Council Member Oliverio and carried unanimously, the plaza located in Evergreen Park at the corner of San Felipe and Yerba Buena Roads was named “John J. Montgomery Plaza”. (10-0-1. Absent: Chirco.)

- 2.4 Approve the Sixth Amendment to the Investment Custodial Services Agreement with Wells Fargo Bank to extend the term of the agreement for three months from April 1, 2009 through June 30, 2009 and to increase the maximum compensation by \$12,500 for the extended term in an amount not to exceed \$50,000. CEQA: Not a Project. (Finance)**

Documents Filed: Memorandum from Deputy Director of Finance Julia Cooper, dated March 2, 2009, recommending approval of the sixth amendment to the agreement.

Action: The Sixth Amendment to the Investment Custodial Services Agreement with Wells Fargo Bank to extend the term of the agreement for three months from April 1, 2009 through June 30, 2009 and to increase the maximum compensation by \$12,500 for the extended term in an amount not to exceed \$50,000 was approved. (10-0-1. Absent: Chirco.)

- 2.5 Approve the Eighth Amendment to the General Banking Services Agreement with Union Bank of California to extend the term of the agreement for three months from April 1, 2009 through June 30, 2009 and to increase the Agreement's total maximum compensation by \$262,500 for the extended term in an amount not to exceed \$1,050,000. CEQA: Not a Project. (Finance)**

Documents Filed: Memorandum from Deputy Director of Finance Julia Cooper, dated March 2, 2009, recommending approval of the eighth amendment of the agreement.

Action: The Eighth Amendment to the General Banking Services Agreement with Union Bank of California to extend the term of the agreement for three months from April 1, 2009 through June 30, 2009 and to increase the Agreement's total maximum compensation by \$262,500 for the extended term in an amount not to exceed \$1,050,000 was approved. (10-0-1. Absent: Chirco.)

- 2.6 Adopt a resolution amending the Conflict of Interest Code for the City of San José. (City Clerk)
(Deferred from 3/10/09 – Item 3.5)**

Documents Filed: Memorandum from City Clerk Lee Price and City Attorney Richard Doyle, dated February 26, 2009, recommending adoption of a resolution.

Action: [Resolution No. 74837](#), entitled: "A Resolution of the Council of the City of San José Amending the Conflict of Interest Code for the City of San José", was adopted. (10-0-1. Absent: Chirco.)

- 2.7 Request for an excused absence for Council Member Chu from the Regular Meeting of the Public Safety, Finance and Strategic Support Committee on April 16, 2009 due to Authorized City Business: League of California Cities Board Meeting in Sacramento, CA. (Chu)
(Rules Committee referral 3/11/09)**

2.7 (Cont'd.)

Documents Filed: Memorandum from Council Member Chu, dated March 9, 2009, requesting an excused absence due to authorized City business.

Action: The absence for Council Member Chu was excused. (10-0-1. Absent: Chirco.)

**2.8 Request for an excused absence for Council Member Constant from the Regular Meeting of the Rules and Open Government Committee on April 1, 2009 due to illness of close family member. (Constant)
(Rules Committee referral 3/11/09)**

Documents Filed: Memorandum from Council Member Constant, dated March 10, 2009, requesting an excused absence due to an illness of a close family member.

Action: The absence for Council Member Constant was excused. (10-0-1. Absent: Chirco.)

**2.9 Approve travel by Council Member Nguyen to Australia on May 21 – June 3, 2009 to serve as a delegate, representing the United States, with the American Council of Young Political Leaders (ACYPL) International Exchange Program. Source of Funds: The American Council of Young Political Leaders (ACYPL). (Nguyen)
(Rules Committee referral 3/18/09)**

Documents Filed: Memorandum from Council Member Nguyen, dated March 11, 2009, requesting approval of travel.

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

END OF CONSENT CALENDAR

NEIGHBORHOOD SERVICES

**5.4 As referred by the Rules and Open Government Committee on March 11, 2009, discuss and consider adoption of the César E. Chávez Memorial Walkway. CEQA: Exempt, File No. PP09-056. (Mayor/Campos/Liccardo)
[Rules Committee referral 3/11/09 – Item 3.2(10)(4)]**

Documents Filed: (1) Memorandum from Mayor Reed, Council Members Campos and Liccardo, dated March 12, 2009, recommending adoption of the recommending route and attachments and direction to the Redevelopment Agency Board. (2) Memorandum from City Clerk Lee Price, dated March 11, 2009, transmitting the recommendations of the Rules and Open Government Committee.

5.4 (Cont'd.)

Mayor Reed outlined the recommendations in the memorandum he cosigned with Council Members Campos and Liccardo, to designate a memorial walkway in honor of César E. Chávez.

Public Comments: Speaking in support to designate a memorial walkway in honor of César E. Chávez were Rudy Chávez Medina (César E. Chávez Family Visions, Inc.), Reverend Sal Alvarez and Elsie Aranda.

Motion: Council Member Campos moved approval of the joint memorandum she cosigned with Mayor Reed and Council Member Liccardo, dated March 12, 2009. Council Member Liccardo seconded the motion.

A short discussion followed.

