

## MINUTES OF THE CITY COUNCIL

**SAN JOSÉ, CALIFORNIA**

**TUESDAY, AUGUST 18, 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, Herrera, Kalra, Liccardo, Nguyen, Oliverio, Pyle; Reed.

Absent: Council Members - Constant. (Excused)

Upon motion unanimously adopted, Council recessed at 9:31 a.m. to a Closed Session in Room W133, to confer with Legal Counsel with respect to (A) initiation of litigation pursuant to Government Code subsection (c) of Section 54956.9 concerning anticipated litigation in one (1) matter. (B) to confer with Legal Counsel pursuant to Government Code subsection (b) of Section 54956.9 with respect to anticipated litigation (Claim Not Filed) of significant exposure in one (1) matter. (C) to confer with Legal Counsel pursuant to Government Code subsection (a) of Section 54956.9 with respect to existing litigation: (1) Y.K.A. Industries, Inc. v. Redevelopment Agency, et al. Names of Parties Involved: Y.K.A. Industries, Inc., the Redevelopment Agency of the City of San José, Nina Grayson. Court: Superior Court of California, County of Santa Clara, Court of Appeal, the Appellate District; Case No: 1-05-CV038126, H031583; Amount of Money or Other Relief Sought: Damages according to proof; (2) City v. Downer Estates Homeowners Association; Names of Parties Involved: City of San José, Downer Estates Homeowners Association, Does 1 through 700; Court: Superior Court of California, County of Santa Clara; Case No: 1-09-CV145785; 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, Does 1-10; Court: United States District Court, Northern District of California; Case No: C-06-04252HRL; Amount of Money or Other Relief Sought: Challenge to SJMC 12.06.310. (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

## **CLOSED SESSION (Cont'd.)**

Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI; (2) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW; (3) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO; (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP; (5) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (6) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP; (7) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (8) International 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. 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 11:15 a.m. and reconvened to Regular Session at 1:32 p.m. in the Council Chambers.

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

Absent: Council Members - Constant. (Excused)

## **INVOCATION**

Cambodian Buddhist Temple on McLaughlin Avenue presented a prayer for the Invocation. (District 7)

## **PLEDGE OF ALLEGIANCE**

Mayor Reed 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 2.11 was deferred to August 25, 2009. (10-0-1. Absent: Constant.)

## **CEREMONIAL ITEMS**

- 1.1 Presentation of a commendation to Altera Corporation for their commitment to promoting San José Green Vision Goals as Santa Clara County and San José's first green Semiconductor Company. (Chu)**  
**(Rules Committee referral 08/12/09)**

Action: Mayor Reed, Council Member Chu and Chief Development Officer Paul Krutko recognized and commended Altera Corporation for their commitment to promoting San José Green Vision Goals.

- 1.2 Presentation of a commendation to Lucia Huang for her efforts to create and administer a grant program in support of swim programs for middle school children at Evergreen, Mt. Pleasant Elementary and Alum Rock Union Elementary School Districts. (Herrera)**  
**(Rules Committee referral 08/12/09)**

Action: Mayor Reed and Council Member Herrera recognized and commended Lucia Huang for her efforts to create and administer a grant program in support of swim programs for middle school children at Evergreen, Mt. Pleasant Elementary and Alum Rock Union Elementary School Districts.

- 1.3 Presentation of an award to the City by Community Health Charities. (Mayor)**  
**(Rules Committee referral 08/12/09)**

Action: Debbie Hendricks, Community Health Charities of California, recognized and commended the City of San José for its charitable efforts. Mayor Reed accepted the award on behalf of the City.

## **CONSENT CALENDAR**

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

**2.1 Approval of minutes.**

- (a) **Regular Minutes of May 5, 2009**
- (b) **City Council Budget Study Session Minutes of May 6-14, 2009**
- (c) **Regular Minutes of May 12, 2009**
- (d) **Regular Minutes of May 19, 2009**

Documents Filed: (1) Regular Minutes dated May 5, 2009, May 12, 2009 and May 19, 2009. (2) City Council Budget Study Session Minutes dated May 6-14, 2009.

