

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, APRIL 21, 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 9:35 a.m. to a Closed Session in Room W133, to confer with Legal Counsel with respect to (A) Real Property Designated Representatives pursuant to Government Code 54956.8: Property: 95 North Third Street, San José, CA 95113; APN: 467-21-002; Negotiating Parties: Jim Ortbal, Paul Krutko and Neil Stone for the City of San José and Steve Dunn for Legacy Partners; 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. (B) to confer with Legal Counsel with respect to existing litigation pursuant to Government Code subsection (a) of Section 54956.9: (1) Garden City, Inc. v. City, et al.; Names of Parties Involved: Garden City, Inc., City of San José, Division of Gaming Control, Richard Teng, DOES 1-10; Court: Superior Court of California, County of Santa Clara; Case No: 1-09-CV139958; Amount of Money or Other Relief Sought: Damages according to proof; (2) 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 D. 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; (3) Grason v. City of San José, et al.; Names of Parties Involved: Kenneth Grason, City of San José, San José Police Chief Robert Davis, Police Officer Vida, #3404 and DOES 1 through 10; Court: U.S. District Court, Northern District of California; Case No: C07-03687 JW; Amount of Money or Other Relief Sought: Damages according to proof; (4) Valdez et al. v. City et al; Names of Parties

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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; (5) 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. (6) 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; (7) 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; (8) 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; (9) 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; (10) 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; (11) 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; (12) 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; (13) 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; (14) 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; (15) 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; (16) 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; (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 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; (18) 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; (19) 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; (20) 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; (21) 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; (22) 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

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proof; (23) Diamond Enterprises, et al. v. City of San José, et al; Names of Parties 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; (24) 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; (25) 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; (26) 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; (27) 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; (28) 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; (29) 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; (30) 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

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California, County of Santa Clara; Case No: 1-07-CV100074; Amount of Money or Other Relief Sought: Damages according to proof; (31) Lefall, et al. v. City of San José; 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; (32) 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; (33) 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; (34) 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; (35) 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; (36) 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; (37) 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. (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager designee Alex Gurza; Employee Organizations: 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 11:55 a.m. and reconvened to Regular Session at 1:38 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

Dancers from the Joy of Dancing Studio performed “Rubber Ducky”. (District 4)

PLEDGE OF ALLEGIANCE

Mayor Reed and the Third Grade Students from De Vargas Elementary School (District 1) led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the Orders of the Day and the Amended Agenda were approved, and Item 8.2 was referred to the Rules and Open Government Committee to be agendaized on a future City Council Agenda. (10-0-1. Absent: Chirco.)

CEREMONIAL ITEMS

1.1 Presentation of a commendation to Rockwell Collins for their leadership and manufacturing solutions in providing vision systems to the defense and aerospace industries. (Economic Development)

Action: Mayor Reed and Council Member Chu commended Rockwell Collins for their leadership and manufacturing solutions in providing vision systems to the defense and aerospace industries.

1.2 Presentation of Energy Saving Rebate Check from the PG&E “California Wastewater Process Optimization Program” for achieving significant energy savings in Municipal Wastewater Facilities throughout the PG&E service territory. (Environmental Services)

Action: Mayor Reed accepted an Energy Saving Rebate Check from the PG&E “California Wastewater Process Optimization Program” on behalf of the City of San José.

1.3 Presentation of an Award to the City from the Northern California Solar Energy Association for ranking first in total solar projects installed within large cities. (Environmental Services)

Action: Mayor Reed accepted an award from the Northern California Solar Energy Association on behalf of the City of San José.

1.5 Presentation of a commendation to the Almaden Customer Service Realty Autism Golf Tournament for their extensive work helping children with Autism and their families. (Pyle)

Action: Mayor Reed and Council Member Pyle recognized and commended the Almaden Customer Service Realty Autism Golf Tournament for their extensive work helping children with Autism and their families.

1.7 Presentation of a proclamation declaring the week of April 26 – May 2, 2009 as “National Crime Victims’ Rights Week” in the City of San José. (Rules Committee referral 4/15/09)

Action: Mayor Reed and Council Member Constant recognized the week of April 26, 2009 through May 2, 2009 as “National Crime Victims’ Rights Week” in the City of San José.

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.)

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 28524 – Rezoning certain real property situated at the northeast corner of Coleman Avenue and Taylor Street (702 Coleman Avenue) to LI-Light Industrial Zoning District. C09-001**

Documents Filed: Proof of Publication of the title of Ordinance No. 28524 executed on April 14, 2009, submitted by the City Clerk.

Action: [Ordinance No. 28524](#) was adopted. (10-0-1. Absent: Chirco.)

- 2.3 (a) Adopt a resolution authorizing the City Attorney to negotiate and execute a fourth amendment to the January 18, 2005 agreement with Renne Sloan Holtzman & Sakai LLP, for legal services in connection with labor relations and negotiations increasing compensation by \$225,000 for a total amount not to exceed \$950,000, and extending the term through June 30, 2010.**

- 2.3 (b) **Adopt the following 2008-2009 Appropriation Ordinance amendments in the General Fund:**
- (1) **Decrease the Contingency Reserve by \$225,000.**
 - (2) **Increase the City Manager's Non-Personal/Equipment appropriation by \$225,000.**

**CEQA: Not a Project. (City Attorney's Office/City Manager's Office)
(Deferred from 4/14/09 – Item 2.3)**

Documents Filed: Memorandum from City Attorney Richard Doyle and City Manager Debra Figone, dated April 6, 2009, recommending adoption of a resolution and appropriation ordinance amendments.

