



MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, FEBRUARY 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, Pyle; Reed.

Absent: Council Members - Chirco. (Excused)

Upon motion unanimously adopted, Council recessed at 9:31 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 anticipated litigation (Claim Not Filed) pursuant to Government Code subsection (b) of Section 54956.9 in one (1) matter of significant exposure. (B) to confer with Legal Counsel with respect to anticipated litigation pursuant to Government Code subsection (c) of Section 54956.9 in one (1) matter. (C) to confer with Legal Counsel with respect to existing litigation pursuant to Government Code subsection (a) of Section 54956.9: (1) Bernal 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 1025; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-11641; Amount of Money or Other Relief Sought: Damages according to proof; Court: Administrative Appeal; (2) In re: Bowers; Court: Administrative Appeal; (3) 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 One to Fifteen, inclusive; Court: Superior Court of California, County of Santa Clara; Case No: 1-04-CV-026149; Amount of Money or Other Relief Sought: Eminent Domain language: Seeking to obtain real property through eminent domain for fair market value; (4) City of San José v. Hon. Read Ambler; Names of Parties Involved: Sutter's Place, Inc., dba Bay 101, Garden City, Inc., City of San José, Hon. Read Ambler; Court: Superior Court of California, County of Santa Clara; Case No: 1-05-CV-05391 (Consolidated with 1-05-CV-050392); Amount of Money or Other Relief Sought: The City seeks a Writ of Administrative Mandamus challenging various errors in the hardship proceedings. (5) Sutter's Place, Inc. v. City, et al; Names of Parties

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

CLOSED SESSION (Cont'd.)

Involved: Sutter's Place, Inc., dba Bay 101, Garden City, Inc., City of San José, 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. (6) 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. (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; (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) 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. (9) 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.

CLOSED SESSION (Cont'd.)

By unanimous consent, Council recessed from the Closed Session at 11:50 a.m. and reconvened to Regular Session at 1:31 p.m. in the Council Chambers.

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

Absent: Council Members - Chirco. (Excused)

INVOCATION

The Oak Grove High School Choir sang "In Time of Silver Rain". (District 2)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

At the evening Council Session, Boy Scout Troop 221, Almaden Valley, led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (10-0-1. Absent: Chirco.)

CEREMONIAL ITEMS

1.1 Presentation of a commendation to the City/San José State University Public Sector Career Initiative in recognition of its partnership to create the new website "Students: From Campus to City Hall". (Human Resources)

Action: Mayor Reed and City Manager Debra Figone recognized and commended the City/ San José State University Public Sector Career Initiative in recognition of its partnership to create the new website "Students: From Campus to City Hall".

1.6 Presentation of a commendation to Miguel E. Jara, owner of La Taqueria on South First Street, upon his retirement. (Mayor/Redevelopment Agency)

Action: Mayor Reed, Council Member Liccardo and Redevelopment Agency Executive Director Harry S. Mavrogenes recognized and commended Miguel E. Jara, owner of La Taqueria on South First Street, upon his retirement.

- 1.7 Presentation of a proclamation declaring the week of February 26th – March 1st, 2009 as “First Tee Week” in the City of San José. (Mayor/Constant)
(Rules Committee referral 2/18/09)**

Action: Mayor Reed and Council Member Constant recognized the week of February 26 through March 1, 2009 as “First Tee Week” in the City of San José.

- 1.8 Presentation of a commendation to Officer Christine Zarate and Sergeant Sal Lopez for their continued efforts to make a positive impact in the community above and beyond the requirements of their service. (Kalra)
(Orders of the Day)**

Action: Mayor Reed and Council Member Kalra recognized and commended Officer Christine Zarate and Sergeant Sal Lopez for their continued efforts to make a positive impact in the community above and beyond the requirements of their service.

CONSENT CALENDAR

Upon motion by Council Member Pyle, seconded by Council Member Nguyen 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 October 7, 2008**
 - (b) Special Meeting Minutes of October 14, 2008**
 - (c) Regular Minutes of October 21, 2008**
 - (d) Joint Council/San José Financing Authority Minutes of October 21, 2008**
 - (e) Historic Preservation Study Session Minutes of October 23, 2008**
 - (f) Regular Minutes of October 28, 2008**
- (Deferred from 2/10/09 – Item 2.1)**

Documents Filed: (1) The Regular Minutes dated October 7, 2008, October 21, 2008 and October 28, 2008. (2) Special Meeting Minutes dated October 14, 2008. (3) Joint Council/San José Financing Authority Minutes dated October 21, 2008. (4) Historic Preservation Study Session Minutes dated October 23, 2008.

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

- 2.2 Final adoption of ordinances.**
- (a) ORD. NO. 28493 – Rezoning certain real property situated on the southern portion of area generally bounded by North Fifth Street, East Santa Clara Street, North Sixth Street, and East Saint John Street to DC Downtown Primary Commercial Zoning District. C08-058**

Documents Filed: Proof of Publication of the title of Ordinance No. 28493 executed on February 10, 2009, submitted by the City Clerk.

2.2 (a) (Cont'd.)

Action: Ordinance No. 28493 was adopted. (10-0-1. Absent: Chirco.)

- (b) **ORD. NO. 28495 – Rezoning certain real property situated on the north side of Foxworthy Avenue, approximately 100 feet east of Lansford Avenue (1345 Foxworthy Avenue), to A(PD) Planned Development Zoning District. PDC08-048**

Documents Filed: Proof of Publication of the title of Ordinance No. 28495 executed on February 17, 2009, submitted by the City Clerk.

Action: Ordinance No. 28495 was adopted. (10-0-1. Absent: Chirco.)

- (c) **ORD. NO. 28496 – Rezoning certain real property situated on the east side of North 21st Street, approximately 350 feet northerly of East Santa Clara Street (32 North 21st Street) to CN Commercial Neighborhood Zoning District. C08-063**

Documents Filed: Proof of Publication of the title of Ordinance No. 28496 executed on February 17, 2009, submitted by the City Clerk.

Action: Ordinance No. 28496 was adopted. (10-0-1. Absent: Chirco.)

- (d) **ORD. NO. 28497 – Rezoning certain real property situated at the southwest corner of North First Street and Skyport Drive (1717 North First Street), from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District. PDC08-037**

Documents Filed: Proof of Publication of the title of Ordinance No. 28497 executed on February 17, 2009, submitted by the City Clerk.

Action: Ordinance No. 28497 was adopted. (10-0-1. Absent: Chirco.)

- 2.3 (a) **Approve Contract Change Order No. 1 for the Runway 12R/30L Centerline Lights Project at the Norman Y. Mineta San José International Airport in the amount of \$101,527, and a four day time extension to complete additional work related to the construction of the Project.**

- (b) **Approve additional funding in the amount of \$81,527 for additional work related to the installation of Runway 12R/30L Centerline Lights Project.**

CEQA: Resolution Nos. 67380 and 71451, PP 07-067. (Airport/Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen and Director of Aviation William Sherry, dated February 2, 2009, recommending approval of contract Change Order No. 1 and approval of additional funding for additional work.

2.3 (Cont'd.)

Action: The Contract Change Order No. 1 for the Runway 12R/30L Centerline Lights Project at the Norman Y. Mineta San José International Airport in the amount of \$101,527, and a four day time extension to complete additional work related to the construction of the project and additional funding in the amount of \$81,527 for additional work related to the installation of Runway 12R/30L Centerline Lights Project, were approved. (10-0-1. Absent: Chirco.)

2.4 (a) Approve a settlement and authorize the City Attorney to negotiate and execute a Stipulated Judgment to settle an eminent domain matter with World Oil Company relating to real property located at 3148 Senter Road for the total amount of \$762,500, plus statutory interest and costs for the land value, plus \$9,375 for the loss of goodwill, as considered by the City Council during Closed Session on January 27, 2009.

