

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, APRIL 28, 2009

The Council of the City of San José convened in regular session at 9:00 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 9:04 a.m. to a Closed Session in Room W133, to confer with Legal Counsel with respect to (A) Public Employee Performance Evaluation Pursuant to Government Code Section 54957: Title: Independent Police Auditor. (B) to confer with Legal Counsel with respect to anticipated litigation of significant exposure (Claim Not Filed) 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, 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; (2) 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; (3) 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; (4) 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

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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; (5) 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; (6) 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; (7) Valdez et al. v. City et al; Names of Parties Involved: Francisco Valdez, Ricardo Vasquez, City of San José, San José Police Chief Robert Davis, Officer R. Agaman and DOES 1-2500; Court: U.S. District Court, Northern District of California; Case No: C09 00176; Amount of Money or Other Relief Sought: Damages according to proof; (8) 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; (9) Williams, et al. v. City of San José, et al; Names of Parties Involved: Thomas Williams and Nancy Williams, individually and as joint personal representatives of the Estate of Ty Williams, Todd Williams, Trina Williams and Keith Lusk, City of San José, Cristiano Bindi, individually and in his capacity as a police officer for the City of San José, Gregory Salas, individually and in his capacity as a police officer for the City of San José and DOES 3-10; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV100074; Amount of Money or Other Relief Sought: Damages according to proof; (10) 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; (11) 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; (12) De La Rosa, et al. v. City of San José, et al; Names of Parties Involved: Richard E. De La Rosa, Dennis Fong, Jose Mendoza, City of San José, Avo Makdessian and DOES 1-100; Court: Superior Court of California, County of Santa

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Clara Court, Court of Appeal, 6th Appellate District; Case No: 1-03-CV-817097 & H0331583; Amount of Money or Other Relief Sought: In excess of \$25,000 according to proof; (13) 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; (14) 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; (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; (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) San José Police Officers' Association (SJPOA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (9) International Association of Firefighters (IAFF), Local 230; Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA:

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

By unanimous consent, Council recessed from the Closed Session at 11:25 a.m. and reconvened to Regular Session at 1:33 p.m. in the Council Chambers.

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

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

INVOCATION

Father Michael Hendrickson, St. Victor's Catholic Church and Independence High School 76th Cavalry Band provided the Invocation. (District 4)

PLEDGE OF ALLEGIANCE

Mayor Reed, accompanied by students of John Muir Elementary School (District 1), led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Herrera, seconded by Council Member Nguyen and carried unanimously, the Orders of the Day and the Amended Agenda were approved, and Item 5.3 was deferred to May 12, 2009. (9-0-2. Absent: Chirco, Constant.)

CEREMONIAL ITEMS

1.1 Presentation of a commendation to the Filipino American World War II Veterans in remembrance of the Fall of Bataan that occurred on April 9, 1942. (Chu)

Action: Mayor Reed and Council Members Chu and Liccardo recognized and commended the Filipino American World War II Veterans in remembrance of the Fall of Bataan that occurred on April 9, 1942.

1.2 Presentation of a commendation to Diane Cunningham for winning a gold medal in the 4x400-meter Snowshoeing Relay and a bronze medal in the 800-meter Snowshoeing Race at the Special Olympics in Boise, Idaho. (Kalra)

Action: Mayor Reed and Council Member Kalra recognized and commended Diane Cunningham for her achievements.

1.3 Presentation of a commendation to PRX for its generous contribution in promoting San José's vibrant neighborhood business districts. (Redevelopment Agency)

Action: Item 1.3 was dropped.

1.4 Presentation of a proclamation declaring May 1, 2009 as "Show Us Your Hope Day" in the City of San José. (Pyle/Oliverio)

Action: Mayor Reed and Council Members Pyle and Oliverio recognized May 1, 2009 as "Show Us Your Hope Day" in the City of San José.