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

**2.3 (a) Request for an excused absence for Vice Mayor Chirco from the Closed Session on August 4, 2009 due to illness. (Chirco) (Orders of the Day)**

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

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

**2.4 Approve travel by City Manager Debra Figone to Montreal, Quebec, Canada on September 12-16, 2009 to attend the International City/County Management Association 95<sup>th</sup> Annual Conference. Source of Funds: City Manager's Non Personal Appropriation. (City Manager's Office)**

Documents Filed: Memorandum from City Manager Debra Figone, dated July 29, 2009, requesting approval of travel.

Action: The travel request for City Manager Debra Figone was approved. (10-0-1. Absent: Constant.)

**2.5 Approve a third amendment to the agreement with GlobalFluency for national and international public relations services, extending the term through August 31, 2010 and increasing the compensation by \$120,000 for a total contract amount of \$570,000, since November 2006. CEQA: Not a Project. (Economic Development)**

Documents Filed: (1) Memorandum from Council Members Chu and Kalra, dated August 14, 2009, recommending denial of the amendment and continuation agreement with GlobalFluency. (2) Memorandum from Chief Development Officer Paul Krutko, dated July 27, 2009, recommending approval of an amendment and continuation agreement with GlobalFluency. (3) Staff PowerPoint presentation Communicating a Compelling Community Identity for San José dated August 18, 2009.

Chief Development Officer Paul Krutko provided a brief presentation on Strategic Initiative #14, Communicating a Compelling Community Identity for San José and responded to Council questions.

## 2.5 (Cont'd.)

Motion: Council Member Pyle moved approval of the third amendment to the agreement and the continuation of the agreement with GlobalFluency. Council Member Herrera seconded the motion.

Expressing support to the motion were Mayor Reed, Vice Mayor Chirco and Council Members Pyle, Herrera, Nguyen, Liccardo and Oliverio.

Council Members Chu and Kalra objected to the motion on the floor and expressed the fact that during these tough economic times, the City should be focused on ensuring funding for essential City services that will directly benefit its residents while at the same time contribute to the City.

Council Member Campos reiterated her continued opposition to the services agreement with GlobalFluency. She advised that the City should consider how it is spending taxpayer money and to not cut vital services.

Public Comments: Yolanda Cruz, AFSCME/MEF Local 101, expressed her support to the memorandum from Council Members Chu and Kalra to deny the amendment and continuation agreement with GlobalFluency. Ed Rast spoke in support to the Staff recommendations. Ross Signorino provided his own opinions.

Action: On a call for the question, the motion carried, the third amendment to the agreement with GlobalFluency for national and international public relations services, extending the term through August 31, 2010 and increasing the compensation by \$120,000 for a total contract amount of \$570,000, was approved. (7-3-1. Noes: Campos, Chu, Kalra. Absent: Constant.)

## 2.6 Adopt a resolution setting the new Fee Schedule for Tow Services Agreements to become effective August 20, 2009 as follows:

- (a) **Basic Tow Service – \$175.00 per tow.**
- (b) **Service Calls:**
  - (1) **Class “A” regular duty tow trucks - \$78.00 per hour.**
  - (2) **Class “A” regular duty tow trucks - \$19.50 per quarter-hour.**
  - (3) **Class “B” medium duty tow trucks - \$71.25 per quarter-hour.**
  - (4) **Class “C” and “D” heavy duty tow trucks - \$87.50 per quarter-hour.**
- (c) **Extraordinary Service Tows:**
  - (1) **Class “A” regular duty tow trucks - \$78.00 per hour.**
  - (2) **Class “B” medium duty tow trucks - \$285.00 per hour.**
  - (3) **Class “C” and “D” heavy duty tow trucks - \$350.00 per hour.**
- (d) **After Hours Gate Fee (9:00 p.m. to 6:00 a.m.) - \$70.00.**
- (e) **Vehicle Storage Fee – \$55.00 per day, per space.**
- (f) **Contractual Rates of Compensation to the City - \$75.25 per tow, \$7.00 per dispatch.**

**CEQA: Not a Project. (Planning, Building and Code Enforcement)**

**2.6 (Cont'd.)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated July 27, 2009, recommending adoption of a resolution.