(b) Adopt the following Appropriation Ordinance amendments in the Building and Structure Construction Tax Fund:

(1) Increase the appropriation to the Public Works Department for the Senter Road: Tully to Singleton project by \$150,000.

(2) Decrease the Ending Fund Balance by \$150,000.

CEQA: Senter Rd Widening Project Final EIR, File No. PP04-295. (City Attorney's Office)

Documents Filed: Memorandum from City Attorney Richard Doyle and Budget Director Jennifer Maguire, dated February 13, 2009, recommending approval of the settlement and adoption of appropriation ordinance amendments.

Action: The settlement was approved and the City Attorney was authorized to negotiate and execute a Stipulated Judgment to settle an eminent domain matter with World Oil Company relating to real property located at 3148 Senter Road for the total amount of \$762,500, plus statutory interest and costs for the land value, plus \$9,375 for the loss of goodwill, as considered by the City Council during Closed Session on January 27, 2009 and Ordinance No. 28499, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Building Structure Construction Tax Fund for the Senter Road: Tully to Singleton Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. (10-0-1. Absent: Chirco.)

2.5 (a) Approve two (2) agreements with Gorbet+Banerjee, related to the Norman Y. Mineta San José International Airport Public Art Program, as follows:

(1) An agreement for fabrication and installation of non-architectural systems for public artworks at the Norman Y. Mineta San José International Airport, in an amount not to exceed \$360,500.

(2) An agreement for the design, fabrication and installation of three (3) pilot artworks at the Norman Y. Mineta San José International Airport, in an amount not to exceed \$310,000.

- 2.5 (b) **Adopt a resolution:**
- (1) **Authorizing the City Manager to negotiate and execute an agreement with Gorbet+Banerjee for development and configuration of custom software systems and programmatic operational manuals to support art activation platforms at the Norman Y. Mineta San José International Airport, in an amount not to exceed \$355,000.**
 - (2) **Authorizing the City Manager to negotiate and execute amendments to the above three (3) agreements to add up to six (6) months to the term and reallocate scope and/or funding from one agreement to another agreement if the City Manager believes that it would benefit the City's administration of the agreements, provided that there is no increase in the total aggregate compensation of \$1,025,500 approved by the authorization.**

CEQA: Resolution Nos. 67380 and 71451, PP07-256. (Economic Development)

Documents Filed: Memorandum from Chief Development Officer Paul Krutko, dated February 2, 2009, recommending approval of the two agreements and adoption of a resolution.

Council Member Constant requested clarification about the public art program at the Norman Y. Mineta San José International Airport. Public Art Director Barbara Goldstein explained the Public Art Investment Plan was approved by Council four years ago, which included approved funding in the budget.

Action: Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, two agreements with Gorbet+Banerjee, related to the Norman Y. Mineta San José International Airport Public Art Program were approved and Resolution No. 74794, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement and Amendments to that Agreement and Also Two Other Agreements with Gorbet+Banerjee for Public Artworks at the Norman Y. Mineta San José International Airport", was adopted. (10-0-1. Absent: Chirco.)

- 2.6 **Authorize the City Manager to certify and submit the 2009-2010 City of San José Urban Runoff Management Work Plans to the San Francisco Bay Regional Water Quality Control Board in conformance with the City's Municipal Separate Storm Sewer System National Pollutant Discharge Elimination System permit requirements. CEQA: Exempt, File No. PP09-026. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated February 2, 2009, recommending the City Manager certify and submit the 2009-2010 City of San José Urban Runoff Management Work Plans to the San Francisco Bay Regional Water Quality Control Board.

2.6 (Cont'd.)

Action: The City Manager was authorized to certify and submit the 2009-2010 City of San José Urban Runoff Management Work Plans to the San Francisco Bay Regional Water Quality Control Board in conformance with the City's Municipal Separate Storm Sewer System National Pollutant Discharge Elimination System permit requirements. (10-0-1. Absent: Chirco.)

2.7 Adopt a resolution authorizing the City Manager to submit a grant application to the California Energy Commission's Renewable-based Energy Secure Communities (RESCO) Initiative, requesting grant funding in the amount of \$1,269,000 and providing for City matching funding in the amount of \$1,076,000 to conduct the following activities ("2009-2012 San José Specific, Measurable, Attainable, Realistic and Timely Energy Solutions (SMART^E) Program."

- (a) Development and implementation of a program that addresses the community need for financing the upfront costs of energy efficiency and renewable energy measures and enables the deployment of mature and viable renewable energy technologies and energy efficiency solutions.
- (b) Facilitation and support for PG&E's development of a Smart Grid Project and smart meter installations.
- (c) Development and implementation of San José's SMART^E Community Education and Outreach plan, including comprehensive education, training and outreach resources for the residents and businesses of San José through multiple-medias and an education and demonstration center.
- (d) Continued implementation and support for the Redevelopment Agency (RDA) Clean Tech Incentive Program, which provides incentives to clean tech companies to locate and do business in redevelopment areas San José.

CEQA: Not a Project. (Environmental Services)

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated February 6, 2009, recommending adoption of a resolution.

Action: Dropped per Administration.

2.8 As recommended by the Transportation and Environment Committee of February 2, 2009:

- (a) Approve proposed Dental Amalgam program and direct the City Attorney to draft an ordinance amending Chapter 15.14 of the San José Municipal Code to regulate dental practices under a Dental Wastewater Permit and require the installation of amalgam separators and implementation of Best Management Practices.
- (b) Direct the City Attorney to draft an ordinance amending Chapter 15.14 of the San José Municipal Code to implement the enhanced Fats, Oils and Grease Control Program.

(Environmental Services)

[Transportation and Environment Committee referral – Item (e)]

2.8 (Cont'd.)

Documents Filed: Memorandum from City Clerk Lee Price, dated February 24, 2009, transmitting the recommendations of the Rules and Open Government Committee.

Deputy Director of Environmental Services Melody Tovar responded to Council Member Constant's questions about the costs, implementation and the timeliness for the implementation of the program.

Action: Upon motion by Council Member Constant, seconded by Council Member Liccardo and carried unanimously, the Dental Amalgam program was approved; the City Attorney was directed to: (1) Draft an ordinance amending Chapter 15.14 of the San José Municipal Code to regulate dental practices under a Dental Wastewater Permit and require the installation of amalgam separators and implementation of Best Management Practices. (2) Draft an ordinance amending Chapter 15.14 of the San José Municipal Code to implement the enhanced Fats, Oils and Grease Control Program. (9-0-2. Absent: Chirco, Kalra.)

2.9 **As recommended by the Transportation and Environment Committee of February 2, 2009, require special events with over 1,000 attendees to specify that food vendors use #1 (PET) plastic recyclable beverage containers for that event as a condition of their Event Authorization effective May 1, 2009. (Environmental Services) [Transportation and Environment Committee referral – Item (f)]**

Documents Filed: Memorandum from City Clerk Lee Price, dated February 24, 2009, transmitting the recommendations of the Rules and Open Government Committee.

Action: The requirement for special events with over 1,000 attendees to specify that food vendors use #1 (PET) plastic recyclable beverage containers for that event as a condition of their Event Authorization effective May 1, 2009, was approved. (10-0-1. Absent: Chirco.)

2.10 (a) **Adopt a resolution to:**

- (1) **Initiate proceedings to consider the McMillan House, located at 525 S. Sixth Street, as a City Landmark of special historic, architectural, cultural, aesthetic or engineering interest or value of a historic nature.**
- (2) **Set a public hearing on Tuesday, April 7, 2009 at 1:30 p.m. for Council consideration of City landmark designation of the structures.**
- (3) **Refer the matter back to the Historic Landmarks Commission for its consideration at a public hearing, followed by a report and recommendation back to City Council.**

CEQA: Not a Project. SNI: University.