**1.5 Presentation of a proclamation declaring April 30, 2009 as "El Día de Los Niños/El Día de Los Libros Children's Day/Book Day" in the City of San José. (Campos/Oliverio)
(Rules Committee referral 4/15/09)**

Action: Mayor Reed and Council Members Campos and Oliverio recognized April 30, 2009 as "El Día de Los Niños/El Día de Los Libros Children's Day/Book Day" 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. (9-0-2. Absent: Chirco, Constant.)

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 28528 – Establishing Rule 20A Underground Utility District along Tully Road, between Kenoga Drive and 720 feet west of Senter Road and along Senter Road, between Parrott Street and 170 feet south of Tully Road**

Documents Filed: Proof of Publication of the title of Ordinance No. 28528 executed on April 21, 2009, submitted by the City Clerk.

Action: [Ordinance No. 28528](#) was adopted. (9-0-2. Absent: Chirco, Constant.)

2.3 Accept the audits of the Parks and Recreation Bond Projects Fund, Library Bond Projects Fund, and Library Parcel Tax Fund for periods ended June 30, 2008. (City Auditor)

Documents Filed: Memorandum from City Auditor Sharon Erickson, dated April 14, 2009, recommending acceptance of the reports.

Action: The Parks and Recreation Bond Projects Fund, Library Bond Projects Fund, and Library Parcel Tax Fund for periods ended June 30, 2008 were accepted. (9-0-2. Absent: Chirco, Constant.)

**2.4 (a) The Agency Agreement with the County of Santa Clara for Countywide Household Hazardous Waste Collection Program for 2009-2010.
(b) The Agency Agreement with the County of Santa Clara for Countywide AB939 Implementation Fee for 2009-2010.**

CEQA: Exempt, File No. PP09-085. (Environmental Services)

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated April 6, 2009, recommending approval of the agreements.

Action: The Agency Agreement with the County of Santa Clara for Countywide Household Hazardous Waste Collection Program for 2009-2010 and the Agency Agreement with the County of Santa Clara for Countywide AB939 Implementation Fee for 2009-2010 were approved. (9-0-2. Absent: Chirco, Constant.)

**2.5 Request for an excused absence for Vice Mayor Chirco from the Regular Meeting of the Neighborhood Services and Education Committee on April 9, 2009 due to illness/medical appointment. (Chirco)
(Rules Committee referral 4/15/09)**

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

Action: The absence for Vice Mayor Chirco was excused. (9-0-2. Absent: Chirco, Constant.)

2.6 Adopt a resolution to:

- (a) Join with the County of Santa Clara and eleven cities in the County in applying for the U.S. Department of Justice 2009 Recovery Act Edward Byrne Memorial Justice Assistance Grant (JAG) to partially fund the Police Department's Automated Field Reporting/Records Management System.**
- (b) Accept the grant if it is awarded.**

- 2.6 (c) **Authorize the City Manager to negotiate and execute any documents necessary to effectuate the grant, including an agreement with the County of Santa Clara and eleven participating jurisdictions including City of Campbell, City of Cupertino, City of Gilroy, Town of Los Gatos, City of Milpitas, City of Morgan Hill, City of Mountain View, City of Palo Alto, City of Santa Clara, City of Sunnyvale, and City of Saratoga in the amount not to exceed a total of \$1,353,687 for the City of San Jose, and any amendments to the agreement.**
- (d) **Approve the spending plan for the grant.**
CEQA: Not a Project. (Police)
(Rules Committee referral 4/22/09)

Documents Filed: Memorandum from Police Chief Robert Davis, dated April 20, 2009, recommending adoption of a resolution.

Action: [Resolution No. 74884](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Join with the County of Santa Clara and Eleven Cities in the County to Apply to the U.S. Department of Justice for a 2009 Recovery Act Edward Byrne Memorial Justice Assistance Grant in an Amount Not To Exceed \$1,353,687, To Accept the Grant if Awarded and To Execute All Related Documents", was adopted. (9-0-2. Absent: Chirco, Constant.)

