



CITY COUNCIL AGENDA

AUGUST 18, 2009

SYNOPSIS

PETE CONSTANT
ASH KALRA
SAM LICCARDO
KANSEN CHU
NORA CAMPOS

DISTRICT 1
DISTRICT 2
DISTRICT 3
DISTRICT 4
DISTRICT 5

CHUCK REED MAYOR

PIERLUIGI OLIVERIO
MADISON P. NGUYEN
ROSE HERRERA
JUDY CHIRCO, VICE MAYOR
NANCY PYLE

DISTRICT 6
DISTRICT 7
DISTRICT 8
DISTRICT 9
DISTRICT 10

Welcome to the San José City Council meeting!

This Agenda contains both a Consent Calendar section for routine business items that require Council approval, and general business items arranged to correspond with San José's City Service Areas (CSAs). City Service Areas represent the policy-making level for strategic planning, policy setting, and investment decisions in the critical functions the City provides to the community. They are:

- **Strategic Support Services** — The internal functions that enable the CSAs to provide direct services to the community in an effective and efficient manner.
- **Community & Economic Development** — Manage the growth and change of the community in order to create and preserve healthy neighborhoods and ensure a diverse range of employment and housing opportunities.
- **Neighborhood Services** — Serve, foster, and strengthen community by providing access to lifelong learning and opportunities to enjoy life.
- **Transportation & Aviation Services** — A safe and efficient transportation system that contributes to the livability and economic health of the City; and provide for the air transportation needs of the community and the region at levels that is acceptable to the community.
- **Environment and Utility Services** — Manage environmental services and utility systems to ensure a sustainable environment for the community.
- **Public Safety Services** — Commitment to excellence in public safety by investing in neighborhood partnerships as well as prevention, enforcement, and emergency preparedness services.

Items listed in Section 9 require approval of both the City Council and the San José Redevelopment Agency Board.

You may speak to the City Council about any item that is on the agenda, and you may also speak during Open Forum on items that are not on the agenda and are within the subject matter jurisdiction of the City Council or Redevelopment Agency Board. If you wish to speak to the City Council, please refer to the following guidelines:

- **Fill out a Yellow Speaker's Card and submit it to the City Clerk seated at the front table. Do this before the meeting or before the item is heard.** This will ensure that your name is called for the item(s) that you wish to address, and it will help ensure the meeting runs smoothly for all participants.
- When the Council reaches your item on the agenda, Mayor Reed will open the public hearing and call your name. Please address the Council from the podium, which is located to the left of the City Clerk's table.
- Each speaker generally has two minutes to speak per item. The amount of time allotted to speakers may vary at the Mayor's discretion, depending on the number of speakers or the length of the agenda.
- To assist you in tracking your speaking time, there is a display on the podium. The green light turns on when you begin speaking; the yellow light turns on when you have 30 seconds left; and the red light turns on when your speaking time is up.

Please be advised that, by law, the City Council is unable to discuss or take action on issues presented during Open Forum. According to State Law (the Brown Act) items must first be noticed on the agenda before any discussion or action.

The San José City Council meets every Tuesday at 1:30 p.m. and every first and third Tuesday at 7 p.m., unless otherwise noted. If you have any questions, please direct them to the City Clerk's staff seated at the tables just below the dais. Thank you for taking the time to attend today's meeting. We look forward to seeing you at future meetings.

Agendas, Staff Reports and some associated documents for City Council items may be viewed on the Internet at www.sanjoseca.gov/clerk/agenda.asp. Council Meetings are televised live and rebroadcast on Channel 26.

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the Office of the City Clerk at San José City Hall, 200 E. Santa Clara Street, Council Wing, 2nd Floor, San José, CA 95113 at the same time that the public records are distributed or made available to the legislative body. Any draft contracts, ordinances and resolutions posted on the Internet site or distributed in advance of the Council meeting may not be the final documents approved by the City Council. Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for the final document.

To arrange an accommodation under the Americans with Disabilities Act to participate in this public meeting, please call (408) 535-1260 or (408) 294-9337 (TTY) at least two business days before the meeting.

On occasion the City Council may consider agenda items out of order.

- **Call to Order and Roll Call**
9:31 a.m. - Closed Session, Call to Order in Council Chambers
Absent Council Members: Constant. (Excused)

1:32 p.m. - Regular Session, Council Chambers, City Hall
Absent Council Members: Constant. (Excused)
- **Invocation (District 7)**
Cambodian Buddhist Temple on McLaughlin Avenue presented a prayer for the Invocation.
- **Pledge of Allegiance**
Mayor Reed led the Pledge of Allegiance.
- **Orders of the Day**
The Orders of the Day and the Amended Agenda were approved with Item 2.11 deferred to 8/25/09.
- **Closed Session Report**
No Report.

1. 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)
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. CEREMONIAL ITEMS

- 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)
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)
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.

2. CONSENT CALENDAR

2.1 Approval of Minutes.

Recommendation: 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

Approved.

2.2 Final adoption of ordinances.

There were none.

2.3 Mayor and Council Excused Absence Requests.

Recommendation:

- (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)

Excused.

2.4 City Manager's Travel to Montreal, Quebec, Canada.

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

Approved.

2. CONSENT CALENDAR

2.5 National/International Public Relations Outreach Agreement.

Recommendation: 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)

Approved.

