

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, AUGUST 11, 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, Chirco, Chu, Constant, Herrera, Kalra, Liccardo, Nguyen, Oliverio, Pyle; Reed.

Absent: Council Members - None.

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) confer with Legal Counsel with respect to existing litigation pursuant to Government Code subsection (a) of Section 54956.9: (1) Luong v. City, et al.; Names of Parties Involved: Hang Luong, City of San José, Officer Tedros Habib and DOES 1-10; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-109346; Amount of Money or Other Relief Sought: Damages according to proof; (2) Kurz v. City, et al.; Names of Parties Involved: Eric Kurz, Jennifer Kurz, Santa Clara Valley Transportation Authority; County of Santa Clara, State of California, State of California Department of Transportation, City of San José, and DOES 1 through 50; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-117081; Amount of Money or Other Relief Sought: Damages according to proof; (3) 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 through 10; Court: U.S. 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; (4) City v. International Association of Firefighters, Local 230; Names of Parties Involved: City of San José, International Association of Firefighters, Local 230, DOES 1-10, Michael Baldwin; Superior Court of California, County of Santa Clara; Case No: 1-09-CV-142109; Amount of Money or Other Relief Sought: Appeal of arbitration award; (B) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: 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

CLOSED SESSION (Cont'd.)

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

By unanimous consent, Council recessed from the Closed Session at 11:55 a.m. and reconvened to Regular Session at 1:32 p.m. in the Council Chambers.

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

Absent: Council Members - None.

INVOCATION

Pastor Arnold Perez of Cryy Out Christian Fellowship provided the Invocation.

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Council Member Campos and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Item 2.7 deferred to August 18, 2009.

CLOSED SESSION REPORT

City Attorney Doyle disclosed the following Closed Session actions of August 11, 2009:

A. Authority to Pursue Appellate Review in a Litigation Case:

Case Name: City v. International Association of Firefighters, Local 230.

Adverse Party or Parties: International Association of Firefighters, Local 230.

Substance of Litigation: City seeking review of arbitration award.

Council Vote: Ayes: Campos, Chu, Constant, Herrera, Kalra, Nguyen, Oliverio, Pyle; Reed.

Noes: None.

Disqualified: None.

Absent: Chirco, Liccardo. (Excused)

Vacant: None.

CEREMONIAL ITEMS

**1.1 Presentation of a commendation to McKinley Teen Center and YMCA East Valley Adventure Camp for their extraordinary community service efforts in the Five Wounds Brookwood Terrace area. (Liccardo)
(Rules Committee referral 7/29/09)**

Action: Mayor Reed and Council Members Herrera and Liccardo recognized and commended McKinley Teen Center and YMCA East Valley Adventure Camp for their extraordinary community service efforts in the Five Wounds Brookwood Terrace area.

**1.3 Presentation of commendations to HACE Scholarship recipients Gabrielle Castro, Esteban Servin and Tiffany Maldonado. (Campos)
(Rules Committee referral 8/5/09)**

Action: Mayor Reed and Council Member Campos recognized and commended HACE Scholarship recipients Gabrielle Castro, Esteban Servin and Tiffany Maldonado.

**1.4 Presentation of a proclamation declaring August 15, 2009 as “Indian Independence Day” in the City of San José in recognition of a century of Indian immigration to America and to honor the many contributions Indian-Americans have made to the City. (Kalra)
(Rules Committee referral 8/5/09)**

Action: Mayor Reed and Council Member Kalra recognized and proclaimed August 15, 2009 as “Indian Independence Day” in the City of San José in recognition of a century of Indian immigration to America and to honor the many contributions Indian-Americans have made to the City. (Kalra)

CONSENT CALENDAR

Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried unanimously, the Consent Calendar was approved, and the below listed actions were taken as indicated. (11-0.)

2.4 Adopt a resolution establishing the FY 2009-10 property tax levy on all taxable property for general obligation bonded indebtedness. CEQA: Not a Project. (Finance)

Documents Filed: Memorandum from Director of Finance Scott P. Johnson, dated July 20, 2009, recommending adoption of a resolution.

Action: [Resolution No. 75079](#), entitled: “A Resolution of the Council of the City of San José Establishing the Fiscal Year 2009-2010 Property Tax Levy for the City’s General Obligation Bond Indebtedness”, was adopted. (11-0.)

- 2.5 Adopt a resolution authorizing the Director of Finance to negotiate and execute a continuation and amendment to the agreement with Silicon Valley Security & Patrol, Inc., as follows:**
- (a) Continue and extend the term of agreement to August 31, 2009, to allow for final payment to the vendor.**
 - (b) Increase maximum compensation for the renewal period of the agreement by \$12,799 from \$131,000 to \$143,799 to cover additional costs for unanticipated security guard services. CEQA: Not a Project. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott P. Johnson, dated July 20, 2009, recommending adoption of a resolution.