END OF CONSENT CALENDAR

NEIGHBORHOOD SERVICES

- 5.4 **As referred by the Neighborhood Services and Education Committee on April 9, 2009, adopt a resolution to revise City Council Policy 0-30, Schools and City Collaborative to reflect recent changes to the structure of the Collaborative. (Parks, Recreation and Neighborhood Services)**
(Deferred from 4/21/09 – Item 5.5)

Documents Filed: Memorandum from City Clerk Lee Price, dated April 9, 2009, transmitting the recommendations of the Neighborhood Services and Education Committee.

Director of Parks, Recreation and Neighborhood Services Albert Balagso provided brief comments about the City Council Policy 0-30, Schools and City Collaborative.

Action: Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, [Resolution No. 74885](#), entitled: "A Resolution of the Council of the City of San José Approving Revisions to City Council Policy 0-30, Regarding the Schools and City Collaborative", was adopted. (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 about the Swine Flu epidemic and confirmed that currently there were no reported cases in Santa Clara County. She reported that the Office of Economic Development has submitted stimulus projects to the Regional Recovery Work Plan for the Bay Area.

3.2 Report of the Rules and Open Government Committee – April 8, 2009 Mayor Reed, Chair

Action: Deferred to May 5, 2009.

3.3 Report of the Public Safety, Finance and Strategic Support Committee – April 16, 2009 - Council Member Nguyen, Chair

Documents Filed: The Public Safety, Finance and Strategic Support Committee Report dated April 16, 2009.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried unanimously, the Report of the Public Safety, Finance and Strategic Support Committee and the actions of April 16, 2009 were accepted. (9-0-2. Absent: Chirco, Constant.)

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

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

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

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

Documents Filed: The Rules and Open Government Committee Report dated April 1, 2009.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the Report of the Rules and Open Government Committee and the actions of April 1, 2009 were accepted. (9-0-2. Absent: Chirco, Constant.)

- 3.6 As referred by the Public Safety, Finance and Strategic Support Committee on April 16, 2009, accept the Auditor's Report on the Semi-Annual recommendation Follow-Up Report on all outstanding audit recommendations for the six months ended December 31, 2008. (City Auditor)
(Public Safety, Finance and Strategic Support Referral 4/16/09 – Item 3.6)**

Documents Filed: Memorandum from City Clerk Lee Price, dated April 23, 2009, transmitting the recommendations of Public Safety, Finance and Strategic Support Committee.

City Auditor Sharon Erickson summarized the Auditor's Report on the Semi-Annual recommendation Follow-Up Report.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried unanimously, the Auditor's Report on the Semi-Annual recommendation Follow-Up Report on all outstanding audit recommendations for the six months ended December 31, 2008 was accepted. (9-0-2. Absent: Chirco, Constant.)

- 3.7 As referred by the Public Safety, Finance and Strategic Support Committee on April 16, 2009, accept the report on the audit of the City of San José's Workers' Compensation Program. (City Auditor)
(Public Safety, Finance and Strategic Support Referral 4/16/09 – Item 3.7)**

Documents Filed: Memorandum from City Clerk Lee Price, dated April 23, 2009, transmitting the recommendations of Public Safety, Finance and Strategic Support Committee.

City Auditor Sharon Erickson summarized the audit on the City of San José's Workers' Compensation Program and responded to Council questions.

Action: Upon motion by Council Member Herrera, seconded by Council Member Liccardo and carried unanimously, the report on the City of San José's Workers' Compensation Program was accepted. (9-0-2. Absent: Chirco, Constant.)

- 3.8 As referred by the Rules and Open Government Committee on April 22, 2009, adopt a position of support for SB481 (Cox) – Airports: Wildlife. (Airport)
[Rules Committee referral 4/22/09 – Item 6.1(a)]**

Documents Filed: Memorandum from City Clerk Lee Price, dated April 23, 2009, transmitting the recommendations of the Rules and Open Government Committee.