Item 2.6 was pulled from the Consent Calendar from a member of the public who was not available to speak.

Action: Upon motion by Vice Mayor Chirco, seconded by Council Member Pyle and carried unanimously, [Resolution No. 75086](#), entitled: "A Resolution of the Council of the City of San José Adopting a Fee Schedule for Tow Services Agreements", was adopted. (10-0-1. Absent: Constant.)

- 2.7**
- (a) Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Services for Redevelopment Capital Projects Fund (Fund 450):**
    - (1) Increase the Beginning Fund Balance by \$100,000; and**
    - (2) Increase the Utility Undergrounding Program appropriation to the Public Works Department by \$100,000.**
  - (b) Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Building and Structure Construction Tax Fund (Fund 429):**
    - (1) Increase the Beginning Fund Balance by \$382,000; and**
    - (2) Increase the Traffic Signals appropriation to the Department of Transportation by \$382,000.**
  - (c) Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District #8 (Fund 386):**
    - (1) Increase the Beginning Fund Balance by \$120,000; and**
    - (2) Increase the Minor Building Renovations appropriation to the Parks, Recreation, and Neighborhood Services Department by \$120,000.**
  - (d) Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Subdivision Park Trust Fund (Fund 375):**
    - (1) Increase the Beginning Fund Balance by \$71,000; and**
    - (2) Increase the Carolyn Norris Turnkey Park Design Review and Inspection appropriation to the Public Works Department by \$71,000.**
  - (e) Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the General Fund (Fund 001):**
    - (1) Increase the estimate for Revenue from the Federal Government by \$101,740; and**
    - (2) Increase the 2007 Super Urban Area Security Initiative (SUASI) – Fire appropriation to the Fire Department by \$101,740.**

**CEQA: Not a Project. (Public Works/Transportation/Parks, Recreation and Neighborhood Services/Fire/City Manager's Office)**

## 2.7 (Cont'd.)

Documents Filed: Memorandum from Budget Director Jennifer Maguire, dated July 27, 2009, recommending adoption of appropriation ordinance and funding sources resolution amendments.

Action: [Ordinance No. 28630](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the Services for Redevelopment Capital Projects Fund for the Utility Undergrounding Program; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”; [Resolution No. 75087](#), entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 74956 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2009-2010 to Adjust Revenues in the Redevelopment Capital Projects Fund”; [Ordinance No. 28631](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the Building and Structure Construction Tax Fund for the Traffic Signals Appropriation; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”; [Resolution No. 75088](#), entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 74956 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2009-2010 to Adjust Revenues in the Building and Structure Construction Tax Fund”; [Ordinance No. 28632](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund: Parking Purposes Council District No. 8 for the Minor Building Renovations Appropriation; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”; [Resolution No. 75089](#), entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 74956 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2009-2010 to Adjust Revenues in the Construction Tax and Property Conveyance Tax Fund: Parking Purposes Council District No. 8 Fund”; [Ordinance No. 28633](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the Subdivision Park Trust Fund for the Carolyn Norris Turnkey Park Design Review and Inspection Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”; [Resolution No. 75090](#), entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 74956 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2009-2010 to Adjust Revenues in the Subdivision Park Trust Fund”; [Ordinance No. 28634](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the General Fund for the 2007 Super Urban Area Security Initiative – Fire Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption” and [Resolution No. 75092](#), entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 74956 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2009-2010 to Adjust Revenues in the General Fund”, were adopted. (10-0-1. Absent: Constant.)