Action: On a call for the question, the motion carried unanimously, the route and signage for the César E. Chávez Memorial Walkway was adopted per the approved memorandum from Mayor Reed and Council Members Campos and Liccardo, dated March 12, 2009. The Redevelopment Agency and Department of Transportation Staffs were directed to continue to work in coordination with the César Chávez Family Visions, Inc., community based organizations, the Latino and Filipino community and other stakeholders in implementing the César E. Chávez Memorial Walkway. (10-0-1. Absent: Chirco.)

STRATEGIC SUPPORT SERVICES

3.2 Report of the Rules and Open Government Committee – March 4, 2009 Mayor Reed, Chair

Documents Filed: The Rules and Open Government Committee Meeting Report dated March 4, 2009.

Action: Upon motion by Council Member Pyle, seconded by Council Member Liccardo and carried unanimously, the Report of the Rules and Open Government Committee and the actions of March 4, 2009 were accepted. (9-0-2. Absent: Chirco, Constant.)

- 3.4
- (a) **Authorize the City Attorney to execute the litigation settlement agreements with Sutter's Place, Inc., dba Bay 101 and Garden City, Inc.**
 - (b) **Approve an ordinance revising Title 16 of the San José Municipal Code, Gaming Control Regulatory Program, to clarify and enhance the scope, terms, conditions and procedures of regulation of cardrooms and funding sources, and to make technical changes to the Title.**

- 3.4 (c) **Adopt a resolution of the Council of the City of San José initiating proceedings on its own motion pursuant to the provisions of Section 20.120.010 of Chapter 20.120 of Title 20 of the San José Municipal Code to amend Sections 20.40.100, 20.50.100, 29.90.060, add a new Part 13.5 to Chapter 20.80, and add a new Section 20.200.995 of said Title 20 to provide for the appropriate location of relocated cardrooms, setting a public hearing thereon, and referring said proposed Title 20 amendments to the Planning Commission for report or recommendation.**
- (d) **Adopt a resolution amending Resolution No. 72737 (the Schedule of Fees) as amended, to decrease cardroom table fees for Fiscal Year 2008-2009 to \$24,482.00.**

CEQA: Not a Project. (City Attorney's Office)

Documents Filed: (1) Memorandum from Mayor Reed, Vice Mayor Chirco and Council Member Campos, dated March 20, 2009, recommending acceptance of the settlement agreement with direction to staff. (2) Memorandum from City Attorney Richard Doyle, dated March 10, 2009, recommending authorization of the litigation settlement, approval of an ordinance and adoption of resolutions. (3) Letter from Michele Lew, President/CEO, Asian Americans for Community Involvement, dated March 24, 2009, expressing approval of the proposed settlement.

City Attorney Richard Doyle summarized the settlement of the cardroom litigation. He pointed out that the proposed settlement resulted in a dismissal of pending lawsuits challenging certain amendments to Title 16 made in 1999 and the legality of the assessment of table fees through Fiscal Year 2008-2009.

Motion: Council Member Campos moved approval of the memorandum she cosigned with Mayor Reed and Vice Mayor Chirco. Council Member Constant seconded the motion.

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

Council Member Nguyen requested that Staff reach out to the nonprofits and community groups that have a connection with the Asian-American community and other ethnic groups, such as Asian-Americans for Community Involvement (AACI) once the outreach process begins. Council Member Chu concurred with the request from Council Member Nguyen.

Public Comments: Speaking in favor of the Staff recommendations and encouraging a fair and equitable process were Patricia Gardner, Executive Director (Silicon Valley Council of Nonprofits), Denise Scoval (InnVision), Scott Maurer (Katherine and George Alexander Community Law Center), Michael Pritchard (Pathway Society), Michele Lew (Asian-Americans for Community Involvement), Lien Cao (Asian-American Recovery Services) and Ross Signorino.

Council Members Campos, Kalra, Herrera, Constant, Chu and Nguyen provided meeting disclosures.

3.4 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, the memorandum from Mayor Reed, Vice Mayor Chirco and Council Member Campos, dated March 20, 2009 was approved, accepting the settlement agreement, including: Staff directed to develop and bring to the HNMF Leadership Committee a framework for administering the Charitable and Non-Profit Contributions to address the social problems associated with gambling from the Settlement of the Cardroom Litigation that includes: (1) An outreach process to the nonprofit community that ensures the City's nonprofit partners are aware of the availability of these resources. (2) An allocation and distribution plan that is consistent with both the settlement and the Healthy Neighborhoods strategic work plan approved by the City Council in October 2008. (3) Scenarios for reimbursing costs associated with administration of the funds, exploring both City and non-City options. Staff requested to reach out to the nonprofits and community groups that have a connection with the Asian-American community and other ethnic groups, i.e. Asian-Americans for Community Involvement (AACI) once the outreach process begins; [Ordinance No. 28517](#), entitled: "An Ordinance of the City of San José Amending Title 16 of the San José Municipal Code, Gaming Control Regulatory Program, To Clarify and Enhance the Scope, Terms, Conditions and Procedures of Regulation of Cardrooms and Funding Sources and To Make Technical Changes to the Title", was passed for publication and [Resolution No. 74838](#), entitled: "A Resolution of the Council of the City of San José Initiating Proceedings on Its Own Motion to Amend Section 20.40.100 of Chapter 20.40, Section 20.50.100 of Chapter 20.50 and Section 20.90.060 of Chapter 20.90 and Adding a New Part 13.5 to Chapter 20.80 and a New Section 20.200.995 to Chapter 20.200, All of Title 20 of the San José Municipal Code (The Zoning Code) To Establish Land Use Regulations for Relocated Cardrooms" and [Resolution No. 74839](#), entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 72737 as Previously Amended by Resolution Numbers 73242, 73831 and 74452 to Decrease Cardroom Table Fees (SJMC Section 16.30.060B) for Fiscal Year 2008-2009", were adopted. (10-0-1. Absent: Chirco.)