Action: [Resolution No. 75080](#), entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Finance to Negotiate and Execute a Continuation and Amendment to the Agreement with Silicon Valley Security & Patrol, Inc. for Security Guard Service for Downtown Garages and Surface Lots”, was adopted. (11-0.)

- 2.6 Report on bids and award of contract for the Lower Silver Creek Trail Reach 7 at Silverstone Place Project to the low bidder, Perma Green Hydroseeding, Inc., in the amount of \$389,700, and approval of a contingency in the amount of \$38,970. CEQA: Mitigated Negative Declaration, File No. PP07-106. Council District 5. SNI: East Valley/Communities. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated July 20, 2009, recommending acceptance of a report and award of a contract.

Action: The report on bids and award of contract for the Lower Silver Creek Trail Reach 7 at Silverstone Place Project to the low bidder, Perma Green Hydroseeding, Inc., in the amount of \$389,700, and approval of a contingency, were accepted. (11-0.)

- 2.7 Adopt the following Appropriation Ordinance amendments in the Construction Excise Tax Fund:**
- (a) Establish an appropriation to the Department of Transportation for the Seven Trees Boulevard Sidewalk Project in the amount of \$574,000.**
 - (b) Decrease the Reserve – Seven Trees Boulevard Sidewalk Project by \$574,000. CEQA: Exempt, File No. PP08-137. Council District 7. SNI: Seven Trees. (Public Works/Transportation/City Manager’s Office)**

Action: Deferred to August 18, 2008.

- 2.8 (a) **Approve travel for City Clerk Lee Price to Montecito, California on August 14-21, 2009 to provide training services at Continuing Education for Public Officials. Source of Funds: Continuing Education for Public Officials.**
- (b) **Approve travel for City Clerk Lee Price to Riverside, California on September 8-11, 2009 to provide training services at Technical Track for City Clerks. Source of Funds: Technical Track for City Clerks.**
- (City Clerk)**
(Rules Committee referral 7/29/09)

Documents Filed: Memorandum from City Clerk Lee Price, dated July 29, 2009, requesting approval of travel.

Action: The travel requests for City Clerk Lee Price were approved. (11-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

The City Manager acknowledged the hard work and success of San José City Police Officers and Park Rangers in two recent incidents.

3.2 Report of the Rules and Open Government Committee – June 10, 2009 Mayor Reed, Chair

Documents Filed: The Rules and Open Government Committee Report dated June 10, 2009.

Action: Upon motion by Council Member Pyle, seconded by Vice Mayor Chirco and carried unanimously, the Report of the Rules and Open Government Committee and the actions of June 10, 2009 were accepted. (11-0.)

3.4 As recommended by the Elections Commission, approve an ordinance amending parts of Title 2 and Title 12 of the San José Municipal Code related to Campaign Finance Regulations and the Elections Commission. (City Attorney/City Clerk).

Documents Filed: (1) Memorandum from City Attorney Richard Doyle and City Clerk Lee Price, dated July 30, 2009, recommending approval of an ordinance. (2) Letter from Public Policy Vice-President Patricia Sausedo, San José Silicon Valley Chamber of Commerce, dated August 11, 2009, requesting clarity on key issues of the proposed revised requirement.

Senior Deputy City Attorney Lisa Herrick offered a presentation on revisions to the San José Municipal Code as related to Campaign Finance Regulations and the Elections Commission. City Attorney Richard Doyle and City Clerk Lee Price provided additional input on the process and responded to questions from Council.

Elections Commission Vice Chair Michael Smith gave additional input on Finance Regulations.

Motion: Council Member Liccardo moved approval of the Staff recommendation with an amendment to delete the exception to disclosure requirements for slate mailers, and to suspend the provisions that limit contributions to independent committees. Council Member Herrera seconded the motion.

City Attorney Richard Doyle's recommended bifurcation of Council Member Liccardo's motion into two motions, creating a second motion for suspension of provisions that limit contributions to independent committees.

Extensive Council discussion followed.

Public Comments: Ben Field (South Bay AFL/CIU Labor Council), spoke in opposition to suspending rules that campaign contributions be limited to independent campaign committees. Pat Sausedo (San José/Silicon Valley Chamber of Commerce) and Ross Signorino spoke in support of the Staff and Elections Commission recommendations.

Council Member Kalra expressed opposition of suspending enforcement of contribution limits because of the risk of losing and the risk of potential or actual litigation costs.

Council Member Campos spoke in opposition to suspending the enforcement of contribution limits, recommending waiting until the Court of Appeals for the Ninth Circuit issues a decision.