Action: [Resolution No. 74876](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Attorney to Negotiate and Execute a Fourth Amendment to the Agreement for Legal Services with Renne Sloan Holtzman & Sakai LLP” and [Ordinance No. 28529](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the General Fund for the City Manager’s Non-Personal/Equipment Fund; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”, were adopted. (10-0-1. Absent: Chirco.)

- 2.4 **Adopt a resolution revising the airline fee-waiver incentive program to support the development of new air service at Mineta San José International Airport by providing two-year incentives for new international routes to/from Canada and Mexico and repealing Resolution No. 74388 that established the current incentive program. CEQA: Resolution Nos. 67380 and 71451, File No. PP08-059. (Airport)**

Documents Filed: Memorandum from Director of Aviation William Sherry, dated March 30, 2009, recommending adoption of a resolution.

Action: [Resolution No. 74877](#), entitled: “A Resolution of the Council of the City of San José Revising the City’s Airline Air Service Promotional Fee-Waiver Incentive Program to Support the Development of New Air Service at the Norman Y. Mineta San José International Airport and Repealing Resolution No. 74388”, was adopted. (10-0-1. Absent: Chirco.)

- 2.5 **Approve an ordinance amending Title 15 of the San José Municipal Code by adding Chapter 15.34 to implement certain provisions of the Digital Infrastructure and Video Competition Act of 2006, relating to the regulation of video service providers. CEQA: Not a Project. (City Attorney’s Office)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated April 9, 2009, recommending approval of an ordinance.

Action: [Ordinance No. 28530](#), entitled: “An Ordinance of the City of San José Amending Title 15 of the San José Municipal Code by Adding a New Chapter 15.34 to Provide for Regulations of State Video Franchise Holders”, was passed for publication. (10-0-1. Absent: Chirco.)

- 2.6 As recommended by the Parks and Recreation Commission on April 1, 2009, rename a pool located at 421 N. First Street as “Rotary Ryland Pool” (currently named Ryland Pool). (City Clerk)**

Documents Filed: Memorandum from City Clerk Lee Price, dated April 6, 2009, transmitting the recommendations of the Park and Recreation Commission.

Action: The pool located at 421 N. First Street was renamed as “Rotary Ryland Pool”. (10-0-1. Absent: Chirco.)

- 2.7 Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with Bjorn Schulke to fabricate and install artwork for the Norman Y. Mineta San José International Airport North Concourse Concession Area in an amount not to exceed \$300,000. CEQA: Resolution Nos. 67380 and 71451, File No. PP09-051. (Economic Development)**

Documents Filed: Memorandum from Chief Development Officer Paul Krutko, dated March 30, 2009, recommending adoption of a resolution.

Public Comments: Marta Thoma, Thoma & Hall, voiced her objection to the agreement for the reason that local artists were not selected to fabricate and install art work at the Norman Y. Mineta San José International Airport.

Action: Upon motion by Council Member Pyle, seconded by Council Member Liccardo and carried unanimously, [Resolution No. 74878](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with Bjorn Schulke for the Fabrication and Installation of a Public Art Project at Norman Y. Mineta San José International Airport in an Amount Not To Exceed \$300,000”, was adopted. (10-0-1. Absent: Chirco.)

- 2.8 (a) Report on bids and award of a one-year construction contract for New Construction of Various Equipment, to the low bidder, Anderson Pacific Engineering Construction, Inc., in an amount not to exceed \$450,930, with an option to extend the contract for two additional one year terms in an amount not to exceed \$500,000 per option term, for a total contract amount of up to \$1,450,930, subject to appropriation of funds.**
- (b) Adopt a resolution authorizing the Director of Environmental Services to exercise the option to extend the term of the contract for two additional one year terms, subject to appropriation of funds.**
- CEQA: Exempt, File No. PP08-202. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated March 30, 2009, recommending the award of the contract to the low bidder and adoption of a resolution. (2) Letter from the Treatment Plant Advisory Committee, dated April 9, 2009, stating concurrence with the Staff recommendations.

2.8 (Cont'd.)

Action: The award of a one-year construction contract for new construction of various equipment, to the low bidder, Anderson Pacific Engineering Construction, Inc., in an amount not to exceed \$450,930, with an option to extend the contract for two additional one year terms in an amount not to exceed \$500,000 per option term, for a total contract amount of up to \$1,450,930, subject to appropriation of funds was approved and [Resolution No. 74879](#), entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Environmental Services to Exercise the Option to Extend the Term of the Contract with Anderson Pacific Engineering Construction, Inc. for the San José/Santa Clara Water Pollution Control Plant for New Construction of Various Equipment, Fiscal Year 2008-2009, for Two Additional One Year Terms in an Amount Not To Exceed \$500,000 per Option Year, Subject To Appropriation”, was adopted. (10-0-1. Absent: Chirco.)

- 2.9 (a) **Adopt a resolution authorizing the Director of Housing to negotiate and execute a grant agreement with the Neighborhood Housing Services of Silicon Valley (NHSSV) in the amount of \$250,000 for operational support of NHSSV’s loan education and counseling services associated with the City’s Homeownership Program.**
- (b) **Adopt the following amendments to the 2008-2009 Appropriation Ordinance in the Low- and Moderate-Income Housing Fund (Fund 443):**
- (1) **Increase the Housing Department’s Non-Personal/Equipment appropriation by \$250,000.**
 - (2) **Decrease the Loans Grants and Site Acquisition appropriation by \$250,000.**

CEQA: Not a Project. (Housing)

Documents Filed: Memorandum from Director of Housing Leslye Krutko and Budget Director Jennifer Maguire, dated April 1, 2009, recommending adoption of a resolution and appropriation ordinance amendments.