Council Member Constant left the Council Meeting.

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

Documents Filed: The Rules and Open Government Committee Report dated February 18, 2009.

Action: Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, the Report of the Rules and Open Government Committee and the actions of February 18, 2009 were accepted. (9-0-2. Absent: Chirco, Constant.)

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

Documents Filed: The Rules and Open Government Committee Report dated February 25, 2009.

Action: Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, the Report of the Rules and Open Government Committee and the actions of February 25, 2009 were accepted. (9-0-2. Absent: Chirco, Constant.)

COMMUNITY & ECONOMIC DEVELOPMENT

**4.1 Report of the Community & Economic Development Committee Special Meeting
March 12, 2009, Council Member Pyle, Chair**

Documents Filed: The Community & Economic Development Committee Special Meeting Report dated March 12, 2009.

Motion: Council Member Pyle moved approval of the Community & Economic Development Committee Special Meeting Report. Council Member Herrera seconded the motion.

Council Member Herrera requested that Staff correct the Committee minutes to reflect “approved vendor list”.

Action: On a call for the question, the motion carried unanimously, the Report Community & Economic Development Committee Special Meeting and the actions of March 12, 2009 were accepted, with a correction to the minutes on Page 3, Paragraph 7 as follows, modify “*improved*” vendor list to “*approved*” vendor list. (9-0-2. Absent: Chirco, Constant.)

**4.6 Accept the verbal report by the City Manager on the Community & Economic Development Committee Special Meeting of March 12, 2009, related to the City’s Policies on Contracting for Services. (City Manager)
[Community & Economic Development Committee referral 03/12/09 – Item 4.1(2)]**

Deputy City Manager Edward K. Shikada summarized the City’s Policies on Contracting for Services.

Public Comments: Lisa Jensen encouraged Council to move forward on the City’s Policies on Contracting for Services.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the verbal report by the City Manager on the Community & Economic Development Committee Special Meeting of March 12, 2009, related to the City’s Policies on Contracting for Services was accepted. (9-0-2. Absent: Chirco, Constant.)

4.2 Direct the City Manager 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 the City Council Policy 6-30: Public Outreach, relating to Tree Removal Permit; and**
- (c) **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)
(Deferred from 3/17/09 – Item 4.2)**

Action: Deferred to April 7, 2009 in the evening, per Orders of the Day.

4.3 Approve an amendment of the Option Agreements with Coleman Airport Partners, LLC for the Airport West property located at 1125 Coleman Avenue to eliminate the requirement of the developers to provide a letter of credit under the agreements. CEQA: Not a Project. Council District 3. (Economic Development)

Documents Filed: Memorandum from Chief Development Officer Paul Krutko, dated March 2, 2009, recommending approval of an amendment of the option agreements.

Public Comments: Don Gagliardi, Soccer Silicon Valley, spoke in support to the Staff recommendations.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, an amendment of the Option Agreements with Coleman Airport Partners, LLC for the Airport West property located at 1125 Coleman Avenue to eliminate the requirement of the developers to provide a letter of credit under the agreements was approved. (9-0-2. Absent: Chirco, Constant.)

4.4 Report on Request for Proposal and adopt a resolution authorizing the Director of Finance to:

- (a) **Execute five-year agreements with each of the following companies for City Generated Zone Towing Services:**
 - (1) **Zone 1: Matos Auto Towing and Transport (San José, CA).**
 - (2) **Zone 2: City Towing, Inc. (San José, CA).**
 - (3) **Zone 3: Century Tow (San José, CA).**
 - (4) **Zone 4: Motorbody Company, Inc. (San José, CA).**
 - (5) **Zone 5: Courtesy Tow Services, Inc. (San José, CA).**
 - (6) **Zone 6: Delta Towing, Inc. (San José, CA)**
- (b) **Exercise two one-year options to extend the agreements.**
- (c) **Award any Zone to an alternate tow company and to execute an Agreement with that company in the event that any of the companies recommended above is unable to deliver the required deposit and contract documentation by 4:00 p.m. on March 25, 2009.**

CEQA: Not a Project. (Finance)

4.4 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Finance Scott Johnson, dated March 5, 2009, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Finance Scott Johnson, dated March 20, 2009, advising the Council on the appeal of the Chief Purchasing Officer's protest determination with regard to the proposal submitted by Extreme Towing, Inc. on March 6, 2009 for Zones 3 and 6 and recommend that Council deny the appeal from Extreme Towing.

Deputy Director of Finance Walter Rossman presented the Staff report on City generated zone towing services, including details of the protest and appeal of Extreme Towing, Inc.

Willard Alves, General Manager, Appellant, Extreme Towing, Inc., argued in protest of the award of the towing zones to its competitors and of the low scores of Extreme Towing, Inc. in the areas of customer restroom facilities, closed circuit security system and employee training material. He observed that with specific clarifications in the Request for Proposal process an applicant would have more of an equal advantage competing with the other companies.