Action: On a call for the question, the motion to suspend the provisions that limit contributions to independent committees failed. (5-6-0. Noes: Campos, Chu, Herrera, Kalra, Nguyen, Pyle.)

3.4 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, and [Ordinance No. 28624](#), entitled: “An Ordinance of the City of San José (1) Amending Section 2.08.1620 of Part 16 of Chapter 2.08 of Title 2 of the San José Municipal Code to Clarify the Term of Commissioners; (2) Amending Section 2.08.1630 to Clarify the Prohibition Against Holding Public Office While Serving on the Elections Commission and to Add a Prohibition Against Being Employed by or Having a Contractual Relationship with a Candidate for City Office While Serving on the Elections Commission; (3) Amending Section 12.04.060 of Chapter 12.04 of Title 12 to Clarify that an Elections Commissioner May Vote to Impose an Order or Penalty for a Violation of Title 12 if He or She Certifies that He or She has Heard or Read the Testimony at the Hearing on the Complaint and Reviewed all the Evidence in the Record; (4) Amending Section 12.04.080 to Add a Requirement that City Officials and Employees Must Maintain the Confidentiality of a Complaint, Investigative File or Information Before the Elections Commission Until the Evaluator Presents the Report and Recommendations to the Commission; (5) Amending Section 12.06.040 of Chapter 12.06 to Expand the Definition of “Committee”; (6) Amending Section 12.06.050 to Clarify the Definition of “Contribution”; (7) Amending Section 12.06.080 to Expand the Definition of “Election”; (8) Amending Section 12.06.130 to Clarify the Definition of “Independent Expenditure”; (9) Amending Section 12.06.170 to Clarify the Definition of “Political Reform Act”; (1) Amending Section 12.06.260 to Clarify Prohibited Contributions by Cardrooms; (11) Amending Sections 12.06.910 and 12.06.920 to Clarify Campaign Disclosure Requirements; (12) Amending Part 10 of Chapter 12.06 to Require Disclosure of Electioneering Communications; and (13) Making Other Technical Changes; was passed for publication, as amended. Delete: (1) Provision suspending requirements that limit campaign contributions to independent committees, and (2) An exception to disclosure requirements for slate mailers. Referred to City Clerk, City Attorney and the Election Commission for potential refinements to the regulations regarding electronic electioneering communications. (11-0.)

3.5 **Adopt a resolution approving the terms of an Agreement with the Association of Maintenance Supervisory Personnel, and authorizing the City Manager to execute the agreement with a term of June 28, 2009 to June 30, 2010. CEQA: Not a Project. (Employee Relations)**

Documents Filed: Memorandum from Director of Employee Relations Alex Gurza, dated July 23, 2009, recommending adoption of a resolution.

City Manager Debra Figone offered comments on the agreement and thanked the Association of Maintenance Supervisory Personnel for their cooperation.

Action: Upon motion by Vice Mayor Chirco, seconded by Council Member Pyle and carried unanimously, [Resolution No. 75081](#), entitled: “A Resolution of the Council of the City of San José Approving an Agreement between the City of San José and the Association of Maintenance Supervisory Personnel, with a Term of June 28, 2009 to June 30, 2010”, was adopted. (11-0.)

**3.6 Report of the Rules and Open Government Committee – June 17, 2009
Mayor Reed, Chair**

Documents Filed: The Rules and Open Government Committee Report dated June 17, 2009.

Public Comments: Cathy Brandhorst spoke off topic.

Action: Upon motion by Council Member Chirco, seconded by Council Member Pyle and carried unanimously, the Report of the Rules and Open Government Committee and the actions of June 17, 2009 were accepted. (10-0-1. Absent: Kalra.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.3 Adopt a resolution:

- (a) **Approving an increase in the construction/permanent funding of up to \$6,209,579 to First Community Housing, or its designated affiliate, for the development of the North Fourth Street Family Apartments project to be built at 1460 North Fourth Street and made available to extremely low-income, very low-income, and low-income families.**
- (b) **Approving the capitalization of up to \$1,186,123 in interest to be accrued on the City’s construction loan, bringing the total City construction/permanent funding up to \$13,894,579.**

CEQA: Addendum to Final EIR for the North San José Area Development Policy, Resolution No. 72768, File No. PCD06-022. (Housing)

Documents Filed: Memorandum from Director of Housing Leslye Krutko, dated July 21, 2009, recommending adoption of a resolution.

As previously noted, Council Member Oliverio explained that his no vote was based upon no park fees, no ongoing property tax and no building and construction taxes.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried, [Resolution No. 75082](#), entitled: “A Resolution of the Council of the City of San José Approving a Loan Increase and Capitalization of Interest to be Accrued for the Fourth Street Apartments Project”, was adopted. (10-1-0. Noes: Oliverio.)