Action: [Resolution No. 74880](#), entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Housing to Negotiate and Execute a Grant Agreement with Neighborhood Housing Services of Silicon Valley” and [Ordinance No. 28531](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Low to Moderate Income Housing Fund for the Housing Department’s Non-Personal/Equipment Fund; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”, were adopted. (10-0-1. Absent: Chirco.)

- 2.10 **Adopt a resolution to consider the establishment of a Rule 20A Underground Utility District along Coleman Avenue between West Hedding Street and Spring Street, North Market Street between West Julian Street and West St. James Street, and Devine Street between North San Pedro Street and North First Street, and setting a Public Hearing on June 2, 2009 at 1:30 p.m. CEQA: Mitigated Negative Declaration, File No. PP08-257. Council District 3. (Public Works)**

2.10 (Cont'd.)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated March 30, 2009, recommending adoption of a resolution.

Action: [Resolution No. 74881](#), entitled: "A Resolution of the Council of the City of San José Setting the Time and Place for a Public Hearing to Consider the Establishment of a Rule 20A Underground Utility District Along Coleman Avenue Between West Hedding Street and Spring Street, North Market Street Between West Julian Street and West St. James Street and Devine Street Between North San Pedro Street and North First Street on June 2, 2009 at 1:30 p.m.", was adopted. (10-0-1. Absent: Chirco.)

**2.11 Request for an excused absence for Vice Mayor Chirco from the Closed Session and the Regular Council Meeting on April 7, 2009 due to illness. (Chirco)
(Rules Committee referral 4/8/09)**

Documents Filed: Memorandum from Vice Mayor Chirco, dated April 6, 2009, requesting an excused absence due to authorized City business.

Action: The absence for Vice Mayor Chirco was excused. (10-0-1. Absent: Chirco.)

2.12 Approve requests by Council Member Chu to travel to:

- (a) **Los Angeles, CA on April 2, 2009 to attend the League of California Cities Housing, Community and Economic Development Committee meeting.**
- (b) **Sacramento, CA on April 15-17, 2009 to attend the League of California Cities' Legislative Action Days on April 15, 2009 and Board Meeting on April 16 – 17, 2009 as the designated representative of the City of San José.**

Source of Funds: Mayor/Council Travel Fund. (Chu)

[Rules Committee referral 4/15/09 – Item 3(1)(a)]

Documents Filed: Memorandum from Council Member Chu, dated April 10, 2009, requesting approval of travel.

Action: The travel requests for Council Member Chu were approved. (10-0-1. Absent: Chirco.)

END OF CONSENT CALENDAR

PUBLIC SAFETY SERVICES

- 8.1 As recommended by the Rules and Open Government Committee on April 8, 2009:**
- (a) Accept the introductory scope and preliminary timeline for Consortium for Police Leadership and Equity (CPLÉ) to present to the City Council its organization and methodology for doing research related to racial and gender equity in policing.**
 - (b) Accept the preliminary quarterly status report schedule to the Public Safety, Finance & Strategic Support Committee.**
- (City Manager)**
(Rules Committee referral 4/8/09 – Item 10.2)

City Manager Debra Figone provided opening comments and highlights about the Consortium for Police Leadership in Equity. Police Chief Robert Davis presented comments.

Dr. Phillip Atiba Goff presented a brief overview of the Consortium for Police Leadership in Equity and responded to Council questions.

Motion: Council Member Kalra moved to continue Item 8.1 to May 5, 2009 in order to obtain additional information regarding the scope, methodology and questions to be asked; to continue to engage with Consortium for Police Leadership in Equity and to outreach with the community. Council Member Nguyen seconded the motion.

Discussion followed.

Public Comments: Robert Lopez, San José Police Officers Association, expressed his opinion that only a small minority had misgivings about the Police Officers in the community. Ross Signorino agreed that there was not an inherit distrust of the Police Department throughout the City of San José.

Action: On a call for the question, the motion carried unanimously, Item 8.1 was continued to May 5, 2009 in order to obtain additional information regarding the scope, methodology and questions to be asked; to continue to engage with Consortium for Police Leadership in Equity and to outreach with the community. (9-0-2. Absent: Chirco, Constant.)

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone provided an update on the Fiscal Year 2009-2010 proposed operating budget which is scheduled to be released on May 1, 2009.

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

Action: Deferred to April 28, 2009.

**3.3 Report of the Rules and Open Government Committee – April 1, 2009
Mayor Reed, Chair**

Action: Deferred to April 28, 2009.

3.5 Adopt a resolution:

(a) Approving the terms of agreements with the bargaining units listed below and authorizing the City Manager to execute the agreements effective June 28, 2009:

- (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI).**
- (2) Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43).**
- (3) Association of Maintenance Supervisory Personnel (AMSP).**
- (4) City Association of Management Personnel (CAMP).**
- (5) International Brotherhood of Electrical Workers, Local No. 332 (IBEW).**
- (6) Municipal Employees' Federation, AFSCME Local 101 (MEF).**
- (7) Confidential Employees' Organization, AFSCME Local 101 (CEO).**

(b) Implementing retiree healthcare funding for Executive Management and Professional Employees (Unit 99) and employees in the Unclassified Non-Management employee unit (Unit 82) who are in the Federated City Employees' Retirement System, effective June 28, 2009.