Motion: Council Member Liccardo moved to uphold the Staff recommendation of denial and approval of the original staff recommendations. Council Member Nguyen seconded the motion.

Public Comments: Burt Dean, Rebello's Towing, commented on the subject of providing high quality towing services to the residents of the City of San José. Ross Signorino asked about how the pollution and ground contamination is being handled and whether it is being monitored.

Action: On a call for the question, the motion carried unanimously, the appeal was denied and [Resolution No. 74840](#), entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Finance to Execute Agreements with Six Towing Companies for City Generated Zone Towing Services", was adopted. (8-0-3. Absent: Chirco, Constant, Pyle.)

4.5 **Conduct a public hearing and adopt a resolution amending the FY 08-09 Fee Resolution to adjust certain Planning fees to cost recovery and make other minor fee changes. CEQA: Not a Project. (Planning, Building and Code Enforcement)**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated March 9, 2009, recommending adoption of a resolution. (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.

4.5 (Cont'd.)

Action: Upon motion by Council Member Oliverio, seconded by Council Member Liccardo and carried unanimously, [Resolution No. 74841](#), entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 72737 as Previously Amended by Resolution Numbers 73242, 73831 and 74452 to Adjust Certain Planning Fees to Cost Recovery and Make Other Minor Fee Changes”, was adopted. (8-0-3. Absent: Chirco, Constant, Pyle.)

- 4.7 Conduct a public hearing on 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 & 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

(Continued from 3/17/09 – Item 11.4)

Documents Filed: (1) Memorandum from Council Member Liccardo, dated March 23, 2009, recommending approval of the Planning/Staff recommendations, including amendments as depicted in “Action”. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC08-005, dated February 13, 2009, recommending approval. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated February 26, 2009, transmitting the recommendation of the Planning Commission. (4) Proof of Publication of Notice of Public Hearing, executed on February 6, 2009, submitted by the City Clerk.

Mayor Reed opened the public hearing.

Brian Boguezz, Owner, spoke to the merits of the rezoning and in support of the memorandum from Council Member Liccardo.

Public Comments: Speaking in support to the rezoning of the real property located at 55 North Eleventh Street were Dr. Oscar Battle, Jr., Mattie Tinsley and Ellen Rolling (African American Heritage House Museum).

Mayor Reed closed the public hearing.

Director of Planning, Building and Code Enforcement Joseph Horwedel and City Attorney Richard Doyle responded to Council questions.

4.7 (Cont'd.)

Motion: Council Member Liccardo moved approval of the Staff/Planning recommendations and his memorandum dated March 23, 2009, with additional amendments, as described in "Action". Council Member Herrera seconded the motion.

A short discussion followed.

Action: On a call for the question, the motion carried unanimously, the memorandum from Council Member Liccardo, dated March 23, 2009, was approved, as amended: (1) Approving the rezoning and to allow the construction of an additional three, single family attached residential units on the site, *including any permitted addition to and movement of the existing structure*. (2) *Staff directed to return on April 7, 2009 with a resolution for the City Council to nominate and initiate proceeding to consider the residence located at 55 North 11th Street as a City Landmark of special historic, architectural, cultural, aesthetic or engineering interest or value of a historic nature*. (3) *Request Staff to proceed with processing of the permits applicable to any of these units irrespective of what happens with the original structure through the process of the Historic Landmarks Commission*. (a) In the meantime, any site development or building permits relating to the alteration of or addition to the original structure should be considered by Staff with consideration to the possibility that a landmark designation may result from this process. (b) Staff should apply parking requirements flexibility to allow for full utilization of this parcel, in light of the applicant's efforts to restore the historic structure and given the low density of the development relative to its General Plan designation of 25-50DU/AC; the recommendation of the Planning Commission and the Planning Director was approved, [Ordinance No. 28518](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated at the West Side of the North Eleventh Street Approximately 300 Feet North of East Santa Clara Street (55 N. 11th Street) to A(PD) Planned Development Zoning District", was passed for publication. (9-0-2. Absent: Chirco, Constant.)

- 4.8 Conduct a public hearing on consideration of an ordinance rezoning the real property located on the north side of Michigan Avenue, approximately 350 feet easterly of North 1st Street 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) suggestion of working to reduce building foot print at planned development permit stage, incorporate green building principles and native plantings; (3) 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

4.8 (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC06-018, dated February 17, 2009, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated February 26, 2009, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing, executed on February 6, 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: Upon motion by Council Member Chu, seconded by Council Member Campos and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and [Ordinance No. 28519](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the North Side of Michigan Avenue Approximately 350 Feet Easterly of North 1st Street (APN 015-05-082) to A(PD) Planned Development Zoning District", was passed for publication. (9-0-2. Absent: Chirco, Constant.)

4.9 **Conduct a public hearing on 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 (Continued from 3/17/09 – Item 11.6)**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC08-022, dated February 2, 2009, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated February 23, 2009, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing, executed on January 16, 2009, submitted by the City Clerk. (4) Letter from Davy Hua, dated March 24, 2009, protesting the rezoning and submitting five signatures of residents in protest.

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

4.9 (Cont'd.)