4.4 Adopt a resolution:

- (a) **Approving a change in the affordability mix for the Kings Crossing Apartments, a 94-unit affordable rental housing complex being developed by Charities Housing Development Corporation, or its designated affiliate, to be made available to extremely low-income and very low-income households, with 92 units affordable to households with incomes at or below 50% Area Median Income and two unrestricted managers' units.**
- (b) **Approving the forgiveness of up to \$475,000 in accrued interest on the City's acquisition/predevelopment loan.**

CEQA: Final EIR, Resolution No. 74196, File No. PDC07-015. Council District 3. (Housing)

Documents Filed: Memorandum from Director of Housing Leslye Krutko, dated July 20, 2009, recommending adoption of a resolution.

As previously noted, Council Member Oliverio explained that his no vote was based upon no park fees, no ongoing property tax and no building and construction taxes.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried, [Resolution No. 75083](#), entitled: "A Resolution of the Council of the City of San José Approving a Change in the Unit Affordability Mix and Forgiveness of Accrued Interest for the Kings Crossing Apartments Affordable Housing Project", was adopted. (10-1-0. Noes: Oliverio.)

4.5 Adopt a resolution approving a change in affordability targeting to allow 12 units restricted to households with incomes no greater than 80% of Area Median Income ("AMI"), and 18 units restricted to households with incomes no greater than 60% AMI, to become restricted at 30% AMI in the existing Curtner Studios (formerly known as Curtner Gardens Inn) located at the northwest corner of Curtner and Canoas Gardens Avenues. CEQA: Exempt, File No. PP09-143. Council District 6. (Housing)

Documents Filed: Memorandum from Director of Housing Leslye Krutko, dated July 20, 2009, recommending adoption of a resolution.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Herrera, and carried unanimously, [Resolution No. 75084](#), entitled: "A Resolution of the Council of the City of San José Approving a Change in Affordability Targeting in the Curtner Studios Affordable Housing Project", was adopted. (11-0.)

PUBLIC SAFETY SERVICES

- 8.1**
- (a) Accept the Independent Police Auditor's 2008 Year-End Report. (Independent Police Auditor)**
 - (b) Accept the Administration's Response to the Independent Police Auditor's 2008 Year-End Report. (City Manager's Office)**
 - (c) Accept the San José Police Department's Internal Affairs Unit report on Department Initiated Investigations (DII) for CY 2008. (Police)**

Documents Filed: (1) Memorandum from Acting Independent Police Auditor Shivaun Nurre, dated July 29, 2009, recommending acceptance of the 2008 IPA Year End Report. (2) "2008 IPA Year End Report: A Report to the City Council", dated June 18, 2009. (3) Memorandum from City Manager Debra Figone, dated August 11, 2009, recommending acceptance of the Administration's response to the IPA 2008 Year-End Report. (4) Memorandum from Chief of Police Robert L. Davis, dated June 8, 2009, recommending acceptance of the San José Police Department's Internal Affairs Unit report on Department Initiated Investigations for CY 2008. (5) Powerpoint presentation of the 2008 IPA Year End Report.

Acting Independent Police Auditor Shivaun Nurre provided a presentation highlighting the Independent Police Auditor's 2008 Year-End Report.

Chief of Police Robert L. Davis responded to questions from Council. Extensive Council discussion followed.

Action: Upon motion by Council Member Pyle, seconded by Council Member Campos and carried unanimously, the Independent Police Auditor's (IPA) 2008 Year-End Report, the Administration's Response to the IPA Report, and the San José Police Department's Internal Affairs Unit Report on Department Initiated Investigations for CY 2008 were accepted. (11-0.)

RECESS/RECONVENE

The City Council recessed at 4:13 p.m. from the afternoon Council Session and reconvened at 7:01 p.m. in the Council Chambers, City Hall.

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

Absent: Council Members - None.

City Clerk Lee Price read the requests for continuance of the applications. Upon motion by Council Member Liccardo, seconded by Council Member Oliverio, and carried unanimously, the below noted continuances and actions were taken as indicated. (11-0.)

CERMONIAL ITEM

- 1.2 Administer Oaths of Office to District 1 Youth Commissioner Kavya Shankar, District 2 Youth Commissioner Annie Chung, District 4 Youth Commissioner Kasey Ong, and District 7 Youth Commissioner Amanda Aldama. (City Clerk)
(Rules Committee referral 7/29/09 and 8/5/09)**

Action: City Clerk Lee Price administered the Oaths of Office to District 1 Youth Commissioner Kavya Shankar, District 2 Youth Commissioner Annie Chung, District 4 Youth Commissioner Kasey Ong, and District 7 Youth Commissioner Amanda Aldama.