- 2.8 (a) **Report on bids and take appropriate action based on the evaluation of bids for the SNI ST01: Seven Trees Boulevard Sidewalk Improvement Project from Senter Road to El Cajon Drive, and a standard contingency of five percent on roadway improvement projects.**

Action: Item 2.8(a) was dropped per Administration.

- (b) **Adopt the following Appropriation Ordinance amendments in the Construction Excise Tax Fund:**
- (1) **Establish an appropriation to the Department of Transportation for the Seven Trees Boulevard Sidewalk Project in the amount of \$574,000.**
  - (2) **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)  
(Deferred from 8/11/09 – Item 2.7)**

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen, Director of Transportation James Helmer and Budget Director Jennifer Maguire, dated July 20, 2009, recommending taking appropriate action based on the evaluation of bids and adoption of appropriation ordinance amendments. (2) Supplemental memorandum from Director of Public Works Katy Allen, Director of Transportation James Helmer and Budget Director Jennifer Maguire, dated August 13, 2009, recommending dropping Item 2.8(a) and adoption of appropriation ordinance amendments.

Action: [Ordinance No. 28635](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the Construction Excise Tax Fund for the Seven Trees Boulevard Sidewalk Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”, was adopted. (10-0-1. Absent: Constant.)

- 2.9 **As recommended by the Rules and Open Government Committee on August 12, 2009, appoint JoAnne Ingold to the Mobile Home Advisory Commission to an unexpired term ending December 31, 2011. (Chu)  
[Rules Committee referral 8/12/09 – Item G(1)]**

Public Comments: Expressing opposition to the appointment of JoAnne Ingold to the Mobile Home Advisory Commission were Gus Colgain, California Mobile Home Owners Resources and Action Association, Gail Anne Osmer and Ursula Helsing.

Motion: Council Member Nguyen moved approval to reject the appointment of JoAnne Ingold and to direct the City Clerk to proceed with the recruitment/interview process again. Council Member Herrera seconded the motion.

Council discussion followed.

**2.9 (Cont'd.)**

Substitute Motion: Council Member Oliverio moved approval to continue Item 2.9 for one week. Council Member Chu seconded the motion.

Council Member Nguyen expressed support for the substitute motion.

Council Member Chu noted that he will meet with the two applicants before the August 25, 2009 Council Meeting.

Mayor Reed requested that the City Clerk verify how many Mobile Home Parks that California Mobile Home Owners Resources and Action Association (CMRAA) and the Homeowners Organized to Protect Equity (HOME) have representatives in.

Action: On a call for the question, the substitution motion carried unanimously, Item 2.9 was continued to August 25, 2009. Council Member Chu will meet with the two applicants. City Clerk was directed to verify how many Mobile Home Parks that California Mobile Home Owners Resources and Action Association and the Homeowners Organized to Protect Equity have representatives associated within. (10-0-1. Absent: Constant.)

**2.10 As recommended by the Rules and Open Government Committee on August 12, 2009, approve the proposed designation of Council Member Chu as the voting delegate at the Annual Business Meeting for the League of California Cities (LOCC) on September 18, 2009. (City Manager's Office)  
[Rules Committee referral 8/12/09 – Item h(1)]**

Documents Filed: Memorandum from City Clerk Lee Price, dated August 13, 2009, transmitting the recommendations of the Rules and Open Government Committee.

Action: Council Member Chu was designated as the voting delegate at the Annual Business Meeting for the League of California Cities on September 18, 2009. (10-0-1. Absent: Constant.)

**2.11 Approve travel by Council Member Herrera to San Diego, California on September 4, 2009 to attend the International Council of Shopping Centers Western Division Conference. Source of Funds: Redevelopment Agency. (Herrera)  
(Orders of the Day)**

Action: Deferred to August 25, 2009 per Orders of the Day.

**END OF CONSENT CALENDAR**

## STRATEGIC SUPPORT SERVICES

### **3.2 Report of the Rules and Open Government Committee – July 29, 2009 Mayor Reed, Chair**

Documents Filed: The Rules and Open Government Committee Report dated July 29, 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 July 29, 2009 were accepted. (10-0-1. Absent: Constant.)

