

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, AUGUST 25, 2009

The Council of the City of San José convened in regular session at 9:30 a.m. in the Council Chambers at City Hall.

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

Absent: Council Members - Chirco. (Excused)

Upon motion unanimously adopted, Council recessed at 9:32 a.m. to a Closed Session in Room W133, to confer with Legal Counsel pursuant to (A) Government Code subsection (a) of Section 54956.9 with respect to existing litigation: (1) Barrera, et al. v. City of San José, et al; Names of Parties Involved: Bernardino Barrera, Dolores Barrera, Maria Barrera, Jose Barrera, A.B., a minor child, by and through her Guardian ad Litem, Dolores Barrera, City of San José; Court: United States District Court, Northern District of California; Case No: C09-00858 PVT; Amount of Money or Other Relief Sought: Damages according to proof; (2) California State Auto Association, Inter-Insurance Bureau v. City of San José, et al; Names of Parties Involved: California State Auto Association, Inter-Insurance Bureau, City of San José and Does Inclusive; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-127117; Amount of Money or Other Relief Sought: Damages according to proof; (3) Sky Chiefs, Inc. v. City of San José; Names of Parties Involved: Sky Chiefs, Inc. and City of San José; Court: United States District Court, Northern District of California; Case No: C09-03735 RS; Amount of Money or Other Relief Sought: Declaratory and injunctive relief. (4) Bernal, et al. v. City of San José, et al; Names of Parties Involved: Mike C. Bernal, Susan R. Bernal, Nanetta Bernal, Lilian Bernal Auvinen, Katherine Lira, Diana Bernal-Taylor, Mike A. Bernal, Domenico Loverde, Tomas J. Martinez, Authur Paul Lira, Jr., Jeremiah Lira, Sommer Kai Espinosa, City of San José and Does 1-25; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-116141; Amount of Money or Other Relief Sought: Damages according to proof; (5) Smith, et al. v. City of San José, et al; Names of Parties Involved: Ted Smith, City of San José, San José Redevelopment Agency, Mayor Chuck Reed, each Council Member in their official capacity and Does 1 through 20; Court: Superior Court of California, County of Santa Clara; Case No: 1-09-CV-150427; Amount of Money or Other Relief Sought: Declaratory and injunctive relief.

CLOSED SESSION (Cont'd.)

(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 two (2) matters. (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI; (2) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW; (3) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO; (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP; (5) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (6) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP; (7) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (8) 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). (9) 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. (10) 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. (11) Association of Legal Professionals of San José; Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; 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 10:30 a.m. and reconvened to Regular Session at 1:33 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

Pastor Jon Talbert provided the Invocation. (District 7)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Herrera, seconded by Council Member Pyle and carried unanimously, the Orders of the Day and the Amended Agenda were approved, Item 2.9 was dropped and Items 3.2 and 4.2 were deferred to September 1, 2009. (10-0-1. Absent: Constant.)

CEREMONIAL ITEMS

1.1 Presentation of a commendation to Jensen Landscaping for their exemplary work in promoting San José's Green Vision through landscaping innovation. (Chu/OED)

Action: Mayor Reed, Council Member Chu and Chief Development Officer Paul Krutko recognized and commended Jensen Landscaping for their excellent work in promoting San José's Green Vision through landscaping innovation.

CONSENT CALENDAR

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 28624 – 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 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**

2.2 (a) (Cont'd.)

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”; (10) 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.

Documents Filed: Proof of Publication of the Title of Ordinance No. 28624 executed on August 18, 2009, submitted by the City Clerk.

Public Comments: Kathy Brandhorst spoke off topic.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, [Ordinance No. 28624](#) was adopted. (9-0-2. Absent: Chu, Constant.)

- (b) **ORD. NO. 28625 – Rezoning Certain Real Property Situated at the Southwest Corner of North First and Century Center Court from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District. PDC09-002**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28625 executed on August 18, 2009, submitted by the City Clerk.

Action: [Ordinance No. 28625](#) was adopted. (10-0-1. Absent: Constant.)