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.2 (a) Accept the Donna Lane and Bradford Way Improvement Plan as the community vision for the future of the Donna Lane and Bradford Way area;**
(b) Encourage the Donna Lane and Bradford Way neighborhood residents, apartment owners and business leaders to continue to dedicate their time, energy and resources towards the Improvement Plan, continuing with their community-building activities.

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

Documents Filed: Memorandum from Deputy City Manager Norberto Duenas, dated July 20, 2009, recommending acceptance of the Donna Lane and Bradford Way Improvement Plan and urged continued neighborhood participation.

Neighborhood Development Center Program Manager, Ernest Guzman offered a presentation on the last of the Strong Neighborhood Initiative (SNI) Pilot Projects.

Public Comments: Speaking in support of the Donna Lane and Bradford Way Improvement Plan were: Neil DiGiacomo, Henry Guerrero, Denise Frazier, Elsa Villicana, Rafael Sanchez, Irene Jiminez and Barbara Selva.

Action: Upon motion by Vice Mayor Chirco, seconded by Council Member Pyle and carried unanimously, the Donna Lane and Bradford Way Improvement Plan as the community vision for the future was accepted, and the Donna Lane and Bradford Way neighborhood residents, apartment owners and business leaders were encouraged to continue their community-building activities. (11-0.)

PUBLIC HEARINGS ON CONSENT CALENDAR

- 11.1 (a) **Consideration of an ordinance rezoning the real property located at the southwest corner of North 1st Street and Century Center (1733 N 1st Street) from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to modify setbacks to a previously approved zoning (File No. PDC05-114) on a 2.4 gross acres site (Schmidt, F James Et Al, Owner). CEQA: Reuse of North San José EIR. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.**
PDC09-002 – District 3

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC09-002, dated January 8, 2009, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated July 23, 2009, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing, executed on July 10, 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 Constant, seconded by Council Member Campos and carried unanimously, the recommendation of the Planning Director was approved, [Ordinance No. 28625](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on at the Southwest Corner of North First Street and Century Center Court (1733 North First Street), from A(PD) Planned Development zoning District to A(PD) Planned Development Zoning District”, was passed for publication. (11-0.)

- (b) **Consideration of an ordinance rezoning the real property located on the east side of Morrill Avenue, approximately 200 feet northerly of Ione Drive (1356 Morrill Avenue) from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow up to 2 single-family detached residences on a 0.47 gross acre site (Huoming and Shuyun Huang, Owners). CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1).**
PDC09-011 – District 4

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC09-011, dated July 13, 2009, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated July 23, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing, executed on June 19, 2009, submitted by the City Clerk.

11.1 (b) (Cont'd.)

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 Commission and the Planning Director was approved, [Ordinance No. 28626](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on at the East Side of Morrill Avenue, Approximately 200 Feet Northerly of Ione Drive (1356 Morrill Avenue) to A(PD) Planned Development Zoning District”, was passed for publication. (11-0.)

END OF PUBLIC HEARINGS ON CONSENT CALENDAR

PUBLIC HEARINGS

- 11.2 Consideration of an ordinance rezoning the real property located on the northwest corner of East San Fernando Street and South 34th Street (1647 E San Fernando Street) from R-1-8 Residence Zoning District to A(PD) Planned Development Zoning District to allow expansion of an existing religious assembly use by the construction of a 6,310 square-foot 2-story rectory, demolition of an existing 2,300 square foot 1-story rectory, construction of a 140 square foot memorial tower and addition of a 356 square foot porch/stairway to the front of the existing sanctuary building on a 0.49 gross acre site (An Lac Temple, Owner). SNI: Gateway East. CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0). PDC08-057 – District 5**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC08-057, dated July 1, 2009, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated July 21, 2009, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing, executed on June 19, 2009, submitted by the City Clerk.

Mayor Reed opened the public hearing.

Public Comment: Expressing support for the rezoning proposal were: The-Vu Nguyen, Elizabeth Bich Lien Vo, Dr. Saleya Lam Hang, Thomas Emaxey, Nam Lam and Megan Williams.

Mayor Reed closed the public hearing.

11.2 (Cont'd.)

Action: Upon motion by Council Member Campos, seconded by Council Member Nguyen and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, [Ordinance No. 28627](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Northwest Corner of East San Fernando Street and South 34th Street to A(PD) Planned Development Zoning District”, was passed for publication. (11-0.)

11.3 **Consideration of an ordinance rezoning the real property located on the west side of San Felipe Road, approximately 600 feet south of Delta Road (4203 San Felipe Road) to allow up to eight (8) single-family detached residences and one (1) 12,000 square foot office building on a 2.98 gross-acre site (Hawkstone San Felipe LLC, Owner/Developer). CEQA: Mitigated Negative Declaration. PDC09-003 – District 8**

Action: Continued to August 25, 2009 per Administration.

