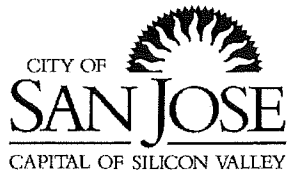
Council Agenda: 09/15/09
Agenda Item: 2.1(a)



MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA **TUESDAY, JUNE 2, 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, Oliverio, Pyle; Reed.

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

Upon motion unanimously adopted, Council recessed at 9:32 a.m. to a Closed Session in Room W133, to confer with Legal Counsel with respect to (A)) 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. (B) to confer with Legal Counsel pursuant to Government Code subsection (a) of Section 54956.9 with respect to existing litigation: (1) Vietnamese-American Community of Northern California v. City of San José, et al; Names of Parties Involved: Vietnamese-American Community of Northern California, City of San José, City Council of San José; Court: Superior Court of California, County of Santa Clara; Case No:1-08-CV-107082; Amount of Money or Other Relief Sought: For declaratory and injunctive relief according to proof; (2) Diaz, et al, v. City; Names of Parties Involved: Juan Diaz, Keith Keesling, Christopher Murphy, Gary Weekley, Karen Allen and other employees similarly situated, City of San José; Court: United States District Court, Northern District of California; Case No: C07-06424 JW; Amount of Money or Other Relief Sought: Damages according to proof; (3) Welch, et al. v. City; Names of Parties Involved: Jeffrey Welch, Glen Biship, Mitchell Witsinski, Robert Culbertson and other employees similarly situated, City of San José; Court: United States District Court, Northern District of California; Case No: C08-02132 JW; Amount of Money or Other Relief Sought: Damages according to proof; (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

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.

CLOSED SESSION (Cont'd.)

Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO; (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP; (5) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (6) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP; (7) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (8) San José Police Officers' Association (SJPOA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (9) International Association of Firefighters (IAFF), Local 230; Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters (IAFF), Local 230. (10) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3 (OE#3). How to obtain a copy of existing contract or MOA: web: http://www.sanjoseca.gov/employeerelations/ moa.asp; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 11:21 a.m. and reconvened to Regular Session at 1:30 p.m. in the Council Chambers.

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

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

INVOCATION

River Glen Estudiantina performed a medley of traditional Latin-American songs, "Mañanitas de Cielito Lindo con Muchos Colores" for the Invocation. (District 6)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Council Member Constant and carried unanimously, the Orders of the Day and the Amended Agenda were approved, and Items 3.4 and 5.4 were deferred to June 9, 2009. (9-0-2. Absent: Chirco, Nguyen.)

CLOSED SESSION REPORT

City Attorney Doyle disclosed the following Closed Session actions of June 2, 2009:

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

Case Name:	Vietnamese-American Community of Northern California v. City, et al.
Adverse Party or Parties:	Vietnamese-American Community of Northern California.
Substance of Litigation:	Injunctive relief regarding alleged Brown Act violations
Council Vote: Ayes:	Campos, Chu, Constant, Herrera, Kalra, Liccardo, Oliverio, Pyle; Reed.
Noes:	None.
Disqualified:	None.
Absent:	Chirco, Nguyen. (Excused)
Vacant:	None.

CEREMONIAL ITEMS

1.1 Presentation of a commendation to Fat Spaniel Technologies for providing a solution to the solar electric plant management problem. (Economic Development)

Action: Mayor Reed and Council Member Liccardo recognized and commended Fat Spaniel Technologies for supplying a solution to the solar electric plant management predicament.

1.2 Presentation of a proclamation declaring the week of June 1-7, 2009 as "National CPR and AED Awareness Week" in the City of San José. (Fire)

Action: Mayor Reed recognized the week of June 1-7, 2009 as "National CPR and AED Awareness Week" in the City of San José.

1.6 Presentation of the FY 2008-09 Government Finance Officers Association's "Distinguished Budget Presentation Award" and the "Certificate of Recognition for Budget Preparation" to the San José Redevelopment Agency. (Mayor/RDA) (Rules Committee referral 5/20/09)

1.6 (Cont'd.)

Action: Mayor Reed presented Redevelopment Agency Executive Director Harry S. Mavrogenes and Chief Financial Officer David Baum, with the FY 2008-09 Government Finance Officers Association's "Distinguished Budget Presentation Award" and the "Certificate of Recognition for Budget Preparation".

CONSENT CALENDAR

Upon motion by Council Member Pyle, seconded by Council Member Herrera, and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (9-0-2. Absent: Chirco, Nguyen.)