HL08-176 – District 3

- 2.10 (b) **Adopt a resolution to:**
- (1) **Initiate proceedings to consider the Lynwood Apartments, located at 553 S. Sixth Street, as a City Landmark of special historic, architectural, cultural, aesthetic or engineering interest or value of a historic nature.**
 - (2) **Set a public hearing on Tuesday, April 7, 2009 at 1:30 p.m. for Council consideration of City landmark designation of the structures.**
 - (3) **Refer the matter back to the Historic Landmarks Commission for its consideration at a public hearing, followed by a report and recommendation back to City Council.**

CEQA: Not a Project. SNI: University.

HL08-177 – District 3

- (c) **Adopt a resolution to:**
- (1) **Initiate proceedings to consider the Kimura House, located at 556 N. Third Street, as a City Landmark of special historic, architectural, cultural, aesthetic or engineering interest or value of a historic nature.**
 - (2) **Set a public hearing on Tuesday, April 7, 2009 at 1:30 p.m. for Council consideration of City landmark designation of the structures.**
 - (3) **Refer the matter back to the Historic Landmarks Commission for its consideration at a public hearing, followed by a report and recommendation back to City Council.**

CEQA: Not a Project.

HL08-178 – District 3

- (d) **Adopt a resolution to:**
- (1) **Initiate proceedings to consider the Reverend G. A. Miller Residence, located at 80 S. Sixth Street, as a City Landmark of special historic, architectural, cultural, aesthetic or engineering interest or value of a historic nature.**
 - (2) **Set a public hearing on Tuesday, April 7, 2009 at 1:30 p.m. for Council consideration of City landmark designation of the structures.**
 - (3) **Refer the matter back to the Historic Landmarks Commission for its consideration at a public hearing, followed by a report and recommendation back to City Council.**

CEQA: Not a Project. SNI: 13th Street.

HL08-179 – District 3

(Planning, Building and Code Enforcement)

Documents Filed: (1) Memoranda from Director of Planning, Building and Code Enforcement Joseph Horwedel, all four dated January 29, 2009, recommending adoption of resolutions. (2) Four Affidavits of Routings, each executed on February 27, 2009 and distributed by the City Clerk.

2.10 (Cont'd.)

Action: Resolution No. 74795, 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 McMillan House, Presently Located at 525 South Sixth Street, as a City Landmark of Special Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of an Historic Nature”; Resolution No. 74796, 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 Lynwood Apartments, Presently Located at 533 South Sixth Street, as a City Landmark of Special Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of an Historic Nature”; Resolution No. 74797, 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 Kimura Residence, Presently Located at 556 North Third Street, as a City Landmark of Special Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of an Historic Nature” and Resolution No. 74798, 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 Reverend G.A. Miller Residence, Presently Located at 80 South Sixth Street, as a City Landmark of Special Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of an Historic Nature”, were adopted. (10-0-1. Absent: Chirco.)

- 2.11 (a) Approve the 2008-2010 Spending Plan for the Supplemental Law Enforcement Services (SLES) Fund for \$1,577,752.**
- (b) Approve the revised 2007-2009 Spending Plan for the SLES Grant, reallocating funding from the previously established Projects #1, #4, and #6 to Projects #2 and #5 and allocating \$88,398 interest earned into the established projects within the same grant.**
- (c) Adopt the following 2008-2009 Appropriation Ordinance and Funding Sources Resolution amendments in the Supplemental Law Enforcement Services Fund (Fund 414):**
- (1) Establish a SLES Grant 2008-2010 appropriation for the Police Department in the amount of \$788,876.**
 - (2) Increase the Earned Revenue by \$788,876.**
- CEQA: Not a Project. (Police/City Manager’s Office)**

Documents Filed: Memorandum from Police Chief Robert Davis and Budget Director Jennifer Maguire, dated February 2, 2009, recommending approval of the 2008-2010 spending plan, revised 2007-2009 spending plan and adoption of appropriation ordinance and funding sources resolution amendments.

2.11 (Cont'd.)

Action: The 2008-2010 Spending Plan for the Supplemental Law Enforcement Services (SLES) Fund for \$1,577,752 the revised 2007-2009 Spending Plan for the SLES Grant, reallocating funding from the previously established Projects #1, #4, and #6 to Projects #2 and #5 and allocating \$88,398 interest earned into the established projects within the same grant were approved, Ordinance No. 28500, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Supplemental Law Enforcement Services Fund for the Supplemental Law Enforcement Services Grant 2008-2010; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption” and Resolution No. 74799, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 74461 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2008-2009 to Adjust Revenues in the Supplemental Law Enforcement Services Fund”, were adopted. (10-0-1. Absent: Chirco.)

2.12 **Adopt a resolution waiving the requirement that the Director of the Department of Public Works seek forfeiture of the bid bond submitted by Élan Construction as security for its bid on the Third Street Garage Staircase Replacement Project. CEQA: Exempt, PP08-155. Council District 3. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated February 3, 2009, recommending adoption of a resolution.

Action: Resolution No. 74800, entitled: “A Resolution of the Council of the City of San José Waiving the Requirement that the Director of Public Works Seek Forfeiture of the Bid Bond Submitted by Élan Construction on the Third Street Garage Replacement Project”, was adopted. (10-0-1. Absent: Chirco.)

2.13 (a) **Approve a consultant master agreement with Engineering Economics, Inc., for a variety of commissioning consultant services for various City projects from the date of execution through December 31, 2011, in an amount not to exceed \$500,000.** (b) **Adopt a resolution authorizing the Director of Public Works to negotiate and execute amendments to the master agreement to modify the scope of services to include additional standard services.** **CEQA: Not a Project. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated February 2, 2009, recommending approval of a consultant master agreement and adoption of a resolution.

2.13 (Cont'd.)

Action: A consultant master agreement with Engineering Economics, Inc., for a variety of commissioning consultant services for various City projects from the date of execution through December 31, 2011, in an amount not to exceed \$500,000 was approved and Resolution No. 74801, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Public Works to Negotiate and Execute Agreements to the Master Agreement with Engineering Economics, Inc. for Commissioning Consultant Services to Modify the Scope of Services to Include New Standard Services", was adopted. (10-0-1. Absent: Chirco.)

- 2.14 Adopt a resolution approving a purchase agreement with Joe E. Levitt and Jane Levitt, Trustees of the Joe E. Levitt and Jane C. Levitt Family Trust dated September 29, 1983, for the purchase of real property located at Jackson Avenue, San José, CA (APN No. 249-64-010) for an amount not to exceed \$352,000, with an estimated additional amount of \$7,000 for closing and escrow costs, and authorizing the Director of Public Works to execute any additional documents necessary to complete the transaction. CEQA: Mitigated Negative Declaration, File No. PP07-130. Council District 3. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated February 2, 2009, recommending adoption of a resolution.

Action: Resolution No. 74802, entitled: "A Resolution of the Council of the City of San José Approving a Purchase Agreement and Authorizing the Director of Public Works to Execute Certain Documents for the Purchase of Properties Pertaining to the Watson Park Expansion Project", was adopted. (10-0-1. Absent: Chirco.)

- 2.15 Request for an excused absence for Council Member Campos from the Regular Meeting of the Neighborhood Services and Education Committee on March 12, 2009 due to being out of town. (Campos)
(Rules Committee referral 2/11/09)**

Documents Filed: Memorandum from Council Member Campos, dated February 4, 2009, requesting an excused absence due to being out of town.

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

- 2.16 (a) Request for an excused absence for Mayor Reed from the Regular Meeting of the Rules and Open Government Committee on February 11, 2009 due to Authorized City Business: Travel to Washington, D.C. to advocate on behalf of the City with the Federal Government.
(b) Report on Legislative Advocacy Trip to Washington, D.C. and request for approval of travel.
(Mayor)
(Rules Committee referral 2/11/09)**

2.16 (Cont'd.)