11.4 **Consideration of an ordinance rezoning the real property located on the northeast side of San Felipe Road, approximately 800 feet northwest of Silver Creek Road and at the northwest terminus of Grand Oak Way to allow up to 35 single-family detached residences on a 19.13 gross acres site (DAL Properties LLC, Owner; DAL Properties LLC, Mark Lazzarini, Developer). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-2-0). PDC09-007 – District 8**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC09-007, dated July 1, 2009, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated July 21, 2009, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing, executed on July 19, 2009, submitted by the City Clerk. (4) Letter from Kathleen Helsing, California Oak Creek resident, in favor of DAL proposed plan and in opposition to City’s plan. (5) Powerpoint slide presentation from Bonnie and Michael Mace.

Mayor Reed and Council Members Chu, Herrera, Nguyen and Pyle offered meeting disclosures.

Director of Planning, Building and Code Enforcement Joseph Horwedel clarified Staff’s findings on alternate street configurations.

11.4 (Cont'd.)

Mayor Reed opened the public hearing.

Public Comment: Mark Lazzarini, representing the Applicant, expressed support for the rezoning proposal. Bonnie Mace and Michael Mace offered a presentation outlining the impact of Staff's proposal and speaking in support of the developer's proposed revisions.

Mayor Reed closed the public hearing.

Motion: Council Member Herrera moved approval of the rezoning as approved by the Planning Commission, including their recommendation regarding the riparian setback on Lot 26 and the two tree removals to the PD permit stage. Council Member Constant seconded the motion.

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Commission and Planning Director was approved, [Ordinance No. 28628](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Northeasterly Side of San Felipe Road, approximately 400 Feet Northwest of Silver Creek Road from A(PD) Planned Development Zoning to A(PD) Planned Development Zoning District", was passed for publication with direction to Staff to address the Planning Commission's recommendation regarding the riparian setback on Lot 26 and the two tree removals to the PD permit stage. (11-0.)

- 11.5 Consideration of an interim ordinance of the City of San José establishing a temporary moratorium on the establishment of new Bail Bonds Establishments pending the review and possible amendment of land use regulations applicable to such establishments. The Planning Commission voted 5-1-1 (Zito absent, Campos abstain) to recommend that the Council approve the proposed ordinance to establish a temporary moratorium on the establishment of new bail bond businesses with an additional provision allowing existing bail bond businesses operating in conformance with all City requirements to relocate to another site if they lose their lease through no fault of their own. The Director of Planning, Building and Code Enforcement recommends that the Council approve the interim ordinance establishing a temporary moratorium on the establishment of new bail bond businesses as originally drafted by staff and that the ordinance not include the provision recommended by the Planning Commission allowing relocation of existing bail bond businesses that lose their leases through no fault of their own. CEQA: The proposed ordinance is categorically exempt pursuant to CEQA Guidelines Section 15061(b)(3) of the California Code of Regulations, File No. PP09-102. Citywide**

11.5 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated July 24, 2009, recommending approval of an interim ordinance. (2) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated July 22, 2009, summarizing community input regarding the proposed ordinance. (3) Letter from Jeff Stanley, CEO, Bad Boys Bail Bonds, in opposition to the proposed moratorium. (4) Proof of Publication of Notice of Public Hearing, executed on July 10, 2009, submitted by the City Clerk. Council Member Campos provided meeting disclosures.

Director of Planning, Building and Code Enforcement Joseph Horwedel presented an overview on the establishment of a temporary moratorium on the establishment of new bail bonds establishments.

Motion: Council Member Liccardo moved approval of the Staff recommendations. Council Member Nguyen seconded the motion.

Mayor Reed opened the public hearing.

Public Comment: Speaking in support of the adoption of an interim ordinance establishing a temporary moratorium were Tina Morrill, Erik Schoennauer, John Karris, Antonina (Hyde Park Neighborhood Association) and William Lambson (Japantown Neighborhood Association).

Speaking in opposition to the proposed moratorium were: Michael Cole (Michael Cole Bail Bonds), Steve Sparacino, Bert Sparacino II (Sparacino Brothers Bail Bonds), Buffy Osti (Buffy Sparacino Bail Bonds), and John Reynolds.

Mayor Reed closed the public hearing.

Council Member Chu spoke against a city-wide moratorium, and proposed an amendment that the moratorium be restricted to the 1st and 2nd Street blocks. Council Member Liccardo did not accept the amendment.

Council Member Constant expressed that a moratorium of this type is a 'bad way to do business', especially in light of the current economy.

Action: On a call for the question, the motion carried, [Ordinance No. 28629](#), entitled: "An Ordinance of the City of San José Establishing a Temporary Moratorium on the Establishment of New Bail Bonds Establishments Pending the Review and Possible Amendment of Land Use Regulations Applicable to Such Establishments and Setting for the Findings to Support Such Temporary Moratorium", was passed for publication. (9-2-0. Noes: Chu, Constant.)