- (c) **ORD. NO. 28626 – Rezoning Certain Real Property Situated on the East Side of Morrill Avenue Approximately 200 Feet Northerly of Ione Drive to A(PD) Planned Development Zoning District. PDC09-011**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28626 executed on August 18, 2009, submitted by the City Clerk.

Action: [Ordinance No. 28626](#) was adopted. (10-0-1. Absent: Constant.)

- (d) **ORD. NO. 28627 – 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. PDC08-057**

Documents Filed: Proof of Publication of the title of Ordinance No. 28627 executed on August 18, 2009, submitted by the City Clerk.

2.2 (d) (Cont'd.)

Action: [Ordinance No. 28627](#) was adopted. (10-0-1. Absent: Constant.)

- (e) **ORD. NO. 28628 – 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 District to A(PD) Planned Development Zoning District. PDC09-007**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28628 executed on August 18, 2009, submitted by the City Clerk.

Action: [Ordinance No. 28628](#) was adopted. (10-0-1. Absent: Constant.)

- (f) **ORD. NO. 28629 – 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.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28629 executed on August 18, 2009, submitted by the City Clerk.

Action: [Ordinance No. 28629](#) was adopted. (10-0-1. Absent: Constant. First Reading: 9-2-0. Noes: Chu Constant.)

2.4 **Approve, retroactively, Kim Welsh's sponsored travel to La Baule, France to speak at the European Union World Investment Conference on June 4, 2009, pursuant to San José Municipal Code Section 12.08.030(I). (Economic Development)**

Documents Filed: Memorandum from Chief Development Officer Paul Krutko, dated August 3, 2009, recommending approval of the travel.

Action: The sponsored travel for Kim Welsh was approved. (10-0-1. Absent: Constant.)

2.5 **Authorize submittal of the 2008-2009 Urban Runoff Management Plan Annual Report and certification to the San Francisco Bay Regional Water Quality Control Board in conformance with the City's Municipal Separate Storm Sewer System National Pollutant Discharge Elimination System permit requirements, pursuant to the Federal Clean Water Act. CEQA: Not a Project. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated August 3, 2009, recommending authorization of submittal of the 2008-2009 Urban Runoff Management Plan Annual Report and certification to the San Francisco Bay Regional Water Quality Control Board.

2.5 (Cont'd.)

Action: The submittal of the 2008-2009 Urban Runoff Management Plan Annual Report and certification to the San Francisco Bay Regional Water Quality Control Board in conformance with the City's Municipal Separate Storm Sewer System National Pollutant Discharge Elimination System permit requirements, pursuant to the Federal Clean Water Act was authorized. (10-0-1. Absent: Constant.)

2.6 Report on bids and award the purchase of 51 diesel particulate filter retrofits on City vehicles to Cummins West, Inc. (San Leandro, CA), the lowest responsive bidder, not to exceed \$720,055.61 of total compensation, including installation and sales tax; and authorize the Director of Finance to:

- (a) **Execute the purchase order to purchase and install 51 diesel particulate filter retrofits.**
- (b) **Purchase and install additional quantities of diesel particulate filter retrofits on an as-required basis at the same unit price for a period of twelve months from the date of the initial purchase order, subject to the appropriation of funds.**

CEQA: Not a Project. (Finance)

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated August 3, 2009, recommending award of the purchase to the low bidder and authorization to the Director of Finance.

Action: The award of the purchase of 51 diesel particulate filter retrofits on City vehicles to Cummins West, Inc., the lowest responsive bidder, not to exceed \$720,055.61 of total compensation, including installation and sales tax was approved. The Director of Finance was authorized to execute the purchase order to purchase and install 51 diesel particulate filter retrofits and purchase and install additional quantities of diesel particulate filter retrofits on an as-required basis at the same unit price for a period of twelve months from the date of the initial purchase order, subject to the appropriation of funds. (10-0-1. Absent: Constant.)