Noes: Campos, Chu, Kalra.

2.6 Fee Schedule for Tow Services Agreements.

Recommendation: 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)

Resolution No. 75086 adopted.

2.7 Appropriation Actions for Early Rebudgets.

Recommendation:

- (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.

Ordinance No. 28630 adopted.

Resolution No. 75087 adopted.

(Continued on the next page)

2. CONSENT CALENDAR

2.7 Appropriation Actions for Early Rebudgets (Cont'd.)

(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.

Ordinance No. 28631 adopted.

Resolution No. 75088 adopted.

(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.

Ordinance No. 28632 adopted.

Resolution No. 75089 adopted.

(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.

Ordinance No. 28633 adopted.

Resolution No. 75090 adopted.

(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)

Ordinance No. 28634 adopted.

Resolution No. 75092 adopted.

2.8 Seven Trees Boulevard Sidewalk Improvement Project.

Recommendation:

(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.

Dropped per Administration.

2. CONSENT CALENDAR

2.8 Seven Trees Boulevard Sidewalk Improvement Project (Cont'd.)

(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)

Ordinance No. 28635 adopted.

2.9 Appointment to the Mobilehome Advisory Commission.

Recommendation: As recommended by the Rules and Open Government Committee on August 12, 2009, appoint JoAnne Ingold to the Mobilehome Advisory Commission to an unexpired term ending December 31, 2011. (Chu)

[Rules Committee referral 8/12/09 – Item G(1)]

Deferred to 8/25/09.

Council Member Chu will meet with the two applicants.

City Clerk directed to verify how many Mobilehome Parks that California Mobilehome Owners Resources and Action Association (CMRAA) and the Homeowners Organized to Protect Equity (HOME) have representatives in.

2.10 2009 League of California Cities Voting Delegate for the Annual Business Meeting.

Recommendation: 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)]

Approved.

2.11 Council Member Herrera's Travel to San Diego, California.

Recommendation: 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)

Deferred to 8/25/09 per Orders of the Day.

3. STRATEGIC SUPPORT SERVICES

- 3.1 **Report of the City Manager, Debra Figone (Verbal Report)**
No Report.
- 3.2 **Report of the Rules and Open Government Committee – July 29, 2009**
Mayor Reed, Chair
Accepted.
- 3.3 **Report of the Public Safety, Finance and Strategic Support Committee**
Council Member Nguyen, Chair
No Report.
- 3.4 **Sunshine Reform Task Force Phase II Recommendations.**

Recommendation: 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)

The memorandum from Mayor Reed, dated August 17, 2009, was approved, approving the SRTF recommendations and including the following amendments:

- (1) **Approve the Rules & Open Government Committee’s (ROGC) recommendation to limit the use of the balancing test to make it easier for the public to get records.**
- (2) **Approve the ROGC'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 ROGC'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 ROGC 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.**

(Action continued on the next page)

3. STRATEGIC SUPPORT SERVICES

3.4 Sunshine Reform Task Force Phase II Recommendations (Cont'd.)

- (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 during a Council meeting.**
- (8) **Consider a broader definition in Item (7) to include anyone who sends a message to a Council Member regarding an Agenda Item, as a part of the Mayor’s Biannual Ethics review in November.**

**Resolution No. 75091 adopted.
Noes: Kalra.**

4. COMMUNITY & ECONOMIC DEVELOPMENT

**4.1 Report of the Community & Economic Development Committee
Council Member Pyle, Chair
No Report.**

4.2 Rezoning real property located on the east side of Radio Avenue.

Recommendation: 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)

Ordinance No. 28636 passed for publication, as amended, to allow Lot 12 to remain, and the Planning Department to work out at the Permit Stage.

5. NEIGHBORHOOD SERVICES

**5.1 Report of the Neighborhood Services and Education Committee
Council Member Campos, Chair
No Report.**

6. TRANSPORTATION & AVIATION SERVICES

- 6.1 **Report of the Transportation and Environment Committee**
Council Member Liccardo, Chair
No Report.

7. ENVIRONMENTAL & UTILITY SERVICES

- 7.1 **Proposal for a Power Purchase and Site Lease Agreement.**

Recommendation: 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)

Deferred to 8/25/09 per Administration.

- 7.2 **Public Hearing on the Application of Ferma Corporation for a Commercial Solid Waste and Recyclables Collection Franchise.**

Recommendation: 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)

The Public Hearing was held.

Ordinance No. 28637 passed for publication.

8. PUBLIC SAFETY SERVICES

8.1 South San José Police Substation Project.

Recommendation:

- (a) Adopt a resolution approving the plan to complete the South San José Policy 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; and
 - (2) Authorize staff to defer all or portions of the landscape and irrigation work if necessary to stay within the new, increased budget.

Resolution No. 75093 adopted.

- (b) Adopt the following 2009-2010 Appropriation Ordinance and Funding Sources 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; and
 - (7) Decrease the Ending Fund Balance by \$240,000.

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

Ordinance No. 28638 adopted.

Resolution No. 75162 adopted.

9. JOINT COUNCIL/REDEVELOPMENT AGENCY

- Notice of City Engineer's Pending Decision on Final Maps
None.
- Notice of City Engineer's Award of Construction Projects
None.

- **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.