Documents Filed: (1) Memorandum from Mayor Reed, dated February 9, 2009, requesting an excused absence due to authorized City business. (2) Memorandum from Mayor Reed, dated February 17, 2009, requesting approval of travel.

Action: The absence for Mayor Reed was excused and the travel request for Mayor Reed was approved. (10-0-1. Absent: Chirco.)

2.17 As recommended by the Rules and Open Government Committee of February 18, 2009, approve the appointment of Brian M. Chrisman, CEO/Founder of Borgata Recycling, Inc., San José, California as a private sector representative on the Silicon Valley Workforce Investment Network Board of Directors as required by law. (Mayor) (Rules Committee referral 2/18/09 – Item 9.1)

Documents Filed: Memorandum from City Clerk Lee Price, dated February 19, 2009, transmitting the recommendations of the Rules and Open Government Committee.

Action: The appointment of Brian M. Chrisman as a private sector representative on the Silicon Valley Workforce Investment Network Board of Directors as required by law, was approved. (10-0-1. Absent: Chirco.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone provided an update on the impacts of the Federal stimulus package and noted that an information memorandum will be routed to the City Council later in the week. She also announced the Deputy City Manager Ed Shikada will travel to Japan as part of the 2009 Japanese American Leadership Delegation.

**3.2 Report of the Rules and Open Government Committee – January 21, 2009
Mayor Reed, Chair**

Documents Filed: The Rules and Open Government Committee Report dated January 21, 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 January 21, 2009 were accepted. (10-0-1. Absent: Chirco.)

**3.3 Report of the Rules and Open Government Committee – January 28, 2009
Mayor Reed, Chair**

Documents Filed: The Rules and Open Government Committee Report dated January 28, 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 January 28, 2009 were accepted. (10-0-1. Absent: Chirco.)

- 3.5**
- (a) Direct the City Attorney to prepare an ordinance to amend the Public Entertainment Permit Ordinance to authorize a change in the fee methodology for the Public Entertainment Business Permit charged to Public Entertainment Businesses operating in the Downtown Entertainment Zone to include costs related to police enforcement of the Public Entertainment Permit Ordinance. Actual fee increases will be brought forward as part of the 2009-2010 Proposed Budget process.**
 - (b) Direct the City Attorney to prepare an ordinance to amend Title 20 of the San José Municipal Code to implement a soft-closing program for the Downtown Entertainment Zone to allow bars and nightclubs to stay open until 2:30 a.m. with a Conditional Use Permit.**
 - (c) Discuss and provide further direction to the Administration on the City Manager’s proposed cost model and structure in order to further inform the proposed ordinance amendments directed above.**

**CEQA: Not a Project. (City Manager’s Office)
[Deferred from 2/10/09 – Items 3.4(i)-(k)]**

Documents Filed: (1) Memorandum from Mayor Reed and Council Members Liccardo, Kalra and Herrera, dated February 11, 2009, recommending approval of the Staff recommendations with conditions as indicated in “Action”. (2) Supplemental memorandum from City Attorney Richard Doyle, dated February 6, 2009, providing additional information on the proposed ordinance; approval of the recommendation would result in the City Attorney drafting an ordinance changing the fee methodology to recover costs associated with police enforcement of the Public Entertainment Permit Ordinance in the Downtown Entertainment Zone. (3) Letter from Daniel Fenton, San José Convention and Visitors Bureau, dated February 23, 2009, expressing support to the joint memorandum and the partnership. (4) Letter from Jackson Fan, Owner, The Temple Bar & Lounge, dated February 23, 2009, expressing support to the pledge of cooperation. (5) Letter from Corey O’Brien, The Blank Club, dated February 5, 2009, expressed support for a new downtown policy model that is based upon facts and data as opposed to picking numbers out of thin air. (6) Letter from Eric Haraga, Owner, Fahrenheit Ultra Lounge and Restaurant, dated February 6, 2009, expressing support for Community Policing Roving Patrols and paying an equitable portion for this service, but only if everyone who will benefit is included. (7) Letter from Dave Powell, Owner, San José Bar and Grill, dated February 6, 2009, expressing support to a new downtown policy model.

3.5 (Cont'd.)

Documents Filed: (Cont'd.) (8) Letter from Kam Razavi, Owner, Loft Barand Bistro, dated February 6, 2009, expressed support to a fair and equitable portion of community policing roving patrols. (9) Letter from John Conway, Owner, Britannia Arms, dated February 5, 2009, expressing support for community policing roving patrols and paying a fair and equitable portion for this new service. (10) Letter from Dave Powell, Owner, Voodoo Lounge, dated February 5, 2009, expressing opposition to the expansion to 2:00 a.m. for alcohol sales in the Entertainment Zone. (11) Letter from Michael Smith, Owner, Dive Bar, dated February 6, 2009, expressed opposition to the Joint memorandum but expressed support to contributing a fair portion toward new community policing roving patrols. (12) Letter from Dan Doherty, Owner, Mission Ale House, dated February 5, 2009, expressing support to expanding community policing roving patrols and paying a fair and equitable portion for this new service. (13) Letter from George Belaski, Owner, Azucar, dated February 6, 2009, expressing support to the creation of community policing roving patrols and paying a fair and equitable portion for this new service.

Meeting disclosures were provided by Mayor Reed and Council Members Liccardo, Pyle, Chu, Nguyen, Herrera, Kalra, Constant and Campos.

Motion: Council Member Liccardo moved approval of the memorandum he cosigned with Mayor Reed and Council Members Kalra and Herrera, dated February 11, 2009, approving the Staff recommendations with conditions as depicted in "Action". Council Member Kalra seconded the motion.

Police Chief Robert Davis and Office of Economic Development Downtown Coordinator Leland Wilcox provided the Staff reports.

Public Comments: Speaking in support to the Joint Memorandum from Mayor Reed and Council Members Liccardo, Kalra and Herrera, expressing support for community policing roving patrols, including paying a fair and equitable portion for this new service were David Powell (San José Restaurant and Entertainment Association), Mauricio Mejia, Dan Doherty (Mission Ale House), Ben Soriano (South First Billiards), Eric Haraga (Fahrenheit Lounge and Restaurant), George Belaski (Azucar), John Conway (Britannia Arms), Elisa Koff-Ginsborg (Working Partnerships), Art Berstein, former President of San José Downtown Association, Erick Sahn, current President of San José Downtown Association and Scott Knies (San José Downtown Association). Ross Signorino pointed out that the racial profiling still needs to be addressed.

Police Chief Robert Davis responded to Council questions. Council discussion followed.

Council Member Constant requested to amend the motion to add an additional Council objective to maintain the safety for residents throughout the City of San José. The amendment was accepted by Council Members Liccardo and Kalra.