2.1 Final approval of minutes.

(a) Regular Minutes of April 7, 2009.
(b) Minutes of the Foreclosure Mitigation Study Session of April 13, 2009.
(c) Regular Minutes of April 14, 2009.
(d) Regular Minutes of April 21, 2009.
(e) Minutes of the Joint/Santa Clara Valley Water District Study Session on Water Supply of April 23, 2009.
(f) Regular Minutes of April 28, 2009.

Documents Filed: (1) Regular Minutes dated April 7, 2009, April 14, 2009, April 21, 2009 and April 28, 2009. (2) Minutes of the Foreclosure Mitigation Study Session dated April 13, 2009. (3) Minutes of the Joint/Santa Clara Valley District Study Session on Water Supply dated April 23, 2009.

Action: The minutes were approved. (9-0-2. Absent: Chirco, Nguyen.)

2.2 Final adoption of ordinances.

(a) ORD. NO. 28542 – Rezoning certain real property situated at the northwest corner of Carla Drive and Almaden Expressway to A(PD) Planned Development Zoning District. PDC08-055

Documents Filed: Proof of Publication of the title of Ordinance No. 28542 executed on May 19, 2009, submitted by the City Clerk.

Action: Ordinance No. 28542 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(b) ORD. NO. 28543 – Amending Chapter 9.10 of Title 9 of the San José Municipal Code to add Section 9.10.152 and 9.10.153 to define Large Events and Large Venues; amend Section 9.10.1720 to increase the Late Report Penalty; and amend Section 9.10.1445 to conform with new definitions.

Documents Filed: Proof of Publication of the title of Ordinance No. 28543 executed on May 19, 2009, submitted by the City Clerk.

2.2 (b) **(Cont'd.)**

Action: Ordinance No. 28543 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(c) **ORD. NO. 28544 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to A & A Recycling.**

Documents Filed: Proof of Publication of the title of Ordinance No. 28544 executed on May 19, 2009, submitted by the City Clerk.

Action: Ordinance No. 28544 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(d) **ORD. NO. 28545 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to All Points Roll Off, Inc.**

Documents Filed: Proof of Publication of the title of Ordinance No. 28545 executed on May 19, 2009, submitted by the City Clerk.

Action: Ordinance No. 28545 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(e) **ORD. NO. 28546 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to Allied Waste of North America, LLC dba Allied Waste of Santa Clara County.**

Documents Filed: Proof of Publication of the title of Ordinance No. 28546 executed on May 19, 2009, submitted by the City Clerk.

Action: Ordinance No. 28546 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(f) **ORD. NO. 28547 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to Bernardini Enterprises, Inc. dba JD Services.**

Documents Filed: Proof of Publication of the title of Ordinance No. 28547 executed on May 19, 2009, submitted by the City Clerk.

Action: Ordinance No. 28547 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(g) **ORD. NO. 28548 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to Eagle Recycling, Inc.**

Documents Filed: Proof of Publication of the title of Ordinance No. 28548 executed on May 19, 2009, submitted by the City Clerk.

Action: Ordinance No. 28548 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(h) **ORD. NO. 28549 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to Eco Box Recycling, Inc.**

2.2 (h) (Cont'd.)

Documents Filed: Proof of Publication of the title of Ordinance No. 28549 executed on May 19, 2009, submitted by the City Clerk.

Action: Ordinance No. 28549 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(i) ORD. NO. 28550 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to Environmental Management Systems, LLC dba EMS.

Documents Filed: Proof of Publication of the title of Ordinance No. 28550 executed on May 19, 2009, submitted by the City Clerk.

Action: Ordinance No. 28550 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(j) ORD. NO. 28551 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to Environmental Resource Recovery, Inc. dba Valley Recycling.

Documents Filed: Proof of Publication of the title of Ordinance No. 28551 executed on May 19, 2009, submitted by the City Clerk.

Action: Ordinance No. 28551 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(k) ORD. NO. 28552 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to GreenWaste Recovery, Inc.

Documents Filed: Proof of Publication of the title of Ordinance No. 28552 executed on May 19, 2009, submitted by the City Clerk.

Action: Ordinance No. 28552 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(l) ORD. NO. 28553 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to GreenWaste Recovery, Inc. dba $99 Debris Box Service.

Documents Filed: Proof of Publication of the title of Ordinance No. 28553 executed on May 19, 2009, submitted by the City Clerk.

Action: Ordinance No. 28553 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(m) ORD. NO. 28554 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to Grifall Trucking, Inc.

Documents Filed: Proof of Publication of the title of Ordinance No. 28554 executed on May 19, 2009, submitted by the City Clerk.

2.2 (m) **(Cont'd.)**

Action: Ordinance No. 28554 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(n) **ORD. NO. 28555 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to Haul-Away Today.**

Documents Filed: Proof of Publication of the title of Ordinance No. 28555 executed on May 19, 2009, submitted by the City Clerk.