### **3.4 Approve the Sunshine Reform Task (SRTF) recommendations on Ethics and Conduct, Technology, Administration and Accountability, and portions of SRTF recommendations on Public Records, as amended by the Rules and Open Government Committee, with the exception of Section 6.1.1.050 – Statistical Reports prepared by the Independent Police Auditor, which will be considered by the Rules and Open Government Committee at a later date, and adopt a resolution implementing the provisions on a pilot basis. CEQA: Not a Project. (City Manager’s Office)**

Documents Filed: (1) Memorandum from Mayor Reed, dated August 17, 2009, recommending approval of the Sunshine Reform Task Force recommendations and amendments as described below in “Action”. (2) Memorandum from Director of Communications Tom Manheim, dated July 30, 2009, recommending approval of the Sunshine Reform Task Force recommendations and amendments by the Rules and Open Government Committee and direction to Staff to proceed with implementation on a pilot basis. (3) Supplemental memorandum from Director of Communications Tom Manheim, dated August 11, 2009, recommending approval of the Sunshine Reform Task Force recommendations and amendments by Rules and Open Government Committee, with the exception of Section 6.1.1.050, Statistical Reports prepared by the Independent Police Auditor, which will be considered by the Rules and Open Government Committee at a later date and adoption of resolution implementing the provisions on a pilot basis. (4) Sunshine Reform Task Force binder of Correspondence Received Concerning Police Records. (5) Staff presentation on the Sunshine Reform Task Force recommendations dated August 18, 2009.

Mayor Reed provided meeting disclosures.

Director of Communications Tom Manheim and Senior Deputy City Attorney Lisa Herrick summarized the Sunshine Reform Task Force Recommendations Phase II.

Public Comments: Providing comments about the Sunshine Reform Task Force Recommendations Phase II were Burt Robinson, Bob Brownstein and Ed Rast, Chair, Sunshine Reform Task Force. Dan Pulcrano, Terry Frank, Californians Aware and Ross Signorino also expressed their views.

### 3.4 (Cont'd.)

Mayor Reed summarized his memorandum dated August 17, 2009, outlining additions and amendments to the Staff recommendations.

Motion: Council Member Pyle moved approval of the Staff recommendations and the memorandum from Mayor Reed. Vice Mayor Chirco seconded the motion.

City Attorney Richard Doyle and Senior Deputy City Attorney Lisa Herrick provided clarifications and responded to Council questions.

Council Member Kalra objected to the motion because there are components indicated by the Sunshine Reform Task Force members that still need to be addressed.

Responding to Council Member Oliverio's request, Mayor Reed amended the motion to include a broader definition pertaining to Item (7) of his memorandum to state "anyone who sends a message to a Council Member with reference to an Agenda Item", to be considered as a part of the Mayor's Biannual Ethics review in November. The amendment was accepted by Council Member Pyle and Vice Mayor Chirco.

Action: On a call for the question, the motion carried as amended, the memorandum from Mayor Reed, dated August 17, 2009, was approved, approving the Sunshine Reform Task Force recommendations on Ethics and Conduct, Technology, Administration and Account-ability and portions of Sunshine Reform Task Force recommendations on Public Records, as amended by the Rules and Open Government Committee as outlined in the Staff memorandum dated July 30, 2009; and including the following amendments: (1) Approve the Rules and Open Government Committee's recommendation to limit the use of the balancing test to make it easier for the public to get records.(2) Approve the Rules and Open Government Committee's practice of considering release of recordings of 911 calls on a case-by-case basis using the balancing test instead of having a blanket ban on releases and direct the City Manager to establish a policy that the San José Police Department will consider releasing recordings of 911 calls on a case-by-case basis using the balancing test. (3) Approve the Rules and Open Government Committee's practice of considering disputes over Public Records Act requests in a streamlined process that is simple and quick and requires decisions to be made in a public session. (4) Approve the release of detailed budget information that is the foundation of the aggregate data in the proposed and adopted budgets and any other actual expenditure information without applying the balancing test. (5) Direct the City Manager to include program level information in the 2010-2011 budget for General Fund funded programs that would provide additional budget information. (6) Refer to the Rules and Open Government Committee the question of how communications about City business made with personal email, text messages, cell phones, social networking websites and other new technologies should be dealt with as public records. (7) Direct Staff to prepare for Council review an amendment to the Lobbyist disclosure ordinance that would require Council Members to verbally disclose, before a vote is taken, any communications with lobbyists that occur