Action: Upon motion by Council Member Chu, seconded by Council Member Oliverio and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and [Ordinance No. 28520](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Southwest Corner of Hostetter Road and Frost Drive (1728 Hostetter Road) to A(PD) Planned Development Zoning District”, was passed for publication. (9-0-2. Absent: Chirco, Constant.)

NEIGHBORHOOD SERVICES

5.1 Report of the Neighborhood Services and Education Committee – March 12, 2009 Council Member Campos, Chair

Action: Deferred to April 7, 2009 per Orders of the Day.

5.2 Conduct a Public Hearing on the draft Consolidated Plan Annual Action Plan for FY 2009-2010, which is required by the Department of Housing and Urban Development in order to receive Federal Housing and Community Development funding, and announce that as of March 17, 2009, the draft Action Plan is available to the public for thirty-days for review and comment. CEQA: Not a Project. (Housing)

Documents Filed: (1) Memorandum from Director of Housing Leslye Krutko, dated March 2, 2009, recommending conducting a public hearing on the draft Consolidated Plan Annual Action Plan for FY 2009-2010. (2) Supplemental memorandum from Director of Housing Leslye Krutko, dated March 17, 2009, transmitting the recently released Annual Action Plan FY 2009-2010.

Reed opened the public hearing.

Director of Housing Leslye Krutko summarized the draft Consolidated Plan Annual Action Plan for FY 2009-2010.

Public Comments: Melissa Morris, Law Foundation of Silicon Valley, suggested if additional funds are received from the Federal government, that some of the monies be allocated to the organizations that provide fair housing.

Mayor Reed closed the public hearing.

Action: On March 17, 2009, the draft Consolidated Plan Annual Action Plan for FY 2009-2010 was made available to the public for thirty-days for review and comment. There was no Council action.

STRATEGIC SUPPORT SERVICES

- 3.5 (a) **Interview candidate and consider an appointment to fill an unscheduled vacancy for the active employee member of the Police Department on the Board of Administration of the Police and Fire Department Retirement System for a term expiring November 30, 2009.**
- (b) **Interview candidate and consider an appointment to fill an unscheduled vacancy for the active employee member of the Fire Department on the Board of Administration of the Police and Fire Department Retirement System for a term expiring November 30, 2011.**

(City Clerk)

Documents Filed: Memorandum from City Clerk Lee Price, dated March 9, 2009, recommending considering an appointment to fill an unscheduled vacancy for the active employee member of the Police Department on the Board of Administration and an appointment to fill an unscheduled vacancy for the active employee member of the Fire Department on the Board of Administration of the Police and Fire Department Retirement System.

The Mayor and Council Members interviewed Conrad Taylor and Keith Kessler.

Public Comments: Jeff Welch (Local 230, San José Firefighters) expressed his support to the appointment of Keith Kessler to the Board of the Police and Fire Department Retirement System. Ross Signorino voiced comments about the interview process.

Action: Upon motion by Council Member Herrera, seconded by Council Member Campos and carried unanimously, Conrad Taylor of the Police Department was appointed to the Board of Administration of the Police and Fire Department Retirement System for a term expiring November 30, 2009. (9-0-2. Absent: Chirco, Constant.)

Upon motion by Council Member Pyle, seconded by Council Member Campos and carried unanimously, Keith Kessler of the Fire Department was appointed to the Board of Administration of the Police and Fire Department Retirement System for a term expiring November 30, 2011. (9-0-2. Absent: Chirco, Constant.)

NEIGHBORHOOD SERVICES

- 5.3 **Adopt a resolution nominating a portion of the Washington Strong Neighborhood Area for designation as the Guadalupe/Washington Conservation Area and directing the Department of Planning, Building and Code Enforcement to initiate the required process and proceedings to establish the Conservation Area. CEQA: Exempt under the provisions of Section 15307 of the State Guidelines for Implementation of the California Environmental Quality Act. Council Districts 3 and 7. SNI: Washington. (Planning, Building and Code Enforcement)**

5.3 (Cont'd.)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated March 2, 2009, recommending adoption of a resolution.

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

Council Member Liccardo requested information about using multi-lingual noticing for outreach.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and carried unanimously, [Resolution No. 74842](#), entitled: “A Resolution of the Council of the City of San José Initiating Proceedings on Its Own Motion, Pursuant to the Provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, To Designate the Washington Area, Generally Bounded on the North by Interstate 280, on the East by the Rear Property Lines of the Commercial Properties on the West Side of South First Street, On the West by the Guadalupe River and on the South By Portions of Willow Street and the Rear Property Lines of Properties on the North Side of Willow Street, As a Conservation Area with Identifiable Attributes Embodied by: Architecture, Urban Design, Development Patterns, Setting or Geography and History”, was adopted. Staff was requested to return with more information on using multi-lingual noticing for outreach. (8-0-3. Absent: Chirco, Constant, Kalra.)

TRANSPORTATION & AVIATION SERVICES

6.2 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) **Re-adopting 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)]
(Deferred from 3/17/09 – Item 6.3)**

Action: Deferred to April 14, 2009 per Administration.