3.5 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, the memorandum from Mayor Reed and Council Members Liccardo, Kalra and Herrera, dated February 11, 2009, was approved, as amended: (1) Support staff recommendations to implement a soft-closing program for the Downtown Entertainment Zone. (2) Support staff recommendation to amend the Public Entertainment Permit Ordinance to authorize a change in the fee methodology to include costs related to police enforcement of that ordinance and to bring the actual fee increases forward as part of the 2009-2010 budget process in May and June, with the following changes: (a) Hold additional community meetings prior to returning to Council with any proposed changes in this policy. Outreach should include interested stakeholder groups including, but not limited to, affected businesses and neighborhood associations in the Entertainment Zone, 1stAct Silicon Valley, the San José Restaurant and Entertainment Association and the San José Downtown Association. Report to Council should reflect the extent of outreach. (2) (b) Include in the fee methodology a “sliding scale” approach, articulated in the January 9, 2009 staff memorandum as “Alternative 1”, that would exempt the first 50 persons of occupancy, or some other appropriate number, from the fee calculation. (c) Allow club owners to stipulate to a lower allotted occupancy, which will both mitigate the fee and constrain the permitted attendance at their establishments. Any necessary revisions in the Conditional Use Permit or other documentation to reflect the reduced occupancy should be made at no cost to the applicants. (d) Direct the City Manager to create a mechanism to collect the fee by a specified date. Further direct that the City Manager shall suspend or waive the fee on any particular club when that club has become a member of a Business Improvement District (BID) and has paid its designated fee to the BID and the City has received such fee. The City Manager would be authorized to lift or impose the suspension as is appropriate to ensure the full receipt of the aggregate fees required by Council in its June budget deliberations. (3) Direct the City Manager to continue changes in the policing model in the Entertainment Zone (EZ) to fully embrace the “community policing” concept, incorporating the following Council objectives: (a) Courteous presence and engagement with patrons and businesses in the EZ: Having officers typically encountered on foot rather than in patrol cars. Prior to 2:30 a.m., allowing civil, law-abiding citizens to leave clubs and the downtown at a leisurely pace. Encountering officers individually or in pairs rather than in groups where no urgency compels a group response. (b) Proximity of officers to the clubs: Confining patrol of individual beat officers to smaller areas on sidewalks. (c) Efficiency and effectiveness: Deployment of larger share of the total officers on “regular time” rather than “overtime”, particularly where it results in cost savings. Having officers deployed to the EZ earlier in the evening to allow them to observe and assess potential problem situations well before the “rush” of closing time. Reduction in daily deployment commensurate with lower levels of club attendance, occupancy, activity and number/severity of incidents. (3) (d) EZ specific training for all officers: Ensuring that every officer in the EZ has awareness of protocols and practice arising from collaboration between police management and nightclubs. (e) *Ensure adequate coverage at the periphery of the City to maintain safety for residents and officers throughout the City.* (4) Direct the City Manager engage with the San José Police Officers’ Association to discuss alternative deployment models, particularly as to any matters that may eventually raise “meet and confer” obligations. (5) Direct the City

3.5 Action (Cont'd.)

Manager to return to Council by April 21, 2009 with a status report that includes: (a) A proposed alternative policing model and a description of any changes that the Police Department has already implemented in the past 2 years. (b) An analysis of the feasibility of the Redevelopment Agency serving as the entity implementing a hybrid “secondary employment” program. (c) An analysis of the feasibility of assessing a cost recovery fee on any establishment located in the EZ that serves alcohol after 11:00 p.m. or some other appropriate time. Such a fee would require a mechanism separate from the Entertainment Permit. (6) Direct the City Manager to include police overtime cost and deployment data in quarterly reports prepared for the Public Safety, Finance and Strategic Support Committee. (7) Subsequent to Council action in June, report back to Council soon thereafter regarding the feasibility of the following options: (a) Assessing a police cost-recovery fee for any similar establishment located anywhere in the City of San José beginning in Fiscal Year 2010-2011. (b) Placing an “overtime cap” on police costs and deployment in the EZ, by requiring the City Manager to return to Council to request authorization for additional funds to cover overtime expenditures that exceed the cap. (10-0-1. Absent: Chirco.)

- 3.6 (a) **Adopt a resolution to approve the terms of a Memorandum of Agreement with the San José Police Officers’ Association and authorizing the City Manager to execute the agreement with a term of July 1, 2008 to June 30, 2010.**
- (b) **Adopt the following 2008-2009 Appropriation Ordinance amendments in the General Fund:**
- (1) **Increase the Police Department’s Personal Services appropriation by \$10,822,874.**
 - (2) **Decrease the Salaries and Benefits Earmarked Reserve by \$10,822,874.**

CEQA: Not a Project. (City Manager’s Office)

Documents Filed: Replacement memorandum from Director of Employee Relations Alex Gurza and Budget Director Jennifer Maguire, dated February 23, 2009, including the Budget Director’s signature which was inadvertently left off and recommending adoption of a resolution and appropriation ordinance amendments.

City Manager Debra Figone presented comments and responded to Council questions. A short discussion followed.

Action: Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, Resolution No. 74803, entitled: “A Resolution of the Council of the City of San José Approving an Agreement Between the City of San José and the San José Police Officers’ Association with a Term of July 1, 2008 to June 30, 2010” and Ordinance No. 28501, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the General Fund for the Police Department’s Personal Services and for the Salaries and Benefits Earmarked Reserve; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”, were adopted. (10-0-1. Absent: Chirco.)

3.7 Approve an ordinance amending Chapter 4.70 of Title 4 of the San José Municipal Code, by adding a new Part to provide a cap on the amount of Telecommunications Users Tax paid by service users, provided certain conditions are satisfied, which part shall expire on December 31, 2012, unless otherwise extended, shortened, or revised by the City Council. CEQA: Not a Project. (Finance)

Documents Filed: (1) Memorandum from Director of Finance Scott Johnson, dated February 2, 2009, recommending approval of an ordinance. (2) Supplemental memorandum from Director of Finance Scott Johnson, dated February 19, 2009, transmitting additional information regarding further outreach with large businesses has resulted in staff recommending a modification of the proposed Cap Program's annual Telecommunication Users Tax (TUT) first payment due date.

Director of Finance Scott Johnson presented the staff report.

Motion: Council Member Constant moved approval of the Staff recommendations. Council Member Pyle seconded the motion.

Mayor Reed and Council Member Constant provided meeting disclosures.

Public Comments: Jody Hansen, San José Silicon Valley Chamber of Commerce, expressed support to the Staff recommendations and also her appreciation to the City of San José for its flexibility.

Action: On a call for the question, the motion carried unanimously, Ordinance No. 28498, entitled: "An Ordinance of the City of San José Amending Chapter 4.70 of Title 4 of the San José Municipal Code, By Adding a New Part to Establish a Cap on the Amount of Telecommunications Users Tax paid Under This Chapter by Service Users Provided Certain Conditions are Satisfied, Which Part Shall Expire on December 31, 2012 Unless Otherwise Extended, Shortened, or Revised by the City Council", was passed for publication. (10-0-1. Absent: Chirco.)

**3.8 As referred by the Rules and Open Government Committee of February 11, 2009, consider adopting a position of support for AB 46 (Blakeslee) - An Act to Amend Section 25421 of the Public Resources Code, relating to energy, and energy conservation assistance. (Environmental Services)
[Rules Committee referral 2/11/09 – Item 6.1(b)]**

Documents Filed: Memorandum from City Clerk Lee Price, dated February 12, 2009, transmitting the recommendations of the Rules and Open Government Committee.

Action: Upon motion by Council Member Constant, seconded by Council Member Campos and carried unanimously, a position of support for AB 46, an act to amend Section 25421 of the Public Resources Code, relating to energy and energy conservation assistance was adopted. (10-0-1. Absent: Chirco.)

- 3.9 As referred by the Rules and Open Government Committee of February 11, 2009, consider adopting a position of support for State SB16 (Lowenthal) – Low-Income Housing Tax Credit, and Federal HR598 (Rangel) – American Recovery and Reinvestment Tax Act. (Housing)
[Rules Committee referral 2/11/09 – Items 6.1(c) and 6.2(a)]**

Documents Filed: Memorandum from City Clerk Lee Price, dated February 12, 2009, transmitting the recommendations of the Rules and Open Government Committee.

Director of Housing Leslye Krutko provided clarification for Federal HR598.