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

Documents Filed: Memorandum from Director of Employee Relations Alex Gurza, dated April 7, 2009, recommending adoption of a resolution.

City Manager Debra Figone summarized the report on Retiree Healthcare Funding.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and carried unanimously, [Resolution No. 74882](#), entitled: "A Resolution of the Council of the City of San José Approving Agreements Between the City of San José and Several Bargaining Units Regarding Retiree Healthcare Funding and Implementing Retiree Healthcare Funding for Units 99 and 82", was adopted. (9-0-2. Absent: Chirco, Constant.)

3.6 As referred by the Rules and Open Government Committee on April 15, 2009, consider a position of support for AB560 (Skinner) – Net Energy Metering. (Mayor) [Rules Committee referral 4/15/09 – Item 3(1)(a)]

3.6 (Cont'd.)

Documents Filed: Memorandum from City Clerk Lee Price, dated April 16, 2009, transmitting the recommendations of the Rules and Open Government Committee.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, a position of support for AB560 was accepted. (9-0-2. Absent: Chirco, Constant.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.3 **Accept the Envision San José 2040 General Plan Update status report and provide direction to staff to proceed with environmental, fiscal and economic analysis of the four proposed growth study scenarios as recommended by staff. CEQA: Not a Project. (Planning, Building and Code Enforcement)**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated April 9, 2009, recommending acceptance of the Envision San José 2040 status report. (2) Staff presentation of Envision San José 2040 General Plan Update dated April 21, 2009.

Principal Planner Andrew Crabtree provided the General Plan update.

Motion: Council Member Liccardo moved approval of the status report and Scenarios C and E, with the condition that the Task Force will approve Scenarios J or K. Council Member Oliverio seconded the motion.

Public Comments: Jack Nadeau spoke in support to the Staff recommendations but objected to the trend toward high density. Erik Schoennauer encouraged support to the Staff recommendations and to the amendments by Council Member Liccardo. Melissa Hippard, Sierra Club, suggested that an environmental process be included in the process. Ross Signorino observed that growth needs to be managed effectively.

Mayor Reed requested that Council Member Liccardo clarify the motion regarding the distinction between Scenarios G and K.

Council Member Liccardo requested to amend his motion to modify the direction to the Task Force to approve either Scenarios G or K, or Scenarios J or F. Council Member Oliverio accepted the amendment.

Director of Planning, Building and Code Enforcement Joseph Horwedel and Principal Planner Andrew Crabtree responded to Council questions and comments.

Action: On a call for the question, the motion carried unanimously, the Envision San José 2040 Status Report and Scenarios C and E were accepted, with direction to the Task Force to approve either Scenarios G or K, or Scenarios J or F. (8-0-3. Absent: Chirco, Constant, Kalra.)

- 4.4 (a) Approve an ordinance:**
- (1) Repealing Chapter 6.30 of Title 6 of the San José Municipal Code, the Flower Vendor Ordinance;**
 - (2) Amending Chapter 6.54 of Title 6 of the San José Municipal Code, the Peddler Permit Ordinance, to: include regulation of flower street vendors; extend the hours during which approved location peddlers can peddle; authorize the City Manager to make and promulgate time, place and manner regulations reasonably necessary to promote economic growth and create a more vibrant Downtown; and update definitions in the Chapter 6.54 to ensure consistency of terms within Title 6 of the San José Municipal Code.**
- (b) Approve an ordinance amending Chapter 6.55 of Title 6 of the San José Municipal Code, the Downtown Special Events Ordinance, to: reduce the area within which approved location peddler permits may be suspended during a designated Downtown Special Event by limiting the suspension area to the Special Event Boundary; authorize approved location peddlers within the Special Event Boundary to peddle at alternative, temporary approved locations outside the Boundary for the duration of the Downtown Special Event; and clarify the exceptions to the requirement for Event Organizers to provide approved location peddlers an equal opportunity to participate in the Downtown Special Event.**
- (c) Direct staff to repeal all fees related to the Flower Vendor Ordinance and the Flower Vendor Permits from the City's Schedule of Fees and Charges, effective June 1, 2009.**

**CEQA: Downtown Strategy 2000 EIR, Resolution No. 72767. Council District 3. (Economic Development)
(Deferred from 4/14/09 – Item 4.2)**

Action: Deferred to April 28, 2009 per Administration.

NEIGHBORHOOD SERVICES

5.1 Report of the Neighborhood Services and Education Committee – April 9, 2009 Council Member Campos, Chair

Documents Filed: The Neighborhood Services and Education Committee Report dated April 9, 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 April 9, 2009 were accepted. (8-0-3. Absent: Chirco, Constant, Kalra.)

5.3 As referred by the Neighborhood Services and Education Committee on April 9, 2009, consider approval of the following changes to the Level 1 Homework Center Program Allocations Process:

- (a) Allocate the school-based portion of funds to districts serving grades K-8, as a block grant based on the percent of district enrollment to total City enrollment, with:
 - (1) A minimum of \$10,000 per site, and a requirement that each School District submit a program.**
 - (2) A spending plan with clear, quantifiable outcomes, performance measures, leveraging of funds and a central point of contact for the District grant to ensure accountability.****
- (b) Recommend that the funding amounts provided to the Library system, the PRNS system, and to the competitive community-based organizations process remain at the same level of allocation from FY 08-09.**
- (c) Expand the eligible use of funds to include weekend and/or summer programming provided the core service remains a safe place for homework center support.**

(Parks, Recreation and Neighborhood Services)

[Neighborhood Services and Education Committee referral 4/9/09 – Item 5.1(3)(4)]

Action: Deferred to April 28, 2009 per Administration.