ENVIRONMENTAL & UTILITY SERVICES

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

- (a) Approve development of a Request for Proposals 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 Request for Proposals.
- (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)]

(Deferred from 3/17/09 – Item 7.2)

Documents Filed: (1) Memorandum from Council Members Chu, Herrera, Campos and Kalra, dated March 20, 2009, recommending acceptance of the Staff recommendations with amendments as depicted in "Action". (2) Supplemental memorandum from City Attorney Richard Doyle, dated March 19, 2009, providing background on the commercial solid waste redesign. (3) Memorandum from City Clerk Lee Price, dated March 5, 2009, transmitting the recommendations of the Transportation and Environment Committee. (4) Supplemental memorandum Director of Environmental Services John Stufflebean, dated March 12, 2009, providing additional information on the benefits of combining recyclables collection and processing services, the impacts of a prevailing wage requirement for recyclables sorters on the proposed commercial solid waste system and proposed program components that reduce costs and encourage competition.

Director of Environmental Services John Stufflebean summarized a staff report on the commercial solid waste redesign and responded to Council questions.

Motion: Council Member Chu moved approval of the memorandum he cosigned with Council Members Herrera, Campos and Kalra. Council Member Herrera seconded the motion.

Public Comments: Speaking in support to motion, the living wage, two separate Requests for Proposal and the inclusion of the Labor Peace in both Requests for Proposals were Mark Arsenault (Norcal Stevens Creek Disposal and Recycling), Charles Ackman (Stevens Creek Disposal), Larry Daugherty (Teamsters 350), Ross Signorino, Louie Pellegrini (Garden City Sanitation) and Mary Creasman (South Bay Labor Council).

Brock Hill (Premier Recycle Company) requested more information about inclusions.

David Smith voiced objection about a monopoly which will burden his small business; he expressed concern about the competitive process and would like to see more participation from other cities.

7.1 (Cont'd.)

A short discussion followed.

Council Members Chu, Herrera, Campos and Pyle provided meeting disclosures.

Council Member Oliverio expressed support to the initiatives but objected to putting restrictions on the Request for Proposal process that may hinder full competition.

Mayor Reed requested that the City Attorney provide an information memorandum to Council confirming the issues during the period of no communications once a Request for Proposal is out for bid.

Action: On a call for the question, the motion carried, the memorandum from Council Members Chu, Herrera, Campos and Kalra, dated March 20, 2009, was approved, with the following: (1) Direct Staff to separate the Requests for Proposal (RFP) for the processing of organic materials from the RFP for the commercial solid waste system redesign. Two separate Requests for Proposals to be issued: (a) For all collection as well as processing of recyclables. (b) Processing of the organic materials. (2) Direct Staff to include Labor Peace in both Requests for Proposals. Per the City Attorney's memorandum, the City can request this information. City Attorney was requested to provide an information memorandum to Council confirming the issues during the period of no communications once a RFP is out for bid. (8-1-2. Noes: Oliverio. Absent: Chirco, Constant.)

- 7.2
- (a) **Authorize the submission of written technical and legal comments by April 3, 2009, to the San Francisco Bay Regional Water Quality Control Board (Water Board) concerning the Water Board's Revised Tentative Order for a Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit (Regional Permit), dated February 11, 2009.**
 - (b) **Authorize City participation in Water Board public hearings related to the adoption of the Regional Permit, including presentation of testimony and comments at the hearing scheduled for May 13, 2009.**
 - (c) **Direct staff to engage stakeholders in discussions concerning the trash related programming specified in the Regional Permit and provide specific feedback to the Water Board.**
 - (d) **Direct staff to work with the Mayor's Office to identify representation from Council to address the Water Board concerning the Regional Permit.**

CEQA: Not a Project. (Environmental Services)

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated March 2, 2009, recommending as described above in Item 7.2(a)-(d).

Deputy Director of Environmental Services Melody Tovar provided the report on the development and adoption of the Municipal Stormwater National Pollutant Discharge Elimination System Permit.

7.2 (Cont'd.)

Action: Upon motion by Council Member Pyle, seconded by Council Member Liccardo and carried unanimously, the submission of written technical and legal comments by April 3, 2009, to the San Francisco Bay Regional Water Quality Control Board (Water Board) concerning the Water Board's Revised Tentative Order for a Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit (Regional Permit), dated February 11, 2009 and City participation in Water Board public hearings related to the adoption of the Regional Permit, including presentation of testimony and comments at the hearing scheduled for May 13, 2009 were authorized and Staff was directed to engage stakeholders in discussions concerning the trash related programming specified in the Regional Permit and provide specific feedback to the Water Board and to work with the Mayor's Office to identify representation from Council to address the Water Board concerning the Regional Permit. (6-0-5. Absent: Chirco, Constant, Herrera, Kalra, Nguyen.)

PUBLIC SAFETY SERVICES

- 8.1 (a) **Adopt a resolution increasing the construction contingency for the South San José Police Substation construction contract with S.J. Amoroso Construction Co, Inc. (SJA) by \$3,600,000 to a total of \$6,310,000.**
- (b) **Adopt the following 2008-2009 Appropriation Ordinance amendments in the Neighborhood Security Bond Fund (Fund 475):**
- (1) **Increase the South San José Police Substation appropriation by \$4,500,000.**
 - (2) **Decrease the Driver Safety Training Center appropriation by \$1,000,000.**
 - (3) **Decrease the Ending Fund Balance by \$3,500,000.**
- (c) **Adopt a resolution authorizing the Director of Public Works to negotiate and execute individual contract change orders up to \$600,000 each for the South San José Police Substation construction contract with S.J. Amoroso Construction Co, Inc. and repealing Council Resolution No. 74660, adopted November 4, 2008.**
- (d) **Approve the First Amendment to the Master Agreement with Gilbane Building Company for Peer Review and Implementation Support Services for the South San José Police Substation extending the term of the agreement from December 31, 2009 to September 30, 2010, increasing the maximum compensation by \$500,000 from \$1,000,000 to an amount not to exceed \$1,500,000.**
- (e) **Approve the Second Amendment to the Phase two consultant agreement with RossDrulisCusenbery Architecture, Inc. relating to the planning, design and construction of South San José Police Substation extending the term of the agreement from July 31, 2009 to September 30, 2010, with no increase in compensation.**