In response to a question from Council Member Pyle, Director of Aviation William Sherry confirmed that the grass or gravel where birds are nesting may be changed to discourage them from returning to the same areas from year to year.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and carried unanimously, a position of support for SB481 was adopted. (9-0-2. Absent: Chirco, Constant.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.2 Adopt a resolution making findings that the use of Low- and Moderate-Income Housing Funds to provide rehabilitation loans and grants outside a redevelopment project area benefits the Agency's redevelopment project areas and accepting the proposed changes to the Housing Rehabilitation Program as follows:**
- (a) Changes to the existing Housing Rehabilitation Program to encourage greater recapture of funds and focus resources on households in the lowest income categories.**
 - (b) Creation of new loan and grant services, including:**
 - (1) Direct Minor Repair Services for urgent home repairs;**
 - (2) Disabled Access Grants to improve home access for clients with disabilities.**
 - (3) Green Incentive Grants to provide additional funds for clients that choose to install additional green features that are not mandated by the Housing Department.**
 - (c) Modifications to the Mobilehome Rehabilitation Program that lower the income eligibility levels for recipients of mobilehome grants, increase individual grant amounts, limit repairs to essential health and safety issues, and place a funding limit on the overall amount of Program funds to be spent on mobilehome repair each year.**

CEQA: Not a Project. (Housing)

Action: Deferred to May 12, 2009 per Administration.

- 4.3 (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.**

4.3 (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 and 4/21/09 – Item 4.4)**

Documents Filed: Memorandum from Chief Development Officer Paul Krutko, dated March 23, 2009, recommending approval of ordinances and direction to repeal all related fees.

Motion: Council Member Liccardo moved approval of the Staff recommendations, including direction to Staff to conduct additional outreach effort to the community, event producers, restaurants and the Downtown Association before the regulations become final. Council Member Herrera seconded the motion.

Chief Strategist Kim Walesh responded to Council questions.

Discussion followed.

Public Comments: Speaking in support to the Flower Vendor and the Peddler Permit ordinances were Erika Justis, 1st Act Silicon Valley and Ross Signorino.

Action: On a call for the question, the motion carried unanimously, [Ordinance No. 28534](#), entitled: “An Ordinance of the City of San José Repealing Chapter 6.30 of Title 6 of the San José Municipal Code and Amending Chapter 6.54 of Title 6 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 to Ensure Consistency of Terms Within Title 6 of the San José Municipal Code” and [Ordinance No. 28535](#), entitled: “An Ordinance of the City of San José Amending Chapter 6.55 of Title 6 of the San José Municipal Code, Downtown Special Events, to Reduce the Area Within Which Approved Location Peddlers’ Permits May Be Suspended During a Designated Downtown Special Event by Limiting the Suspension Area to the Special Event Boundary, Authorize Peddlers Within the Special Event Boundary to Temporarily Peddle at Alternative 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”, were passed for publication; Staff was directed 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; and including: Staff was directed to conduct additional outreach effort to the community, event producers, restaurants and the Downtown Association before the regulations become final. (9-0-2. Absent: Chirco, Constant.)

NEIGHBORHOOD SERVICES

- 5.2 Report on bids and award of contract for the Watson Park Remediation and Phase I Improvements project to the low bidder, Joseph J. Albanese, Inc., for the base bid and Add Alternate Nos. 1-5 in the amount of \$4,829,000, and approval of a contingency in the amount of \$966,000. CEQA: Mitigated Negative Declaration, PP07-130. Council District 3. SNI: Thirteenth Street. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated April 6, 2009, recommending award of the contract to the low bidder.

Director of Public Works Katy Allen and Director of Parks, Recreation and Neighborhood Services Albert Balagso outlined the Watson Park Remediation and Phase I Improvements project and responded to Council questions.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, the contract for the Watson Park Remediation and Phase I Improvements project to the low bidder, Joseph J. Albanese, Inc., for the base bid and add alternate numbers 1-5 in the amount of \$4,829,000, with related contingency was approved. (9-0-2. Absent: Chirco, Constant.)

- 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 % 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)]

(Deferred from 4/21/09 – Item 5.3)

Action: Deferred to May 12, 20/09 per Orders of the Day.