### 3.4 Action (Cont'd.)

during a Council meeting. (8) Consider a broader definition of Item (7) to include anyone who sends a message to a Council Member with reference to an Agenda Item, as a part of the Mayor's Biannual Ethics review in November; and [Resolution No. 75091](#), entitled: "A Resolution of the Council of the City of San José (1) Approving the Sunshine Reform Task Force's Recommendations on the Phase II Report and Recommendations (Except for Police Reports, Police Department Statistical Reports, Independent Police Auditor Statistical Reports and Fire Department Statistical Reports), as Amended by the Rules & Open Government Committee and (2) Directing Implementation of the Approved Recommendations on a Pilot Basis", were adopted. (9-1-1. Noes: Kalra. Absent: Constant.)

## COMMUNITY & ECONOMIC DEVELOPMENT

**4.2 Consider an ordinance rezoning the real property located on the east side of Radio Avenue, approximately 160 feet northerly of Lincoln Court (2104 Radio Avenue) from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow changes to the setback and open space development standards affecting the project currently under construction, which was previously approved under Planned Development Rezoning File No. PDC05-122 (Radio Homes, LLC, Owner). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2).**

**PDC09-025 – District 6  
(Planning, Building and Code Enforcement)**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated August 5, 2009, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC09-025, dated August 5, 2009, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated January 29, 2009, transmitting the Planning Commission recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on July 24, 2009, submitted by the City Clerk. (4) Letter from William and Eva Glynn, dated August 17, 2009, regarding the Willow Village Square/Radio Avenue Rezoning.

Motion: Council Member Oliverio moved approval of the Staff recommendations. Council Member Herrera seconded the motion.

Director of Planning, Building and Code Enforcement Joseph Horwedel requested that Lot 12 be allowed to remain, with the Planning Department to work out at the Permit Stage. The amendment was accepted by Council Members Oliverio and Herrera.

Mayor Reed opened the public hearing.

## 4.2 (Cont'd.)

Public Comments: Louise Growth spoke in opposition to the proposed rezoning, specifically non-compliant setbacks.

Mayor Reed closed the public hearing.

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and [Ordinance No. 28636](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the East Side of Radio Avenue, Approximately 160 Feet North of Lincoln Court (2102 Radio Avenue: APN 439-08-014) to A(PD) Planned Development Zoning District", was passed for publication, as amended, to allow Lot 12 to remain and the Planning Department to work out at the Permit Stage. (7-0-4. Absent: Campos, Chirco, Constant, Kalra.)

## ENVIRONMENTAL & UTILITY SERVICES

### 7.1 **Accept the Report on the Request for Proposal for a Power Purchase and Site Lease Agreement for Solar Photovoltaic Power Production rejecting the sole proposal that was received and authorizing the City Manager to:**

- (a) **Enter into negotiations with SunPower Corporation (San José, CA) for a Power Purchase Agreement (PPA) to purchase solar energy for a maximum 25 year term.**
- (b) **Present to Council a fully negotiated PPA for final review and approval after successful negotiation of the agreement.**

**CEQA: Not a Project. (Finance/Environmental Services)  
(Deferred from 6/23/09 – Item 3.7 and 8/4/09 – Item 7.1)**

Action: Deferred to August 25, 2009 per Administration.