5.4 As referred by the Neighborhood Services and Education Committee on April 9, 2009:

- (a) Review and discuss the proposed Pricing and revenue Policy.**
- (b) Direct City Staff to refer the program cost recovery goals and Pricing and Revenue Policy for final approval in the operating budget process.**
- (c) Direct City Staff to return to City Council annually for approval of the cost recovery goals as part of the Fees and Charges portion of the annual operating budget process.**
- (d) Authorize the City Manager or its designee to establish fees and charges in a manner consistent with the Pricing Policy and within the approved cost recovery goals.**

(Parks, Recreation and Neighborhood Services)

[Neighborhood Services and Education Committee referral 4/9/09 – Item 5.1(3)(5)]

Documents Filed: (1) Memorandum from City Clerk Lee Price, dated March 9, 2009, transmitting the recommendations of the Neighborhood Services and Education Committee. (2) Comment card from Sylvia Lowe, Chinese Cultural Garden, dated April 21, 2009, expressing support to the need for a fair, and comprehensive Pricing and Revenue Policy.

Director of Parks, Recreation and Neighborhood Services Albert Balagso provided an overview of the Pricing and Revenue Policy goals.

5.4 (Cont'd.)

Motion: Council Member Liccardo moved approval of the Staff recommendations and requested that Staff provide information on the cost to Parks, Recreation and Neighborhood Services if registered Neighborhood Associations and NACs are charged a nominal fee for facility use. Council Member Nguyen seconded the motion.

Director of Parks, Recreation and Neighborhood Services Albert Balagso responded to Council questions.

Discussion followed.

Public Comments: Speaking in support to the Staff recommendations were Corazon Tomalinas, Mike Flaughner, Blage Zelalitch, San José Downtown Association and Bruce Labadie, San José Jazz. Expressing opposition to the Staff recommendations were Richard Santos and Bill Hughes. Connie Langford, Senior Citizens Commission, pointed out that the community centers are essential to the senior citizens.

Action: On a call for the question, the motion carried unanimously, Staff was directed to refer the program cost recovery goals and the Pricing and Revenue Policy for final approval in the operating budget process; the City Manager or its designee was authorized to establish fees and charges in a manner consistent with the Pricing Policy and within the approved cost recovery goals; and Staff was directed to provide information on the cost to Parks, Recreation and Neighborhood Services if registered Neighborhood Associations and NACs are charged a nominal fee for facility use. (8-0-3. Absent: Chirco, Constant, Herrera.)

5.5 **As referred by the Neighborhood Services and Education Committee on April 9, 2009, adopt a resolution to revise Council Policy 0-30 “Schools and City Collaborative” to reflect recent changes to the structure of the Collaborative. (PRNS)** **[Neighborhood Services and Education Committee referral 4/9/09 – Item 5.1(3)(7)]**

Action: Deferred to April 28, 2009 per Administration.

TRANSPORTATION & AVIATION SERVICES

6.1 Report of the Transportation and Environment Committee – April 6, 2009 Council Member Liccardo, Chair

Documents Filed: The Transportation and Environment Committee Report dated April 6, 2009.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and carried unanimously, the Report of the Transportation and Environment Committee and the actions of April 6, 2009 were accepted. (8-0-3. Absent: Chirco, Constant, Herrera.)

- 6.2 Report on bids and award of contract for the Airport and Airlines Tenant Improvement Project at the Norman Y. Mineta San José International Airport to the low bidder, San José Construction Co., Inc. in the amount of \$4,930,000, and approval of a contingency in the amount of \$739,500. CEQA: Resolution Nos. 67380 and 71451, PP09-045. (Airport/Public Works)
(Deferred from 4/14/09 – Item 6.4)**

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen and Director of Aviation William Sherry, dated March 23, 2009, recommending the award of the contract to the low bidder. (2) Supplemental memorandum from Director of Public Works Katy Allen and Director of Aviation William Sherry, dated April 14, 2009, providing additional information after the bids were opened.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, the award of contract for the Airport and Airlines Tenant Improvement Project at the Norman Y. Mineta San José International Airport to the low bidder, San José Construction Co., Inc. in the amount of \$4,930,000, with related contingency, was approved. (8-0-3. Absent: Chirco, Constant, Herrera.)

PUBLIC SAFETY SERVICES

- 8.2 As referred by the Public Safety, Finance and Strategic Support Committee on March 23, 2009:**
- (a) Accept the City Manager’s response to the City Council’s referral on how and whether the City can accurately survey the demographics characteristics of people in the Downtown Entertainment Zone.**
 - (b) City Council consideration on how it would like to proceed with respect to conducting a Demographic Study in the Entertainment Zone.**
- (City Manager)**

Action: Referred to Rules & Open Government Committee to be agendaized on a future City Council Agenda per Orders of the Day.

- 8.3 Accept the status report related to the Downtown Entertainment Zone Policing Cost-Sharing Model per Council direction on February 24, 2009. CEQA: Not a Project. Council District 3. (Economic Development)
(Referred from 2/24/09 – Item 3.5)**

Action: Deferred to April 28, 2009 per Administration.