NOTICE OF CITY ENGINEER’S PENDING DECISION ON FINAL MAPS

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

| <u>Tract</u> | <u>Location</u> | <u>Council District</u> | <u>Developer</u> | <u>Lots/ Units</u> | <u>Type</u> | <u>Proposed Decision</u> |
|--------------|--|-------------------------|------------------|--------------------|------------------------------------|--------------------------|
| 10043 | Northwest Corner of Lincoln Avenue and Parkmoor Avenue | 6 | Sobrato Group | 2 Lots / 243 Units | Multi-Family Attached & Commercial | Approve |

NOTICE OF CITY ENGINEER’S AWARD OF CONSTRUCTION PROJECTS

In accordance with Council Resolution No. 73532, the construction Contract Process Streamlining Policy approved on December 5, 2006, the following is a list of projects that were awarded or rejected by the Director of Public Works in June and July 2007:

AWARD:

| <u>Project Name</u> | <u>Council District</u> | <u>Contractor</u> | <u>Contract Award Amount</u> | <u>Award Date</u> |
|--|-------------------------|----------------------------------|------------------------------|-------------------|
| Third Street Garage Staircase Replacement Project – Re-Bid Results and Award of Contract | 3 | Industrial Coating & Restoration | \$373,540 | 4/2/09 |
| White Road & McKee Road Sanitary Sewer Rehabilitation | 5 | Darcy & Harty Construction, Inc. | \$463,583 | 4/7/09 |
| Norman Y. Mineta San José International Airport: Terminal Modifications IV General Building | Citywide | Rodan Builders, Inc. | \$925,000 | 4/10/09 |
| Naglee Avenue Sanitary Sewer Replacement | 6 | Peak Engineering, Inc. | \$697,810 | 4/21/09 |
| Traffic Signal Installation at Hostetter Road and Piedmont Road | 4 | Brown and Fesler, Inc. | \$142,901 | 4/28/09 |
| Narvaez and Shadow Creek Mobile Home Park Sanitary Sewer Realignment Project | 10 | Stoloski & Gonzalez, Inc. | \$408,566 | 4/28/09 |
| Jackson Street: LRT to Japantown Pedestrian Corridor Project (First Street to Fourth Street) Federal Project No. CML-5005(094) | 3 | Joseph J. Albanese, Inc. | \$804,155 | 4/28/09 |

**NOTICE OF CITY ENGINEER'S AWARD OF CONSTRUCTION PROJECTS
(CONT'D.)**

| Project Name | Council District | Contractor | Contract Award Amount | Award Date |
|---|------------------|---|-----------------------|------------|
| Norman Y. Mineta San Jose International Airport Building Trades Contract 09-10 | Citywide | ASE Consulting Engr. Inc. DBA Silicon Valley Builders | \$250,000 | 5/13/09 |
| Norman Y. Mineta San José International Airport Mechanical/ Plumbing Contract 09-10 | Citywide | Stephen Ciari Plumbing/Heating Inc. | \$250,000 | 5/19/09 |
| Fleming Park Project | 5 | Joseph J. Albanese, Inc. | \$369,953 | 6/1/09 |
| Brace Avenue and Perie Lane Sanitary Sewer Rehabilitation | 4 & 6 | Fermin Sierra Construction, Inc. | \$388,880 | 6/2/09 |
| Norman Y. Mineta San José International Airport General Engineering Contract 09-10 | Citywide | George Bianchi Construction Inc. | \$320,000 | 6/9/09 |
| SJPD Substation Fiberlink | 2 | Phase 3 Communication, Inc. | \$138,362 | 6/30/09 |
| Moorpark/West San José Sanitary Sewer Improvement | 1 | Fermin Sierra Construction Inc. | \$330,330 | 7/23/09 |
| Lake Cunningham Regional Skate Park Lighting Project | 8 | Beltramo Electric, Inc. | \$139,000 | 7/28/09 |

REJECTION

| <u>Project Name</u> | <u>Council District</u> | <u>Contractor</u> | <u>Contract Award Amount</u> | <u>Award Date</u> |
|---|-------------------------|-------------------|------------------------------|-------------------|
| Transit Mall Paving Restoration Project | 3 | Reject Bids | EE \$157,000 | 5/15/09 |

ADJOURNMENT

The Council of the City of San José was adjourned at 7:01 p.m. in memory of Jesse Dominguez, a lifelong San José community activist who passed away on July 22, 2009. Jesse devoted his life to helping our youth stay out of gangs. He organized the first Chicano spiritual walk in 1979 and worked with the Santa Clara County Human Relations Commission, other non-profits and churches to deliver his message of peace and justice. (Herrera)

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

rmk/08-11-09MIN

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

JOINT REDEVELOPMENT AGENCY/COUNCIL

The Joint Redevelopment Agency Board convened at 4:05 p.m. to consider Items 8.1, 8.2 and 8.3 in a Joint Session.