2.7 Adopt a resolution to amend the City of San José Pay Plan, effective August 25, 2009, to create the following classification: Retirement Investment Officer (7504). (Human Resources)

Documents Filed: Memorandum from Director of Human Resources Mark Danaj, dated August 3, 2009, recommending adoption of a resolution.

Action: [Resolution No. 75094](#), entitled: "A Resolution of the Council of the City of San José Amending the City of San José Pay Plan to Create a New Job Classification", was adopted. (10-0-1. Absent: Constant.)

2.8 Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the Services for Redevelopment Capital Projects Fund (City-side Redevelopment Fund) for 2009-2010:

- (a) **Increase the Beginning Fund Balance by \$467,121.**
- (b) **Increase the appropriation to the Department of Public Works for the 24th Street Pedestrian Streetlight Project (PSM 530 Amendment #1) in the amount of \$467,121.**

CEQA: Exempt, File No. PP08-156. (Public Works/City Manager's Office)

Documents Filed: Memorandum from Director of Public Works Katy Allen and Budget Director Jennifer Maguire, dated August 3, 2009, recommending adoption of appropriation ordinance and funding sources resolution amendments.

Vice Mayor Chirco asked Staff about the strategy for turning the 900 streetlights back on that were turned off as per the cuts in the budget of 2008-2009. Director of Transportation James Helmer responded that Staff will be reporting to the Transportation and Environment Committee in November about the issue.

Action: Upon motion by Vice Mayor Chirco, seconded by Council Member Liccardo and carried unanimously, [Ordinance No. 28639](#), 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 24th Street Pedestrian Streetlight Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" and [Resolution No. 75095](#), 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 Services for Redevelopment Capital Projects Fund", were adopted. (10-0-1. Absent: Constant.)

**2.9 Approve travel by Council Member Herrera to San Diego, CA on September 4, 2009 to attend the International Council of Shopping Centers Western Division Conference. Source of Funds: Redevelopment Agency. (Herrera)
(Deferred from 8/18/09 – Item 2.11)**

Documents Filed: Memorandum from Council Member Herrera, dated August 6, 2009, requesting approval of travel.

Action: Item 2.9 was dropped per Orders of the Day.

2.10 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 \$398,700, and approval of a contingency in the amount of \$39,870. CEQA: Mitigated Negative Declaration, File No. PP07-106. Council District 5. SNI Area: East Valley/Communities. (Public Works)

2.10 (Cont'd.)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated August 18, 2009, recommending award of the contract to the low bidder and transmitting corrections to the contract and contingency amounts approved by Council on August 11, 2009, before the bids expired on August 28, 2009.

Action: The award 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 \$398,700, with related contingency, was approved. (10-0-1. Absent: Constant.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone reported that the Pension Stakeholder Outreach meetings will be held on Wednesday, August 26, 2009 and Thursday, August 27, 2009. She added that the "12th Annual Walk to End Domestic Violence" will be on Friday, October 2, 2009, beginning at 11:00 a.m., featured speaker will be Robin Givens.

3.2 Report of the Rules and Open Government Committee – August 5, 2009 Mayor Reed, Chair

Action: Deferred to September 1, 2009 per Orders of the Day.

3.4 As recommended by the Rules and Open Government Committee on August 12, 2009, appoint JoAnne Ingold to the Mobile Home Advisory Commission (MAC) to an unexpired term ending December 31, 2011. (Chu) [Rules Committee referral 8/12/09 – Item G(1)] (Continued from 8/18/09 – Item 2.9)

Documents Filed: (1) Memorandum from City Clerk Lee Price, dated August 13, 2009, transmitting the recommendations of the Rules and Open Government Committee. (2) Supplemental memorandum from City Clerk Lee Price, dated August 21, 2009, transmitting information about the number of registered members of each organization that reside in each mobile home park in the City of San José. (3) Letter from Homeowners Organized to Maintain Equity (HOME), dated August 25, 2009, regarding the release of email. (4) Eight letters from residents of Colonial Manor Mobile Home Park, dated August 20, 2009, expressing concern about the nomination of HOME to the Mobile Home Advisory Commission.