JOINT COUNCIL/REDEVELOPMENT AGENCY

- 9.1 (a) **Adopt a City Council resolution approving responses to written objections to the adoption 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 billion on the amount of bonded indebtedness that may be outstanding at any one time, and to modify the list of eligible public improvements.**
- (b) **Final adoption of Ordinance No. 28525, an Ordinance of the City of San José amending the Redevelopment Plans in the Merged Project Area 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.**

(Redevelopment Agency)

(Rules Committee referral 4/8/09)

Documents Filed: (1) Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated April 10, 2009, recommending adoption of a resolution and final adoption of an ordinance. (2) Supplemental memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated April 14, 2009, recommending adoption of a resolution approving responses to four written objections. (3) Proof of Publication of the title of Ordinance No. 28525 executed on April 14, 2009, submitted by the City Clerk.

Action: Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, [Resolution No. 74883](#), entitled: “A Resolution of the Council of the City of San José Approving Responses to Written Objections from Property Owners and/or Taxing Entities to the Adoption 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 Billion on the Amount of Bonded Indebtedness That May Be Outstanding at Any One Time and To Modify the List of Eligible Public Improvements” and [Ordinance No. 28525](#) were adopted. (8-0-3. Absent: Chirco, Constant, Herrera.)

- 9.2 **Final adoption of Ordinance No. 28525, an Ordinance of the City of San José amending 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.**

Action: Item 9.2 was renumbered to Item 9.1(b) above.

RECESS/RECONVENE

The City Council recessed at 5:12 p.m. from the afternoon Council Session and reconvened at 7:03 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)

Assistant City Clerk Dennis Hawkins read the requests for continuance of the applications. Upon motion by Council Member Pyle, seconded by Council Member Liccardo, and carried unanimously, the below noted continuances and actions were taken as indicated.

CEREMONIAL ITEMS

- 1.4 Presentation of commendations to Outstanding Childcare Contributors Lew Osborn from Moreland School District Pre-School, Lynne Santo Yamaichi, Director and Brian Handa, teacher from the Buddhist Church Lotus Pre-School, and Michelle Wright Conn from Cisco: Families@First Center; and recipients of the George Howard Memorial Award for Volunteerism in Child Care Jennifer Sweeney, Program Manager and Wasmin Malik, Director of the Silicon Valley Education Foundation. (Chirco/Constant)**

Action: Mayor Reed and Council Members Constant, Liccardo and Chu recognized and commended the outstanding Childcare Contributors and recipients of the George Howard Memorial Award for Volunteerism in Child Care. Vice Mayor Chirco was not present.

- 1.6 Presentation of a commendation to San José State's Kappa Delta Sorority, Gamma Iota Chapter, for their highly successful charity event Shamrock Showcase. (Mayor/Liccardo)
(Rules Committee referral 4/8/09)**

Action: Mayor Reed and Council Member Liccardo recognized and commended Gamma Iota Chapter for their highly successful charity event "Shamrock Showcase".

PUBLIC HEARINGS ON CONSENT CALENDAR

- 11.1 (a) Consideration of an ordinance rezoning the real property located on the northwest corner of Stockton Avenue and West Julian Street (715 W. Julian Street) from LI Light Industrial Zoning District to CP Commercial Pedestrian Zoning District to allow commercial uses on a 0.15 gross acre site (Speno, Anthony A. Trustee & Et Al, Owner). CEQA: Mitigated Negative Declaration.
C09-005 – District 6**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C09-005, dated March 30, 2009, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated March 30, 2009, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing, executed on March 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 Pyle, seconded by Council Member Nguyen and carried unanimously, the recommendation of the Planning Director was approved, [Ordinance No. 28532](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on at the Northwest Corner of Stockton Avenue and West Julian Street (715 West Julian Street) to CP Commercial Pedestrian Zoning District”, was passed for publication. (9-0-2. Absent: Chirco, Chu.)

END OF PUBLIC HEARINGS ON CONSENT CALENDAR

PUBLIC HEARINGS

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

PDC07-094 – District 3

(Continued from 3/17/09 – Item 11.3 and 4/7/09 – Item 11.3)

Documents Filed: (1) Memorandum from Council Member Liccardo, dated April 21, 2009, recommending approval of the staff/planning recommendations with conditions of approval as indicated in “Action”. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC07-094, dated February 17, 2009, recommending approval. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated February 26, 2009, transmitting the Planning Commission recommendation of approval. (4) 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 Liccardo, seconded by Council Member Herrera and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, the memorandum from Council Member Liccardo, dated April 21, 2009, was approved, including the following clarifications: (1) Staff directed to work with the applicant to improve the site plan prior to the issuance of a Planned Development Permit. Staff retains the discretion to allow no more than two units if a suitable site development plan cannot be achieved which: (a) Allows for adequate interior circulation and safe egress into high-speed traffic on South 10th Street. (b) Maintains suitable privacy of residents on-site and on the adjoining sites, with appropriate setbacks and adequate on-site parking. (2) Staff directed to work with the applicant to continue to refine architectural elements so that the final design will be more compatible with the historic character of surrounding single family homes; and [Ordinance No. 28533](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the East Side of South 10th Street Approximately 90 Feet North of Margaret Street (684 South 10th Street) to A(PD) Planned Development Zoning District”, was passed for publication. (10-0-1. Absent: Chirco.)

COMMUNITY & ECONOMIC DEVELOPMENT

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.
- (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, et al and 4/7/09 – Item 4.3)

Documents Filed: (1) Memorandum from Council Member Constant, dated April 17, 2009, recommending proposed modifications to the private property tree removal permit process as described below in “Action”. (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated March 9, 2009, recommending direction as depicted above.

Director of Planning, Building and Code Enforcement Joseph Horwedel presented a brief overview of the tree removal permit process and the model of the fee analysis for cost recovery.