8.1 City Council and Redevelopment Agency Board approval of a Cooperation Agreement specifying the terms and conditions for the loan and employment of an Agency employee to the Office of Council Member Rose Herrera on a temporary basis, for up to one year.

Documents Filed: Memorandum from Executive Director of the Redevelopment Agency Harry S. Mavrogenes, dated July 30, 2009, recommending approval of a Cooperation Agreement.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, a Cooperation Agreement specifying the terms and conditions for the loan and employment of an Agency employee to the Office of Council Member Rose Herrera on a temporary basis, for up to one year, was approved. (11-0.)

- 8.2 (a) Adoption of a resolution by the City Council accepting the summary of costs and findings of the Amended Summary 33433 Report, pursuant to the California Health and Safety Code Section 33433 for the lease with Cupertino Flames, LLC, for ground floor retail space at 88 South Fourth Street.**
- (b) Redevelopment Agency Board approval of the Fourth Amendment to the Restaurant Lease with Cupertino Flames, LLC, for the property located at 88 South Fourth Street, increasing the total square footage of the premises, revising the schedule and scope of the project, extending the lease term, waiving a portion of the Common Area Maintenance charges, and additional financing of the Shell Improvements through a Shell Improvement Allowance of \$260,000, for a total Agency assistance for the lease of \$735,000.**
- (c) City Council approval of a First Amended Certificate of Nondisturbance and Attornment with Cupertino Flames, LLC under the terms of the Master Lease between the City and the Redevelopment Agency.**

CEQA: Resolution No. 64273, Use of San Jose Downtown Strategy Plan FEIR. File No. CP98-054. [MERGED] (Deferred 6/23/09, Item 8.3)

Documents Filed: (1) Memorandum from Executive Director of the Redevelopment Agency Harry S. Mavrogenes, dated July 30, 2009, recommending adoption of a resolution and approval of a fourth amendment to the lease with Cupertino Flames, LLC. (2) Supplemental memorandum from Executive Director of the Redevelopment Agency Harry S. Mavrogenes, dated August 11, 2009, recommending that the City Council authorize the City Clerk to execute the First Amended Certificate of Non-disturbance and Attornment with Cupertino flames, LLC.

8.2

(Cont'd.)

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

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, [Resolution No. 75085](#), entitled: “A Resolution of the Council of the City of San José Accepting the Summary of Costs and Findings of the Amended Summary 33433 Report and the Estimated Reuse Valuation for the Fourth Amendment to the Lease Pursuant to the California Healthy and Safety Code Section 33433 for the Fourth Amendment to the Lease with Cupertino Flames, LLC DBA Flames Eatery & Bar, for Ground Floor Retail Space at 88 South Fourth Street; Authorizing the City Clerk to Execute the First Amended Certificate of Non-Disturbance and Attornment Duly Executed by Cupertino Flames, and Making Certain Findings”, was adopted, and approval by the Redevelopment Agency Board of the Fourth Amendment to the Restaurant Lease with Cupertino Flames, LLC, for the property located at 88 South Fourth Street, increasing the total square footage of the premises, revising the schedule and scope of the project, extending the lease term, waiving a portion of the Common Area Maintenance charges, and additional financing of the Shell Improvements through a Shell Improvement Allowance and City Council approval of a First Amended Certificate of Nondisturbance and Attornment with Cupertino Flames, LLC under the terms of the Master Lease between the City and the Redevelopment Agency, were approved. (11-0.)

8.3 **Approval by the City Council and Agency Board of the second amendment to the agreement with SJB (formerly San Juan Bautista) Child Care Development Center, Inc., pertaining to the child care center at Terilyn Avenue, increasing the Agency contribution \$80,000, for a total Agency contribution of \$330,000 and amending the terms of the previously approved agreement to extend the project schedule and performance timelines. CEQA: Exempt, File No. CP08-052. [SNI: K.O.N.A.]**

Documents Filed: Memorandum from Executive Director of the Redevelopment Agency Harry S. Mavrogenes, dated July 30, 2009, recommending approval of a second amendment to the agreement with SJB Child Care Development Center, Inc.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried unanimously, the second amendment to the agreement with SJB Child Care Development Center, Inc., pertaining to the child care center at Terilyn Avenue, increasing the Agency contribution \$80,000, for a total Agency contribution of \$330,000 and amending the terms of the previously approved agreement to extend the project schedule and performance timelines. (11-0.)

The Council of the City of San José and Redevelopment Agency Board was adjourned at 4:13 p.m.