Action: Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, a position of support for State SB16, Low-Income Housing Tax Credit and Federal HR598, American Recovery and Reinvestment Tax Act Position were adopted. (10-0-1. Absent: Chirco.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.2 Accept the Downtown San José Property-Based Business Improvement District Financial Report for FY 2007-2008. CEQA: Exempt, File No. PP08-095. Council District 3. (Public Works/Transportation)**

Documents Filed: Memorandum from Director of Public Works Katy Allen and Director of Transportation James Helmer, dated February 2, 2009, recommending acceptance of the report.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and carried unanimously, the Downtown San José Property-Based Business Improvement District Financial Report for FY 2007-2008 was accepted. (10-0-1. Absent: Chirco.)

NEIGHBORHOOD SERVICES

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

Documents Filed: The Neighborhood Services and Education Committee Report dated February 12, 2009.

Action: Upon motion by Council Member Campos, seconded by Council Member Pyle and carried unanimously, the Report of the Neighborhood Services and Education Committee and the actions of February 12, 2009 were accepted. (10-0-1. Absent: Chirco.)

TRANSPORTATION & AVIATION SERVICES

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

Documents Filed: The Transportation and Environment Committee Report dated February 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 February 2, 2009 were accepted. (10-0-1. Absent: Chirco.)

ENVIRONMENTAL & UTILITY SERVICES

7.1 Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the Integrated Waste Management Fund (Fund 423):

- (a) Increase the estimate for Earned Revenue by \$393,005;
- (b) Increase the Household Hazardous Waste Las Plumas Facility appropriation by \$2,193,005; and
- (c) Decrease the Ending Fund Balance by \$1,800,000.

CEQA: Mitigated Negative Declaration, File No. PP06-100. (Environmental Services)

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean and Budget Director Jennifer Maguire, dated February 2, 2009, recommending adoption of appropriation ordinance and funding sources resolution amendments.

Action: Upon motion by Council Member Pyle, seconded by Council Member Liccardo and carried unanimously, Ordinance No. 28502, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Integrated Waste Management Fund for the Household Hazardous Waste Las Plumas Facility Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption” and Resolution No. 74804, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 74461 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2008-2009 to Adjust Revenues in the Integrated Waste Management Fund”, were adopted. (10-0-1. Absent: Chirco.)

7.2 Adopt a resolution modifying the City of San José Living Wage Policy so that it applies to the contracts issued for the San José/Santa Clara Water Pollution Control Plant, and approving the Policy as modified and updated to reflect current wage rates as a formal City Council Policy, and superseding Resolution No. 68900. CEQA: Not of Project. (Environmental Services)

7.2 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated February 2, 2009, recommending adoption of a resolution. (2) Letter from the Treatment Plant Advisory Committee, dated February 12, 2009, stating concurrence with the Staff recommendations.

Action: Dropped per Administration; to be renoticed.

7.3 As recommended by the Transportation and Environment Committee of February 2, 2009, develop an RFP to solicit and award an exclusive franchise 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. (Environmental Services)

[Transportation and Environment Committee referral – Item (d)]

Documents Filed: (1) Memorandum from City Clerk Lee Price, dated February 24, 2009, transmitting the recommendations of the Rules and Open Government Committee. (2) Supplemental memorandum from City Attorney Richard Doyle, dated February 10, 2009, stating with regard to the wage issues related to this matter, there was a request from Legal Counsel for Teamsters Local 350 to submit additional analysis about the prevailing wage issue; therefore this item was deferred to the March 2, 2009 Transportation and Environment Committee Meeting in order to give the City Attorney's Office an opportunity to review any new information.

Action: Dropped per Rules and Open Government Committee.

7.4 As recommended by the Transportation and Environment Committee of February 2, 2009:

- (a) Adopt a resolution of support for the efforts of the Santa Clara County Cities Association in promoting a regional approach to reducing the use and impacts of disposable, single-use carryout paper and plastic bags.**
- (b) Direct staff to continue supporting the Santa Clara County Recycling and Waste Reduction Commission for a regional approach to single-use carryout bag usage and to provide feedback to the commission on the County's draft model ordinance language.**
- (c) Direct staff and the City Attorney to return to the Transportation and Environment Committee in April 2009 with option to reduce single-use carryout bags for Council consideration including implementation, cost and stakeholder outreach plans.**
- (d) Continue to support legislation that would implement a state-wide program that would significantly reduce the use of single use carryout bags and that would remove any restriction on the City's ability to establish fees on plastic carryout bags or other disposable packaging.**

(Environmental Services)

[Transportation and Environment Committee referral – Item (g)]

7.4 (Cont'd.)

Documents Filed: Memorandum from City Clerk Lee Price, dated February 24, 2009, transmitting the recommendations of the Transportation and Environment Committee.

Action: Dropped per Administration; Referred back to Transportation & Environment Committee.

OPEN FORUM

- (1) Ross Signorino voiced opposition to the adoption of a sewer service fee as a new revenue source.

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 4:01 p.m.

RECESS/RECONVENE

The City Council recessed at 4:01 p.m. from the afternoon Council Session and reconvened at 7:02 p.m. in the Council Chambers, City Hall.

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

Absent: Council Members - Chirco. (Excused)

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

CEREMONIAL ITEMS

- 1.2 Presentation of a commendation to the North Valley Community Association and the Northwood Adopt-A-Park for their 5th Anniversary of the Northwood Adopt-A-Park Program to keep Northwood Elementary School and Northwood Park clean. (Chu)**

Action: Reed and Council Member Chu recognized and commended the North Valley Community Association and the Northwood Adopt-A-Park on their 5th Anniversary to keep Northwood Elementary School and Northwood Park clean.

- 1.3 Presentation of a commendation to the North Valley Community Association for their work in organizing the “Holiday in Berryessa” event at Berryessa Branch Library in December 2008. (Chu)**

Action: Mayor Reed and Council Member Chu recognized and commended the North Valley Community Association for their work in organizing the “Holiday in Berryessa” event in December 2008.

- 1.4 Presentation of a commendation to the San José Youth Chamber Orchestra for their exemplary performance at the City of San José State of the City Address. (Mayor)**

Action: Mayor Reed recognized and commended the San José Youth Chamber Orchestra for their outstanding performance at the City of San José State of the City Address.

1.5 Presentation of a commendation to the Tzu-Chi organization for its worldwide service in the areas of charity, medicine, education and humanitarian development; and most especially for the services provided to the local community now that two Tzu-Chi offices are located in the City of San José. (Pyle)

Action: Mayor Reed and Council Members Pyle and Chu recognized and commended the Tzu-Chi organization for its worldwide service in the areas of charity, medicine, education and humanitarian development, including the two Tzu-Chi offices which are located in the City of San José.

PUBLIC HEARINGS

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

**11.1 (a) Consideration of an ordinance rezoning the real property located at the northwest corner of Blossom Hill Road and Poughkeepsie Road (161 Blossom Hill Road) from CN Commercial Neighborhood Zoning District to R-MH Mobilehome Park District to allow mobile home use on a 0.5 gross acre site (Barbaccia Properties Holdings, LLC, Owner). CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0).
C08-064 – District 2
[Continued from 2/10/09 – Item 11.1(b)]**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C08-064, dated February 2, 2009, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated February 12, 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 Director and the Planning Commission was approved, Ordinance No. 28503, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Northwest Corner of Blossom Hill Road and Poughkeepsie Road (161 Blossom Hill Road) to R-MH Mobilhome Park Zoning District”, was passed for publication. (10-0-1. Absent: Chirco.)

- 11.1 (b) **Consideration of an ordinance rezoning the real property located at/on the southwest corner of S. De Anza Boulevard and Fallen Leaf Lane (1051 S. De Anza Boulevard) from the CP Commercial Zoning District to the CN Commercial Zoning District to accommodate setback restriction on a 0.51 gross acre site (Robinson Oil Corp, Owner). CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.**
C08-060 – District 1

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C08-060, dated February 2, 2009, recommending approval. (2) Proof of Publication of Notice of Public Hearing, executed on February 6, 2009, submitted by the City Clerk. (3) Petition against the proposed convenience store at the existing Gas Station (Rotten Robbie) dated February 24, 2009, containing 75 signatures.