Motion: Council Member Constant moved approval of the Staff recommendations and his memorandum, dated April 27, 2009, with modifications. Council Member Herrera seconded the motion.

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

Discussion followed.

Public Comments: Speaking in support to the memorandum from Council Member Constant were Tim Henderson and Lyman Taylor. Rhonda Berry, Our City Forest, agreed with streamlining the process and urged Council to consider the deficit of the urban forest.

Speaking in objection to the fee increases were Jack Jolly, Ross Signorino and Anil Babbar, Santa Clara County Association of Realtors.

Council Member Oliverio suggested that Staff work with Our City Forest during the streamlining process to consider different options of improving efficiencies and achieving cost recovery, i.e. outsourcing to save money.

4.2 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, the Staff recommendations and the memorandum from Council Member Constant were approved, with direction to Staff to return to Council with an analysis of the following changes to their proposal for modifying the private property tree remove permit process: (1) Provide residents with the option of performing or identifying reasonable mitigation in lieu of a permit. (2) Set a reasonable cap on the permit cost. (3) Allow for removal of nuisance trees without a permit. (4) Not require an arborist report to remove a tree from a private property. (10-0-1. Absent: Chirco.)

NEIGHBORHOOD SERVICES

5.2 Consideration of a proposal to change the current Library Internet Access and Computer Use Policy. (Constant) (Rules Committee referral 4/8/09)

Documents Filed: (1) Memorandum from Mayor Reed and Council Member Constant, dated April 10, 2009, recommending direction to Staff regarding the Library Internet Access and Computer Use Policy. (2) Memorandum from Vice Mayor Chirco and Council Members Kalra and Liccardo, dated April 10, 2009, recommending direction to Staff regarding the Library Internet Access and Computer Use Policy. (3) Supplemental memorandum from Council Member Constant, dated April 10, 2009, providing background on the Library Internet Access and Computer Use Policy. (4) Memorandum from Director of Library Department Jane Light, dated April 15, 2009, regarding the Library Internet Access and Computer Use Policy. (5) Fifteen letters of correspondence from members of the public, each dated April 21, 2009, regarding the Library Internet Access and Computer Use Policy. (6) Petition dated April 21, 2009 containing approximately 1,116 signatures expressing support to protect children from pornographic and obscene images on the computers in the San José Public Libraries.

Director of Library Department Jane Light summarized the Library Internet Access and Computer Use Policy.

Motion: Council Member Constant moved approval of the memorandum he cosigned with Mayor Reed, including the following recommendations: (1) Direct Staff to revise the San José Library Internet Access and Computer Use Policy to recognize that the library computers are used in public areas in full view of minors and therefore require patrons to behave in a responsible and courteous manner. (2) Direct Staff to install internet filtering technology to block websites that contain harmful material on all computers designed for use by minors at San José Branch Libraries. (3) Direct Staff to equip all computers that are not in areas designated for use by minors with filtering technology that can be enabled or disabled by user at time of login. (4) Direct Staff to work with San José State University in accordance with the existing MOU on issues regarding internet use by the public at the Martin Luther King Jr. Library (MLK) before proceeding with changes at MLK. Council Member Oliverio seconded the motion.

5.2 (Cont'd.)

Public Comments: Speaking in support of revising the San José Library Internet Access and Computer Use Policy to include installation of filters were Matthew Chasuk, Larry Pegram, Haran Schoming, Values Advocacy Council, Michael Nauman, Rich Crowley, Keith De Filippis, Jim Wynia, Don Ainge, Susan Shakeri, Tom Leddy, Roosevelt Park NA, Michelle Sundstrom, Karen Chung, Board of Education, Sinead Ochiner, Sharon Potter, Marian Duran, Laural Pannabecker, Luke Nguyen, Debbie Mendez, Jeri Tyrrell, Kathy Yancy, Jim Larkin, Karen Larkin, Jan Soule, Will Hutchinson, Lennah Shakeri, Michael Power, Kerry Hickam, Terese Mansfield, Evan Ansel, K'Lynn Hand, Peter Sauce, Mary Anne Fifield, MD, The Addiction Recovery Center, Gayle Wetzell, Sean Mansfield, Harold Stuart, Robert Benscoter and Kim Wickstrum.

Speaking in support to the memorandum from Vice Mayor Chirco and Council Members Kalra and Liccardo, dated April 10, 2009, were Judy Purrington, Lisa Jensen, Books Not Filters, Kavya Shankar, San José Youth Commission, Michael Kaufman, San José State University Academic Senate, Julie Ostrowski, Trixie Johnson, Caroline Martin, Library Commission, Dave Sulenski, Vince Tarpry, Jean Herges, Wilma Hashii, Reverend Michael Patrick Ellard, The Council of Churches of Santa Clara County, Leslie Bulbuk, Bay Area Municipal Elections Committee (BAYMEC), Tina Morrill, Debbie Cauble, Pat Wolfe, Sam McBane Mulford, Bill Bygtricky, Peter Yessne, Sterling Larnerd, Santa Clara Valley ACLU, Larry Carr, Maureen Smith, San José State University, Eli Edwards, California Library Association Intellectual Freedom Committee, David Parker, Silicon Valley LGBT Democratic Club, Jane Cronkhite and Julie Butterfield.

Also speaking to the issues were Jim Griffith, Tony Nguyen, Nicole Ozer, Jane Shokon, Michele Rowic, Joy Sohoming, Brenda McHenry, League of Women Voters, Ron Seymour, Catherine Graham, Ross Signorino, Kerri Hamilton, Elise Pannabecker, Stoz Tes, Geoffrey Phillips and Anthony Colombo.