TRANSPORTATION & AVIATION SERVICES

- 6.2 (a) **Approve the Fourth Amendment to the Contract with Hensel Phelps Construction Company for design and construction of the Airport Terminal Area Improvement Program to:**
- (1) **Allow for the early release of Design-Builder Contingency.**
 - (2) **Allow a modification to the retention formula.**
 - (3) **Allow for early acceptance of equipment warranties for the Terminal A Modifications Project Element.**
- (b) **Adopt a resolution increasing the City Manager's authority to negotiate and execute contract change orders for the City-Controlled Program Reserve from \$67,165,000 to an amount not-to-exceed \$84,862,000.**
- CEQA: Resolution Nos. 67380 and 71451, File No. PP09-063. (Airport/Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen and Director of Aviation William Sherry, dated April 6, 2009, recommending approval of the fourth amendment to the contract and adoption of a resolution.

Public Comments: Ross Signorino spoke in support to the design and construction of the Airport Terminal Area Improvement Program.

Action: Upon motion by Council Member Herrera, seconded by Council Member Pyle and carried unanimously, the Fourth Amendment to the Contract with Hensel Phelps Construction Company for design and construction of the Airport Terminal Area Improvement Program was approved and [Resolution No. 74886](#), entitled: "A Resolution of the Council of the City of San José Increasing the City Manager's Authority to Negotiate and Execute Change Orders Through the City-Controlled Program Reserve to the Hensel Phelps Construction Company Contract from \$67,165,000 to an Amount Not To Exceed \$84,862,000", was adopted. (9-0-2. Absent: Chirco, Constant.)

- 6.3 **Adopt a resolution authorizing the Director of Transportation to:**
- (a) **Submit a grant application to the Bay Area's Metropolitan Transportation Commission under the *American Recovery and Reinvestment Act of 2009* for the San José Street Resurfacing and Rehabilitation Project in the amount not to exceed \$12,700,000; and**
 - (b) **Negotiate and execute related grant documents to accept any grant funding.**
- CEQA: Exempt, File No. PP06-066. (Transportation)**

Documents Filed: Memorandum from Director of Transportation James Helmer, dated April 6, 2009, recommending adoption of a resolution.

6.3 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, [Resolution No. 74887](#), entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Transportation to Submit a Grant Application to the Bay Area Metropolitan Commission and to Negotiate and Execute Any Documents Related to Acceptance of Grant Funding Under the Federal American Recovery and Reinvestment Act of 2009 and Stating the Assurance to Complete the Project”, was adopted. (9-0-2. Absent: Chirco, Constant.)

PUBLIC SAFETY SERVICES

8.1 **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 and deferred from 4/21/09 – Item 8.3)**

Documents Filed: (1) Memorandum from Chief Development Officer Paul Krutko, dated April 14, 2009, recommending acceptance of the status report. (2) Letter from David Powell and John Conway, San José Restaurant & Entertainment Association, dated April 28, 2009, regarding the Cost-Sharing Model Status Report. (3) Letter from Bobby Lopez, President, San José Police Officers’ Association, dated April 27, 2009, regarding the Cost-Sharing Model Status Report.

Office of Economic Development Downtown Coordinator Leland Wilcox and Police Chief Robert Davis outlined the Downtown Entertainment Zone Policing Cost-Sharing Model Status Report and responded to Council questions.

Public Comments: David Powell, San José Restaurant & Entertainment Association expressed support to the new pricing model and is looking forward to having more community meetings.

Discussion followed.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the Downtown Entertainment Zone Policing Cost-Sharing Model Status Report was accepted; Staff agreed to respond to questions raised by the San José Restaurant and Entertainment Association and report back to Council via an information memorandum. In addition, Staff confirmed a meeting with the San José Police Officer’s Association regarding deployment models will follow. (9-0-2. Absent: Chirco, Constant.)

OPEN FORUM

- (1) Fred Villasenor expressed concern about the process for the selection of the Independent Police Auditor.
- (2) Ross Signorino expressed his opinion about sports in schools.

ADJOURNMENT

The Council of the City of San José was adjourned at 3:32 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

smd/4-28-09 MIN

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