Mayor Reed provided meeting disclosures.

Council Member Chu noted that he met with the two applicants and recommended the appointment of JoAnne Ingold to the unexpired term ending December 31, 2011.

3.4 (Cont'd.)

Motion: Council Member Nguyen moved approval to reject the appointment of JoAnne Ingold to the Mobile Home Advisory Commission, with further direction to the City Clerk to begin a new process. Council Member Pyle seconded the motion.

Council Member Pyle expressed concern because of the emails from members of the Colonial Manor Mobile Home Park who each stated that Homeowners Organized to Maintain Equity (HOME) represents very few residents in the mobile home park; and further that the group is not a recognized organization, there have been no open meetings and no one pays dues.

City Attorney Richard Doyle and City Clerk Lee Price responded to Council questions.

Discussion followed.

Substitute Motion: Council Member Chu moved approval of the appointment of JoAnne Ingold to the Mobile Home Advisory Commission (MAC), with Staff directed to look at expanding the MAC to seven people. Council Member Campos seconded the motion.

Public Comments: Speaking in support to the appointment of JoAnne Ingold were Abbie Warren, JoAnne Ingold, Martha O'Connell and Eunice Stevenson, Homeowners Organized to Maintain Equity (HOME).

Speaking in opposition to the appointment of JoAnne Ingold were George Burke, Ursula Helsing and Gail Osmer, California Mobile Home Resources and Action (CAMRAA).

Mayor Reed, Vice Mayor Chirco and Council Member Kalra objected to the motion because of the fact that Homeowners Organized to Maintain Equity (HOME) has repeatedly refused to disclose information about its membership.

On a call for the question, the substitute motion failed. (3-7-1. Chirco, Herrera, Kalra, Liccardo, Nguyen, Pyle; Reed. Absent: Constant.)

Amendment to the Original Motion: Vice Mayor Chirco requested to amend the motion to direct the City Clerk to seek eligible applicants for the seat, request membership details from any organization of mobile home residents who submits a nomination and screen applicants through the Project Diversity Screening Committee. The amendment was accepted by Council Members Nguyen and Pyle.

Action: On a call for the question, the original motion carried as amended, no action was taken on the recommendation to appoint a resident member on the Mobile Home Advisory Committee. The City Clerk was directed to seek eligible applicants for the seat, request membership details from any organization of mobile home residents who submits a nomination and screen applicants through the Project Diversity Screening Committee. (9-1-1. Noes: Chu. Absent: Constant.)

- 3.5 As recommended by the Rules and Open Government Committee on August 19, 2009, direct the Office of the City Clerk:
- (a) To begin the process to conduct employee elections to nominate an employee member for appointment by the City Council to (1) the Board of Administration of the Federated City Employees Retirement System (Federated Retirement Board) and (2) a Police Department employee member of the Police and Fire Department Retirement Plan (Police and Fire Retirement Board) for terms which will expire November 30, 2013.
 - (b) To begin the process for an election among employees to nominate an employee representative for appointment by the City Council to the Civil Service Commission for a term ending November 30, 2013.

(City Clerk)

[Rules Committee referral 8/19/09 – Item H(1)]

Documents Filed: Memorandum from City Clerk Lee Price, dated August 21, 2009, transmitting the recommendations of the Rules and Open Government Committee.

Action: Upon motion by Council Member Herrera, seconded by Council Member Nguyen and carried unanimously, the City Clerk was directed to begin the process to conduct employee elections to nominate an employee member for appointment by the City Council to (1) the Board of Administration of the Federated City Employees Retirement System (Federated Retirement Board) and (2) a Police Department employee member of the Police and Fire Department Retirement Plan (Police and Fire Retirement Board) for terms which will expire November 30, 2013 and begin the process for an election among employees to nominate an employee representative for appointment by the City Council to the Civil Service Commission for a term ending November 30, 2013. (9-0-2. Absent: Chu, Constant.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.2 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. Director of Planning, Building and Code Enforcement recommends approval and the Planning commission voted 5-0-2 to transmit their comments and concerns without a formal recommendation.