City Attorney Richard Doyle and Director of Library Department Jane Light responded to Council questions.

Discussion followed.

Substitute Motion: Council Member Liccardo moved approval of the memorandum he cosigned with Vice Mayor Chirco and Council Member Kalra, including direction as described in "Action". Council Member Kalra seconded the motion.

Council Member Liccardo pointed out that filters do not work on emails and chat rooms and suggested that use of the internet needs parental supervision.

Council Member Pyle read a message from Vice Mayor Chirco which expressed the Vice Mayor's gratitude to the community. Vice Mayor Chirco declared that in the seven years she has been the Council Member for District 9, she had not received one complaint about this issue and urged her colleagues to support the memorandum she cosigned with Council Members Liccardo and Kalra.

5.2 (Cont'd.)

Council Member Nguyen noted that she had not received any written complaints in District 7 and expressed support to the substitute motion on the floor. Library Director Jane Light stated that she had not received any written or phone complaints.

Mayor Reed objected to the substitute motion for the reason that it does not address or solve the problem. He pointed out that there is a problem in the libraries, a small percentage has been affected and it should be dealt with.

Council Member Constant objected to the substitute motion and added that as a minimum, filters should be placed on computers in the children's section of the libraries.

Council Member Oliverio acknowledged that although he cannot support all the points in the memorandum from Mayor Reed and Council Member Constant, he noted there is a need to change the policy and enforce it. He agreed that filters should be placed in the children's section of the libraries. Council Member Oliverio objected to the substitute motion and noted that it is a sensible approach but still not adequate.

Council Member Campos requested to amend the motion to ensure that the existing policy is fully enforced to the extent of staff resources and to include Page 2, Phase 1: San José Library Internet Access and Computer Use Policy language in "italics" from the memorandum from Mayor Reed and Council Member Constant. Council Members Liccardo and Kalra accepted the amendment. City Attorney Richard Doyle noted that he would review the exact language before it is included in the policy.

Action: On a call for the question, the substitute motion carried, the joint memorandum from Vice Mayor Chirco and Council Members Liccardo and Kalra, dated April 10, 2009, was approved, with the following: (1) The City Manager was directed to have Staff create a "log-on" page that reminds library users of City access rules, warns of the illegality of exposing harmful material to minors, advises users to use computers responsibly and requires users to affirmatively acknowledge agreement with these conditions before proceeding and, as amended, to ensure that the existing policy is fully enforced to the extent of staff resources. (2) Consideration of any additional expenditure on any internet filtering technology greater than \$25,000, including Staff time was deferred until three conditions are met: (a) The San José Police Department's Sexual Assault Investigation and Internet Crimes Against Children Units are fully funded by the City and grant sources to ensure proactive enforcement against on-line predators. (b) Library hours per branch return to their FY2000-2001 levels (54 hours per week) with adequate staffing to ensure full provision of services to the youth. (c) The crossing guard program is fully funded to match expenditures needed to meet demand for crossing guard services citywide. (3) Upon completion of recommendation (2) above: Council should assess the technological solutions available at that time to ensure the most modern technology can efficiently and effectively be applied to minimize child exposure to harmful material. (4) Pending review by the City Attorney, the intent of the following from the joint memorandum from Mayor Reed and Council Member Constant,

5.2 (Action Cont'd.)

dated April 10, 2009, to ensure that all patrons are aware of the need to protect the public from undesirable exposure was approved: Phase 1: San José Library Internet Access and Computer Use Policy: *San José library patrons are expected to use library computers in a responsible and courteous manner. Computers are located in public areas and shared by people of all ages and backgrounds. Internet users must be considerate and respectful of other library patrons and especially mindful of children in the library. Use of public computers for internet access to material that depicts sexual conduct of minors under the age of 18 or that displays material harmful to minors may violate different Penal Code provisions, such as Penal Code Sections 311.11 and 313.1, which may constitute a misdemeanor or felony offense under California law. A potentially unlawful use of public computers may be referred to law enforcement personnel for appropriate action.* (7-3-1. Noes: Constant, Oliverio; Reed. Absent: Chirco.)

ADJOURNMENT

The Council of the City of San José was adjourned at 11:06 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis Hawkins
Assistant City Clerk

smd/4-21-09 MIN

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JOINT REDEVELOPMENT AGENCY ITEM

The Joint Redevelopment Agency Board convened at 5:15 p.m. to consider Item 8.1 in a Joint Session.

- 8.1 Redevelopment Agency Board and City Council concurrence with the approval of the first amendment to the Lease with San Jose Credit Union for the property located at 88 South Fourth Street, Suite 120, increasing the term of the Lease, revising the schedule of adjustments to the Monthly Base Rent and providing a rent credit. CEQA: Resolution No. 64273 Downtown Strategy Plan San Jose FEIR, File No. CP98-054. [SNI]**

Documents Filed: Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated April 9, 2009, recommending concurrence with the first amendment to the lease.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and carried unanimously, the Council and the Redevelopment Agency Board concurred with regard to the approval of the first amendment to the Lease with San Jose Credit Union for the property located at 88 South Fourth Street, Suite 120, increasing the term of the Lease, revising the schedule of adjustments to the Monthly Base Rent and providing a rent credit. (8-0-3. Absent: Chirco, Constant, Herrera.)

The Council of the City of San José and Redevelopment Agency Board was adjourned at 5:16 p.m.