CEQA: Mitigated Negative Declaration, PP04-304. (Public Works/Police/City Manager's Office)

8.1 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen, Police Chief Robert Davis and Budget Director Jennifer Maguire, dated March 2, 2009, recommending adoption of resolutions, appropriation ordinance amendments and approval of the first amendment to the master agreement and the second amendment to the Phase two consultant agreement. (2) Letter from Phyllis Lazzarini, Chair, Citizen Oversight Committee, dated March 20, 2009, outlining the need to add funding to the substation project in order to continue construction on the project.

Director of Public Works Katy Allen and Assistant Director of Public Works David Sykes provided an overview of the South San José Police Substation contract and various actions.

Motion: Council Member Kalra moved approval of the Staff recommendations, with the City Attorney directed to preserve any and all legal remedies against any parties during the course of the project. Council Member Pyle seconded the motion.

Police Chief Robert Davis and Director of Public Works Katy Allen responded to Council questions. Discussion followed.

Council Member Campos requested to amend the motion to add direction to the City Manager to bring forward a policy discussion to the full Council prior to the budget process on the utilization of community policing centers and a comprehensive citywide strategy for future utilization of those centers. The amendment was accepted by Council Members Kalra and Pyle.

Public Comments: Ross Signorino expressed his opinions on cost overruns and tax increases.

Action: On a call for the question, the motion carried unanimously, [Resolution No. 74843](#), entitled: "A Resolution of the Council of the City of San José Increasing the Construction Contingency for the South San José Police Substation Project by \$3,600,000 to a Total Amount Not To Exceed \$6,310,00"; [Ordinance No. 28521](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Neighborhood Security Bond Fund for the South San Jose Police Substation; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption" and [Resolution No. 74844](#), entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Public Works to Negotiate and Execute Individual Change Orders in An Amount Not To Exceed \$600,000, Up to a Combined Amount Not To Exceed the Construction Contingency for the South San José Police Substation and Repealing Resolution No. 74660", were adopted; the First Amendment to the Master Agreement with Gilbane Building Company for Peer Review and Implementation Support Services for the South San José Police Substation extending the term of the agreement from December 31, 2009 to September 30, 2010, increasing the

8.1 Action (Cont'd.)

maximum compensation by \$500,000 from \$1,000,000 to an amount not to exceed \$1,500,000 and the Second Amendment to the Phase two consultant agreement with RossDrulis Cusenbery Architecture, Inc. relating to the planning, design and construction of South San José Police Substation extending the term of the agreement from July 31, 2009 to September 30, 2010, with no increase in compensation was approved; (1) City Attorney directed to preserve any and all legal remedies against any parties during the course of the project. (2) City Manager directed to bring forward a policy discussion to the full Council prior to the budget process on the utilization of community policing centers and a comprehensive citywide strategy for future utilization of those centers. (8-0-3. Absent: Chirco, Constant, Herrera.)

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Joint Council/Redevelopment Agency Board convened at 5:44 p.m. to consider Item 9.1 in a Joint Session.

9.1 Conduct a Public Hearing and approve the Mayor's March Budget Message for Fiscal Year 2009-2010. (Mayor) (Continued from 3/17/09 – Item 9.1)

Documents Filed: (1) Memorandum from Mayor Reed, dated March 13, 2009, transmitting the Mayor's March Budget Message for Fiscal Year 2009-2010. (2) Submitted by Former Council Member Williams: Input from the Community Budget Working Group, dated March 24, 2009 and one a Progress Report from the Community Budget Working Group, dated March 17, 2009.

Mayor Reed opened the public hearing.

Public Comments: Former Council Member Williams introduced the Community Budget Working Group; an initiative intended to engage the public as broadly as possible in thinking around how to prioritize and generate resources for the budget and submitted information for the record.

Ross Signorino congratulated the City for keeping up a high credit rating.

Dan Fenton, Team San José/San José Convention Center and Visitor's Bureau, encouraged the Council to safeguard the dollars that are allocated to critical sales and marketing efforts of the San José Convention Center and Visitor's Bureau.

Mayor Reed closed the public hearing.

Motion: Council Member Kalra moved approval of the Mayor's March Budget Message for Fiscal Year 2009-2010. Council Member Oliverio seconded the motion.

A brief discussion followed.

9.1 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, and the Mayor's March Budget Message for Fiscal Year 2009-2010 was approved. (8-0-3. Absent: Chirco, Constant, Herrera.)

The Joint Council/Redevelopment Agency Board was adjourned at 6:00 p.m.