Mayor Reed opened the public hearing.

Public Comments: Nancy Lamprecht objected to the gas station selling alcohol 600 yards from her home which may bring more homeless people and added traffic; she presented a petition to the City Clerk containing 75 signatures objecting to the gas station selling alcohol.

Mayor Reed closed the public hearing.

Director of Planning, Building and Code Enforcement Joseph Horwedel noted that this rezoning is in order for the owner to renovate and improve the business establishment. He added that the Conditional Use Permit (CUP) is another matter and he will inform the speaker when the application for the CUP is presented to the Planning Commission for its consideration.

Action: Upon motion by Council Member Constant, seconded by Council Member Oliverio and carried unanimously, the recommendation of the Planning Director was approved, Ordinance No. 28504, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Southwest Corner of South De Anza Boulevard and Fallen Leaf Lane (1051 South De Anza Boulevard) to CN Commercial Neighborhood Zoning District”, was passed for publication. (9-0-2. Absent: Chirco, Chu.)

- (c) **Consideration of an ordinance rezoning the real property located on the southeast corner of McKee Road and N. 33rd Street (280 N 3rd Street) from the R-2 Residential and CP Commercial Pedestrian Zoning Districts to the CP Commercial Pedestrian Zoning District on a 0.51 gross acre site (Shirazi Amir Et Al, Owner). SNI: Five Wounds/Brookwood Terrace. CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.**
C08-053 – District 3

11.1 (c) (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C08-064, dated February 3, 2009, recommending approval. (2) Proof of Publication of Notice of Public Hearing, executed on January 16, 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. 28505, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the East Side of North 33rd Street, 140 Feet South of McKee Road (280 North 33rd Street) to CP Commercial Pedestrian Zoning District", was passed for publication. (10-0-1. Absent: Chirco.)

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 Maybury Road (788 North King Road) (Rosado, Leticia C. and Carmelo G., Owner). CEQA: Exempt. The Planning Commission recommends denial (4-1-1), 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

Action: Continued to March 17, 2009 per Administration.

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>
9999	NW corner Curtner Ave & Monterey Rd	7	WPV San José LLC	16 Lots	Retail	Approve

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

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>
10023	SE corner Piercy Road and Tennant Avenue	2	KB Home – South Bay	44 Lots / 40 Units	SFD
10028	E/S of Boynton Ave, 150’ N of Underwood Drive	1	Hammond-Ku	5 Lots / 4 Units	SFA

OPEN FORUM

- (1) Jeffrey Horne complained about a Cease and Desist letter he received from the City of San José regarding his business.
- (2) Mark Boyd provided information about the recent signing of the American Recovery and Reinvestment Act.

ADJOURNMENT

The Council of the City of San José was adjourned at 8:22 p.m.

JOINT REDEVELOPMENT AGENCY ITEMS

The Joint Redevelopment Agency Board convened at 4:03 p.m. to consider Items 8.1, 8.2 and 8.4 in a Joint Session.

8.1 Public Hearing followed by City Council and Redevelopment Agency actions:

- (a) **Adoption of a resolution by the City Council accepting the summary of costs and findings of the Amended Summary 33433 Report and the Estimated Reuse Valuation pursuant to the California Health and Safety Code Section 33433 for the development of Block 3, including additional Agency assistance for improvements to the ground floor commercial space and the public garage of Block 3, Phase I – The 88.**
- (b) **Approval by the Redevelopment Agency Board of the Amended and Restated Disposition and Development Agreement with Block 3 Development Partners, LLC, for the development of Block 3 (Phase I -The 88 and Phase II) to increase Agency assistance to the Phase I project by \$1,850,000 to attract a new grocery store and an additional \$841,075 to address payment of other items arising out of the DDA for a total increase of \$2,691,075; to revise the project description and to modify the schedule of performance.**
- (c) **Adoption of resolutions by the Redevelopment Agency Board:**
 - (1) **Authorizing the Executive Director to negotiate and execute an Agreement with Block 3 Development Partners to define procedures and protocols to correct water infiltration issues in the Central Place public parking garage after garage conveyance to the Agency.**
 - (2) **Approving an adjustment to the FY 2008-09 Adopted Capital Budget to reallocate \$160,000 from the Downtown Business Improvements & Loan project line to the Downtown Mixed Use Projects line in the Merged Redevelopment Area and amending the FY 2008-2009 Agency appropriations resolution.**

CEQA: Resolution No. 71039.1, Use of Mixed Use Project and Century Center Plan Amendment EIR and addenda thereto, File No. H04-038. [SAN ANTONIO PLAZA]

Documents Filed: (1) Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated February 10, 2009, recommending conducting a public hearing, adoption of resolutions and of the amended and restated Disposition and Development Agreement with Block 3 Development Partners, LLC. (2) Supplemental memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated February 24, 2009, providing the comments of ING, the lender for The 88 Project, on the proposed amended and restated Disposition and Development Agreement.

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

Redevelopment Agency Executive Director Harry S. Mavrogenes responded to Council questions.

8.1 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and carried unanimously, the Redevelopment Agency Board of the Amended and Restated Disposition and Development Agreement with Block 3 Development Partners, LLC, for the development of Block 3 to increase Agency assistance to the Phase I project by \$1,850,000 to attract a new grocery store and an additional \$841,075 to address payment of other items arising out of the DDA for a total increase of \$2,691,075; to revise the project description and to modify the schedule of performance was approved and Resolution No. 74805, entitled: "A Resolution of the Council of the City of San José Accepting the Summary Costs and Findings of the Amended 33433 Summary Report and the Estimated Re-Use Evaluation and Making Certain Findings Pursuant to the California Health and Safety Code Section 33433 for the Development of Block 3, Including Additional Agency Assistance for Improvements to the Ground Floor Commercial Space and the Public Garage of Block 3, Phase I – The 88", and Redevelopment Agency Resolution Nos. 5885, 5886 and 5890 were adopted. (9-0-2. Absent: Chirco, Constant.)

- 8.2
- (a) **Adoption of a resolution by the City Council making certain determinations required by Redevelopment Law, Health and Safety Code Section 33445, for Redevelopment Agency funding of construction of improvements for the proposed Spartan Keyes Neighborhood Action Center, which will be located in space proposed to be subleased for that purpose in the Spartan Keyes SNI area.**
 - (b) **City Council and Redevelopment Agency Board approval of a Cooperation Agreement providing for:**
 - (1) **The Agency to fund the initial security deposit of \$5,000 of the proposed sublease for the Center.**
 - (2) **The Agency to fund rent payments for the 5-year term of the proposed sublease for the Center in an amount not to exceed \$136,961.**
 - (3) **The Agency to fund certain tenant improvements and fixtures, furniture and equipment (FF&E) for the proposed Center in an amount not to exceed \$80,000.**
 - (4) **The City to maintain and operate the Spartan Keyes Neighborhood Action Center pursuant to the proposed sublease.**
 - (c) **City Council approval of a five-year sublease agreement with ROEM Development Corporation for 2,256 square feet of commercial space on the ground floor of a building located at 570 Keyes Street, at a rental rate of \$2,256 per month for nine months of the first year of the sublease with the first three months free and annual increases of 3% for a total amount not to exceed \$136,961 for the five-year sublease period.**
 - (d) **Adoption of a resolution by the City Council authorizing the City Manager to negotiate and execute any further ancillary agreements, sublease amendments or other documents necessary to complete the transaction.**

- 8.2 (e) **Adoption by the City Council of the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund in the amount of \$105,304 for FY 2008-2009:**
- (1) **Increase the appropriation to the Department of Public Works for Non-Personal/Equipment by \$25,304.**
 - (2) **Establish a City-Wide appropriation to the General Services Department for the Spartan Keyes Neighborhood Action Center Tenant Improvements in the amount of \$80,000.**
 - (3) **Increase the estimate for Earned Revenue by \$105,304.**

CEQA: Mitigated Negative Declaration and Addenda Thereto, File No. PD04-065. [SPARTAN KEYES SNI]

Documents Filed: Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes and City Manager Debra Figone, dated February 12, 2009, recommending adoption of resolutions, a cooperation agreement, a five-year sublease agreement with ROEM Development Corporation and appropriation ordinance and funding sources resolution amendments.