PDC09-003 – District 8

(Continued from 8/11/09 – Item 11.3)

Action: Deferred to September 1, 2009 per Orders of the Day.

4.3 Approve an ordinance amending Title 4 of the San José Municipal Code to add a new Chapter 4.86 to create a use tax allocation incentive program for the period of five years. CEQA: Not a Project. (Economic Development)

Documents Filed: (1) Memorandum from Chief Development Officer Paul Krutko, dated August 3, 2009, recommending approval of an ordinance. (2) Staff presentation of the Business Cooperation Program dated August 25, 2009.

Chief Development Officer Paul Krutko provided the overview of the Business Cooperation Program and responded to Council questions.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, [Ordinance No. 28640](#), entitled: “An Ordinance of the City of San José Amending Title 4 of the San José Municipal Code to Add a New Chapter 4.86 to Create a Use Tax Incentive Program”, was passed for publication. (10-0-1. Absent: Constant.)

4.4 Approve the proposed ordinance amending Title 23 of the San José Municipal Code to allow programmable display signs for large ground-floor spaces in the Downtown Sign Zone. CEQA: Exempt, File No. PP09-159. Council District 3. SNI: Market/Almaden, University, and 13th Street. (Planning, Building and Code Enforcement)

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated August 11, 2009, recommending adoption of an ordinance. (2) Proof of Publication of Notice of Public Hearing, executed on August 7, 2009, submitted by the City Clerk.

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

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

Public Comments: Speaking in support to the programmable display signs in the Downtown Sign Zone were Jan Martin, Safeway, Tempe, Arizona, Gretchen Baisa, San José Downtown Association and Paul Higgins, San José Downtown Residents Association.

Action: On a call for the question, the motion carried unanimously, [Ordinance No. 28641](#), entitled: “An Ordinance of the City of San José Amending Section 23.02.410 of Chapter 23.02.410 of Chapter 23.02 of Title 23 of San José Municipal Code and Amending Section 23.04.120 of Chapter 23.04 of Title 23 of the San José Municipal Code to Modify the Regulations Relating to Programmable Display Signs in the Downtown Sign Zone”, was passed for publication. (10-0-1. Absent: Constant.)

- 4.5 Consideration of an ordinance extending a temporary moratorium on the establishment of new Bail Bonds Establishments for a period of twenty-two (22) months and fifteen (15) days, pending the review and possible amendment of land use regulations applicable to such establishments, and setting forth the findings to support such extension of the temporary moratorium. CEQA: Exempt, File No. PP09-102. Citywide
(Planning, Building and Code Enforcement)**

Action: Item 4.5 was continued and renoticed to September 1, 2009 per Administration.

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 Adopt a resolution authorizing the City Manager, or designee, to submit an application for federal assistance to (1) the U.S. Department of Commerce’s Economic Development Administration in an amount not to exceed \$4,000,000 to construct a Clean Tech Demonstration Center; and (2) the U.S. Department of Energy for a Community Renewable Energy Deployment Grant in an amount not to exceed \$5,000,000 to install renewable energy technologies. CEQA: Not a Project. Council District 3. (Economic Development/Environmental Services)**

Documents Filed: (1) Memorandum from Chief Development Officer Paul Krutko and Director of Environmental Services John Stufflebean, dated August 3, 2009, recommending adoption of a resolution. (2) Staff presentation of Clean Tech Demonstration Center Grant Applications dated August 25, 2009.

Clean Tech Regional Policy Officer Scott Green and Director of Environmental Services John Stufflebean provided an overview of the Clean Tech Demonstration Center Grant Applications and responded to Council questions.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, [Resolution No. 75096](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Execute and Submit an Application to (1) The U.S. Department of Commerce Economic Development Administration for a Grant for the Las Plumas Clean Tech Demonstration Center in an Amount Not To Exceed \$4,000,000 and (2) The U.S. Department of Energy for its Community Renewable Energy Deployment Grant in an Amount Not To Exceed \$5,000,000”, was adopted. (10-0-1. Absent: Constant.)