OPEN FORUM

- (1) Ross Signorino expressed his views about the incident that occurred last Saturday involving the loss of four Oakland Police Officers, the perpetrator who was also killed and their respective families.
- (2) Patrick Pizzo urged Council to request active park space projections for the various scenarios being evaluated by the Envision 2040 Task Force that meet or exceed the State Standards.

ADJOURNMENT

The Council of the City of San José was adjourned at 6:04 p.m. in memory of the four Oakland Police Officers, Sgt. Mark Dunakin, SWAT Sgt. Ervin Romans, SWAT Sgt. Daniel Sakai and Motorcycle Officer John Hege who were killed in the line of duty on March 21, 2009.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

smd/3-24-09 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.

JOINT REDEVELOPMENT AGENCY ITEMS

The Joint Redevelopment Agency Board convened at 6:14 p.m. to consider Items 8.1, 8.2 and 8.3 in a Joint Session.

8.1 Adoption of resolutions:

- (a) **By the City Council making certain determinations required by Redevelopment Law, Health and Safety Code Section 33445, for Agency funding of the proposed improvements to the Civic Auditorium.**
- (b) **By the Redevelopment Agency Board approving a contract with BBI Engineering, Inc., in the amount of \$953,044, which includes two alternates, for the Civic Auditorium Audio Visual/Sound System Project, authorizing a project contingency in the amount of \$95,304 for a total contract amount of \$1,048,348, and authorizing the Executive Director to execute changes to the contract, subject to the limitations applicable to construction contract change orders.**

CEQA: Not a Project. [PARK CENTER]

Documents Filed: Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated March 10, 2009, recommending adoption of resolutions.

Public Comments: Dan Fenton, Team San José, expressed support to the Staff recommendations.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and carried unanimously, [Resolution No. 74845](#), entitled: "A Resolution of the Council of the City of San José Making Certain Determinations Required by Redevelopment Law, Health and Safety Code Section 33445, for Redevelopment Agency Funding of the Public Improvements for the Civic Auditorium Phase 1 Restoration Project" and [Redevelopment Agency Resolution No. 5897](#) were adopted. (8-0-3. Absent: Chirco, Constant, Herrera.)

- ### 8.2
- (a) **Adoption of resolutions by the City Council and Redevelopment Agency Board approving the Report to Council on the Amendment to the Redevelopment Plans for the Merged Project Area to increase the tax increment limit from \$7.6 billion to \$15 billion, to establish a single limit of \$7.6 billion for the bonded indebtedness that may be outstanding at any one time, and to modify the list of eligible public improvements in each Redevelopment Plan so that all Redevelopment Plans have consistent language relating to public improvements.**

- 8.2 (b) **Approve an ordinance by the City Council of the proposed Amendment to the Redevelopment Plans in the Merged Project Area to increase the tax increment limit from \$7.6 billion to \$15 billion, to establish a single limit of \$7.6 million on the amount of bonded indebtedness that may be outstanding at any one time, and to modify the list of eligible public improvements in each Redevelopment Plan so that all Redevelopment Plans have consistent language relating to public improvements, and making certain findings.**
CEQA: File No. PP08-289, adopted by the Director of Planning, Building and Code Enforcement, dated February 4, 2009. [MERGED]

Mayor Reed opened the public hearing.

Redevelopment Agency Executive Director Harry S. Mavrogenes provided an overview of the Merged Project Area Tax Increment Limit and Bonded Indebtedness Limit Increases.

Public Comments: Speaking in support of the Merged Project Area Tax Increment Limit and Bonded Indebtedness Limit increases were Erik Schoennauer, Ted Johnson, Jeff Byrd (Legacy Partner), Rita Torres, Chris Kober (Castle Group) and Pat Dando (San José Silicon Valley Chamber of Commerce).

Doug McNea and Yolanda Reynolds objected to the Merged Project Area Tax Increment Limit and Bonded Indebtedness Limit Increases.

Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and carried unanimously, the action for Item 8.2 was continued to April 7, 2009 per Orders of the Day. (8-0-3. Absent: Chirco, Constant, Herrera.)

- 8.3 (a) **Adoption of resolutions by the Redevelopment Agency Board and City Council approving the Report to Council on the Amendment to the Strong Neighborhoods Initiative Redevelopment Plan to remove Naglee Park from the Strong Neighborhoods Initiative (SNI) Project Area.**
(b) **Approve an ordinance by the City Council for the proposed Amendment to the SNI Redevelopment Plan to remove Naglee Park from the SNI Project Area.**

CEQA: File No. PP08-289, adopted by the Director of Planning, Building and Code Enforcement, dated February 4, 2009. [SNI]

Documents Filed: Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated March 10, 2009, recommending adoption of resolutions and approval of an ordinance.

8.3 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and carried unanimously, [Resolution No. 74846](#), entitled: “A Resolution of the Council of the City of San José Approving the Report to Council on the Proposed Fifth Amendment to the Strong Neighborhoods Initiative Project Area Redevelopment Plan” and [Redevelopment Agency Resolution No. 5898](#) were adopted and [Ordinance No. 28522](#), entitled: “An Ordinance of the City of San José Adopting the Proposed Fifth Amendment to the Strong Neighborhoods Initiative Project Area Redevelopment Plan and Making Certain Findings”, was passed for publication. (8-0-3. Absent: Chirco, Constant, Herrera.)

The Council of the City of San José and Redevelopment Agency Board was adjourned at 6:41 p.m.