Public Comments: Rita Torres, Spartan Keyes Neighborhood Action Center, expressed support to the Staff recommendations.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and carried unanimously, a Cooperation Agreement and a five-year sublease agreement with ROEM Development Corporation were approved; Resolution No. 74806, 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 Spartan Keyes Neighborhood Action Center"; Resolution No. 74807, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute Any Further Ancillary Agreements, Sublease Amendments or Other Documents Necessary to Complete the Spartan Keyes Neighborhood Action Center Transaction"; Ordinance No. 28506, "An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the General Fund for the Department of Public Works Non-Personal/Equipment and For the Spartan Keyes Neighborhood Action Center Tenant Improvement Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" and Resolution No. 74808, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 74461 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2008-2009 to Adjust Revenues in the General Fund", were adopted. (10-0-1. Absent: Chirco.)

- 8.4 (a) **Adoption of a resolution by the City Council accepting the 33433 Summary Report and Re-Use Valuation pursuant to the California Health and Safety Code Section 33433 for the sale and development of Agency-owned property on the northwest corner of North Second Street and East Saint James Street (APN 467-01-118).**
- (b) **Adoption of a resolution by the Redevelopment Agency Board approving the Amended and Restated Disposition and Development Agreement (DDA) with Green Valley Corporation and authorizing the Executive Director to execute ancillary documents as contemplated by the Amended DDA to close escrow subject to compliance with the terms of the DDA, and to negotiate and execute amendments to the DDA substantially in conformance with the intent of the DDA and as reasonably necessary to conform to lender requirements.**

CEQA: Administrative EIR Findings For Final Supplemental Environmental Impact Report for Park View Towers Project Adopted by Director of PBCE on 6/4/08 in connection with File Nos. H05-029, HP05-002 and HP05-003. [MERGED]

Documents Filed: Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated February 12, 2009, recommending adoption of resolutions

Public Comments: Bob Carlson, Vice President, St. James Historic District, expressed his support to the project.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and carried unanimously, Resolution No. 74809, entitled: "A Resolution of the Council of the City of San José Approving the Sale of Certain Agency-Owned Property Located on the Northwest Corner of North Second Street and East Saint James Street to Green Valley Corporation, Accepting the 33433 Summary Report and Re-Use Valuation and Making Certain Findings", and Redevelopment Agency Resolution No. 5887 were adopted. (10-0-1. Absent: Chirco.)

The Council of the City of San José and Redevelopment Agency Board was adjourned at 4:12 p.m.

JOINT REDEVELOPMENT AGENCY ITEM

The Joint Redevelopment Agency Board reconvened at 7:31 p.m. to consider Item 8.3 in a Joint Session.

- 8.3 (a) **The Redevelopment Agency Board adopt a resolution approving a Building Rehabilitation and Loan Agreement with Urban Markets, LLC (Developer), in an amount not to exceed \$5,000,000 for private improvements and \$1,000,000 for off-site public improvements related to the San Pedro Square Urban Market generally located in the vicinity of 87 North San Pedro and 196 West Saint John Street and authorize the Executive Director to negotiate and execute all documents necessary to implement the transaction described in the Agreement.**
- (b) **The Agency Board adopt a resolution approving a shift of \$4,000,000 from the adopted FY 2009-2010 Two-Year Spending Plan to the FY 2008-2009 Adopted Capital Budget for the San Pedro Square Urban Market project line in the Merged Redevelopment Area, and amending the FY 2008-2009 Agency appropriations resolution.**
- (c) **That the City Council directs the City Attorney and City Administration to draft appropriate ordinances and/or documents for Phase 1 of the Project to allow:**
- (1) **Revocable license to use City streets and rights of way for kiosks and carts for the Project.**
 - (2) **Master vendor permit for multiple vendor sites within the Project.**
 - (3) **Renaming of the Market Street Garage to reflect the new project.**
 - (4) **Joint use of the Peralta Adobe and Fallon House properties by History San Jose and Developer.**
- (d) **Direction by the Agency Board and City Council to staff to discuss with the Developer the alternatives for the future acquisition and/or use of the parking lot located directly west of the Fallon House (West Parking Lot) and the property referred to as the North Garage Space.**

CEQA: Resolution No. 72767, Downtown Strategy 2000 FEIR, File No. PP09-024. [SNI]

Documents Filed: (1) Memorandum from Council Members Liccardo, Herrera and Pyle, dated February 20, 2009, recommending approval of the Staff recommendations. (2) Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes and City Manager Debra Figone, dated February 12, 2009, recommending approval of the agreement with Urban Markets, LLC, adoption of resolutions, direct the City Attorney and City Administration to draft appropriate ordinances and/or documents for Phase 1 of the Project and direction to staff to discuss with the developer the alternatives.

Mayor Reed and Council Members Liccardo, Constant, Kalra and Chu disclosed meetings.

Redevelopment Agency Executive Director Harry S. Mavrogenes provided background on the project. Redevelopment Agency Deputy Executive Janet Kern presented an overview of the building rehabilitation and loan agreement with Urban Markets LLC.

8.3 (Cont'd.)

A spokesperson for the Developer entity which included the McEnery Family (dba Farmers Union) and Martin Menne, who is affiliated with Barry Swenson Builders, spoke to the process of this project and the values of the construction of a unique Urban Farmer's Market.

Public Comments: Expressing support to the Urban Market project which will enhance lifestyles and walking neighborhoods were Joshua Devincenzi Melander (Italian District/Cultural Center), Frank Penrose (St. James Historic District), Paul Higgins (San José Downtown Restaurant Association), Veronica Roberson (City Heights), Scott Knies (San José Downtown Association) and Steve Borkenhagen.

Anthony Martino (Italian Men's Club) expressed support to a new Italian Men's Community Center that would be enhanced by the Urban Market project.

Bill Delte expressed his opinion that the City does not have enough money to pay for this project.

Motion: Council Member Liccardo moved approval of the Staff recommendations as outlined. Council Member Herrera seconded the motion.

Council Member Pyle requested a detailed paper trail from City Attorney Richard Doyle about his decision of a "No Brown Act Violation" between Council Member Liccardo and Council Member Campos when they discussed the Urban Market project.

Council Member Campos suggested that the City should invest in projects that bring high paying jobs and money back to the City of San José. She noted that the City should wisely invest its limited funds and objected to the use of \$6 Million of the taxpayers' funds.

Action: On a call for the question, the motion carried, Redevelopment Agency Resolution Nos. 5888 and 5889 were adopted, the City Attorney and City Administration were directed to draft appropriate ordinances and/or documents for Phase 1 of the Project and Staff was directed to discuss with the Developer the alternatives for the future acquisition and/or use of the parking lot located directly west of the Fallon House (West Parking Lot) and the property referred to as the North Garage Space. The City Attorney was requested to return in one week to the City Council with a detailed analysis about his decision of a "No Brown Act Violation". (9-0-2. Noes: Campos. Absent: Chirco.)

The Council of the City of San José and Redevelopment Agency Board was adjourned at 8:17 p.m.