- 7.2 (a) Accept staff’s report on the Request for Information (RFI) process and issues related to Power Purchase Agreement (PPA) legal and business terms.
(b) Initiate a competitive Request for Proposal (RFP) process for a power purchase and site lease agreement for Solar Photovoltaic Power Production at the Mabury and Central Service yards.**

CEQA: Not a Project. (Finance/Environmental Services)

(Deferred from 6/23/09 – Item 3.7, 8/4/09 – Item 7.1 and 8/18/09 – Item 7.1)

7.2 (Cont'd.)

Documents Filed: (1) Memorandum from Mayor Reed, dated August 24, 2009, recommending approval of the Staff recommendations and modifications as described in "Action". (2) Supplemental memorandum from City Attorney Richard Doyle, dated August 21, 2009, providing background on the California Constitution Debt Limit. (3) Memorandum from Director of Finance Scott Johnson and Director of Environmental Services John Stufflebean, dated June 1, 2009, recommending acceptance of the report, reject the sole proposal, negotiate with SunPower Corporation and present to Council a fully negotiated Power Purchase Agreement for final review. (4) Supplemental memorandum from Deputy Director of Finance Julia Cooper and Director of Environmental Services John Stufflebean, dated August 18, 2009, revising the original recommendations with SunPower and providing additional information regarding Power Purchase Agreements.

Mayor Reed provided meeting disclosures.

Mayor Reed explained the modifications in his memorandum dated August 24, 2009. City Attorney Richard Doyle responded to Council questions.

Motion: Council Member Liccardo moved approval of the Staff recommendations and the memorandum from Mayor Reed, dated August 24, 2009, with modifications as described in "Action." Council Member Oliverio seconded the motion.

Council Member Campos provided meeting disclosures.

Action: On a call for the question, the motion carried unanimously, the Staff recommendations were approved, the memorandum from Mayor Reed, dated August 24, 2009, was approved, as amended: (A) Staff directed to reissue a new solar Request for Proposal as soon as possible for the two service yard sites with the goal of returning to Council within 90 days with a recommended service provider for a solar Power Purchase Agreement with the following modifications to terms: (1) Eliminate the minimum energy generation requirements. (2) Provide alternatives to the right to terminate for non-appropriation of funds. (3) Include a precedence order that assure payment for solar energy before payment of other sources of energy. (4) Allow the City an option to terminate the Power Purchase Agreement and buy the system at a price based on schedule or formula to be agreed upon. (5) Include a pay as-you-go provision for power to be received in succeeding years. (6) Provide for mutual indemnification. (7) Provide for Public Works costs to be paid as incurred rather than up front and refundable if the Power Purchase Agreement is not entered into. (B) The City Attorney directed to retain outside Counsel, if necessary, to determine how other cities have solved the problems with solar Power Purchase Agreements. (10-0-1. Absent: Constant.)

NEIGHBORHOOD SERVICES

5.1 Report of the Neighborhood Services and Education Committee – August 13, 2009 Council Member Campos, Chair

Documents Filed: The Neighborhood Services and Education Committee Report dated August 13, 2009.

Action: Upon motion by Council Member Campos, seconded by Vice Mayor Chirco and carried unanimously, the Report of the Neighborhood Services and Education Committee and the actions of August 13, 2009 were accepted. (10-0-1. Absent: Constant.)

OPEN FORUM

Ross Signorino expressed support for safety aspects of new LED street lighting in the neighborhoods.

ADJOURNMENT

The Council of the City of San José adjourned the meeting at 3:25 p.m. in memory of Daniel Zaccheo, Recreation Leader in the Parks, Recreation and Neighborhood Services Department. (Parks, Recreation and Neighborhood Services)

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

smd/8-25-09 MIN

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.