Action: Ordinance No. 28555 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(o) **ORD. NO. 28556 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to JHM Service, Inc.**

Documents Filed: Proof of Publication of the title of Ordinance No. 28556 executed on May 19, 2009, submitted by the City Clerk.

Action: Ordinance No. 28556 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(p) **ORD. NO. 28557 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to Jonna Corporation, Inc. dba Premier Recycle.**

Documents Filed: Proof of Publication of the title of Ordinance No. 28557 executed on May 19, 2009, submitted by the City Clerk.

Action: Ordinance No. 28557 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(q) **ORD. NO. 28558 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to LMH Enterprises, Incorporated dba Number "1" Disposal.**

Documents Filed: Proof of Publication of the title of Ordinance No. 28558 executed on May 19, 2009, submitted by the City Clerk.

Action: Ordinance No. 28558 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(r) **ORD. NO. 28559 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to Los Altos Garbage Company dba Stevens Creek Disposal & Recycling.**

Documents Filed: Proof of Publication of the title of Ordinance No. 28559 executed on May 19, 2009, submitted by the City Clerk.

Action: Ordinance No. 28559 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(s) **ORD. NO. 28560 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to Mission Trail Waste Systems, Inc. dba Recycle West.**

2.2 (s) (Cont'd.)

Documents Filed: Proof of Publication of the title of Ordinance No. 28560 executed on May 19, 2009, submitted by the City Clerk.

Action: Ordinance No. 28560 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(t) ORD. NO. 28561 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to Pacific Coast Recycling, Inc.

Documents Filed: Proof of Publication of the title of Ordinance No. 28561 executed on May 19, 2009, submitted by the City Clerk.

Action: Ordinance No. 28561 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(u) ORD. NO. 28562 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to Panther Industries.

Documents Filed: Proof of Publication of the title of Ordinance No. 28562 executed on May 19, 2009, submitted by the City Clerk.

Action: Ordinance No. 28562 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(v) ORD. NO. 28563 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to Qualified Trucking, Inc.

Documents Filed: Proof of Publication of the title of Ordinance No. 28563 executed on May 19, 2009, submitted by the City Clerk.

Action: Ordinance No. 28563 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(w) ORD. NO. 28564 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to R & D Mendes Enterprises, Inc. dba Accurate Cleaning Systems.

Documents Filed: Proof of Publication of the title of Ordinance No. 28564 executed on May 19, 2009, submitted by the City Clerk.

Action: Ordinance No. 28564 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(x) ORD. NO. 28565 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to Recycling & Waste Services, Inc.

Documents Filed: Proof of Publication of the title of Ordinance No. 28565 executed on May 19, 2009, submitted by the City Clerk.

Action: Ordinance No. 28565 adopted. (9-0-2. Absent: Chirco, Nguyen.)

2.2 (y) **ORD. NO. 28566 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to San José Conservation Corps.**

Documents Filed: Proof of Publication of the title of Ordinance No. 28566 executed on May 19, 2009, submitted by the City Clerk.

Action: Ordinance No. 28566 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(z) **ORD. NO. 28567 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to The Flea Market, Inc.**

Documents Filed: Proof of Publication of the title of Ordinance No. 28567 executed on May 19, 2009, submitted by the City Clerk.

Action: Ordinance No. 28567 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(aa) **ORD. NO. 28568 – Granting a Commercial Solid Waste and Recyclables Collection Franchise to Waste Connections of California, Inc. dba GT Waste.**

Documents Filed: Proof of Publication of the title of Ordinance No. 28568 executed on May 19, 2009, submitted by the City Clerk.

Action: Ordinance No. 28568 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(bb) **ORD. NO. 28577 – Rezoning certain real property situated on the east side of South White Road approximately 250 feet south of Cunningham Lake Court to A(PD) Planned Development Zoning District. PDC09-008**

Documents Filed: Proof of Publication of the title of Ordinance No. 28577 executed on May 26, 2009, submitted by the City Clerk.

Action: Ordinance No. 28577 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(cc) **ORD. NO. 28578 – Prezoning certain real property situated at the west side of Lincoln Avenue extending from West San Carlos St. to Pacific Avenue on the north, excluding the northwest corner of West San Carlos St. and Lincoln Ave., to A(PD) Planned Development Zoning District. PDC07-017**

Documents Filed: Proof of Publication of the title of Ordinance No. 28578 executed on May 26, 2009, submitted by the City Clerk.