### 7.2 **Conduct a public hearing on the application of Ferma Corporation for a Commercial Solid Waste and Recyclables Collection Franchise, approve the ordinance granting the franchise, and approve the Commercial Solid Waste and Recyclables Collection Franchise Agreement for a term from September 18, 2009 to June 30, 2012 with the option of three one-year extensions. CEQA: Exempt, File No. PP08-228. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated July 27, 2009, recommending holding a public hearing and approval of a franchise agreement. (2) Portfolio information from Ferma Corporation dated August 18, 2009.

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

**7.2 (Cont'd.)**

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, [Ordinance No. 28637](#), entitled: "An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Ferma Corporation", was passed for publication. (10-0-1. Absent: Constant.)

**PUBLIC SAFETY SERVICES**

- 8.1 (a) Adopt a resolution approving the plan to complete the South San José Police Substation Project consistent with the plan as set forth in the Council Memorandum, including the following:**
- (1) Increase Project funding by a total of \$5,100,000, consisting of an increase of \$3,600,000 in the construction contingency for the construction contract with SJ Amoroso Construction Co., Inc. (for a total contingency of \$9,910,000) and an increase of \$1,500,000 for additional construction administration costs due to increased staffing;**
  - (2) Authorize staff to defer all or portions of the landscape and irrigation work if necessary to stay within the new, increased budget.**
- (b) Adopt the following 2009-2010 Appropriation Ordinance and Funding Sources Resolution amendments in the Neighborhood Security Bond Fund (Fund 475):**
- (1) Increase the Beginning Fund Balance by \$485,159;**
  - (2) Increase the South San José Police Substation appropriation by \$5,100,000;**
  - (3) Decrease the Driver Safety Training Center appropriation by \$3,370,000;**
  - (4) Decrease the 9-1-1 Communications Dispatch Center appropriation by \$25,000;**
  - (5) Decrease the East San José Community Policing Center Reserve appropriation by \$590,000;**
  - (6) Decrease the Contingency Reserve appropriation by \$389,841;**
  - (7) Decrease the Ending Fund Balance by \$240,000.**

**CEQA: Mitigated Negative Declaration, File No. PP04-304. (Public Works/Police/City Manager's Office)**

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen, Police Chief Robert Davis and Budget Director Jennifer Maguire, dated July 29, 2009, recommending adoption of a resolution and appropriation ordinance and funding sources resolution amendments. (2) Staff presentation of the South San José Police Substation dated August 18, 2009.

Director of Public Works Katy Allen and Assistant Director of Public Works David Sykes provided a Staff presentation on the South San José Police Substation. Police Chief Robert Davis provided comments. Captain Gary Kirby was also present.

## 8.1 (Cont'd.)

Police Chief Robert Davis and Assistant Director of Public Works David Sykes responded to Council questions.

Motion: Council Member Kalra moved approval of the Staff recommendations. Council Member Chu seconded the motion.

Council Member Campos expressed her support reluctantly and commented that Staff should be more diligent with the checks and balances in the future.

Public Comments: Ross Signorino expressed opposition to the amount of money which is needed for the Police Substation.

Action: On a call for the question, the motion carried unanimously, [Resolution No. 75093](#), entitled: "A Resolution of the Council of the City of San José Approving the Plan to Complete the Construction of the South San José Police Substation"; [Ordinance No. 28638](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the Neighborhood Security Bond Fund for the South San José Police Substation Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" and [Resolution No. 75162](#), entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 74956 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2009-2010 to Adjust Revenues in the Neighborhood Security Bond Fund", were adopted. (10-0-1. Absent: Constant.)

## OPEN FORUM

Ross Signorino expressed his opinion for City Staff to market the idea that the City of San José is a great place to live and to raise a family.

## ADJOURNMENT

The Council of the City of San José was adjourned at 5:06 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Dennis Hawkins, Assistant City Clerk  
City Clerk

smd/8-18-09 MIN

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