Action: Ordinance No. 28578 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(dd) **ORD. NO. 28579 – Amending Section 20.40.100 of Chapter 20.40, Section 20.50.100 of Chapter 20.50, and Section 20.90.060 of Chapter 20.90, and adding a new Part 13.5 to Chapter 20.80 and a new Section 20.200.995 to Chapter 20.200, all of Title 20 of the San José Municipal Code (the Zoning Code), to establish land use regulations for relocated Cardrooms.**

2.2 (dd) (Cont'd.)

Documents Filed: Proof of Publication of the title of Ordinance No. 28579 executed on May 26, 2009, submitted by the City Clerk.

Action: Ordinance No. 28579 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(ee) ORD. NO. 28569 – Amending Sections 23.02.800 and 23.02.1220 of Chapter 23.02, amending Sections 23.04.010 and 23.04.030 of Chapter 23.04, and adding a new Section 23.02.365 to Chapter 23.02, all of Title 23 of the San José Municipal Code, to establish regulations for a Stevens Creek Signage Area.

Documents Filed: Proof of Publication of the title of Ordinance No. 28569 executed on May 26, 2009, submitted by the City Clerk.

Action: Ordinance No. 28569 adopted. (9-0-2. Absent: Chirco, Nguyen.)

(ff) ORD. NO. 28576 – Amending Section 20.100.500 of Chapter 20.100 of Title 20 of the San José Municipal Code to allow for an additional extension of Development Permit terms or a reactivation of certain expired Development Permits for a temporary period of time.

Documents Filed: Proof of Publication of the title of Ordinance No. 28576 executed on May 26, 2009, submitted by the City Clerk.

Action: Ordinance No. 28576 adopted. (9-0-2. Absent: Chirco, Nguyen.)

2.3 (a) Request for an excused absence for Vice Mayor Chirco from the Closed Session and Regular Meeting of the City Council on May 19, 2009 due to illness. (Chirco)

(b) Request for an excused absence for Council Member Constant from the Regular Meeting of the Rules and Open Government Committee on May 13, 2009 due to illness. (Constant)

(c) Request for an excused absence for Council Member Herrera from the Closed Session, Regular Meeting and Evening Session of the City Council on May 19, 2009 due to the death of a close family member. (Herrera)

(Rules Committee referral 5/20/09)

Documents Filed: (1) Memorandum from Vice Mayor Chirco, dated May 18, 2009, requesting an excused absence due to illness. (2) Memorandum from Council Member Constant, dated May 18, 2009, requesting an excused absence due to illness. (3) Memorandum from Council Member Herrera, dated May 19, 2009, requesting an excused absence due to the death of a close family member.

Action: The absences for Vice Mayor Chirco and Council Members Constant and Herrera were excused. (9-0-2. Absent: Chirco, Nguyen.)

2.4 Approve a First Amendment to the Provisioning Facility Ground Lease with Southwest Airlines Co. to allow Southwest to indefinitely delay commencement of construction of tenant improvements, subject to termination by the Director of Aviation upon thirty (30) days written notice at any time prior to issuance of a notice to proceed with construction to Southwest. CEQA: Resolution Nos. 67380 and 71451, File No. PP09-074. (Airport)
(Deferred from 5/19/09 – Item 2.4)

Documents Filed: Memorandum from Director of Aviation William Sherry, dated April 27, 2009, recommending approval of the first amendment to the lease.

Action: The First Amendment to the Provisioning Facility Ground Lease with Southwest Airlines Co. to allow Southwest to indefinitely delay commencement of construction of tenant improvements, subject to termination by the Director of Aviation upon thirty days written notice at any time prior to issuance of a notice to proceed with construction to Southwest was approved. (9-0-2. Absent: Chirco, Nguyen.)

2.5 Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with MRF Geosystems Corporation of Calgary, Alberta, Canada from the date of execution through June 30, 2011, in an amount not to exceed $300,000 for the Storm GIS Data Improvement Project. CEQA: Not a Project. (Public Works)
(Deferred from 5/19/09 – Item 2.12)

Documents Filed: Replacement memorandum from Director of Public Works Katy Allen, dated May 20, 2009, recommending adoption of a resolution.

Action: Resolution No. 74926, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with MRF Geosystems Corporation for Consultant Services Related to the Storm GIS Data Improvement Project in an Amount Not To Exceed $300,000", was adopted. (9-0-2. Absent: Chirco, Nguyen.)

2.6 Approve a second amendment to the consultant agreement with Jacobs Consultancy, Inc. for Airport airspace and airfield analysis services, increasing the maximum cost of the agreement by $300,000, from $200,000 to an amount not to exceed $500,000. CEQA: Resolution Nos. 67380 and 71451, File No. PP09-106. (Airport)

Documents Filed: Memorandum from Director of Aviation William Sherry, dated May 11, 2009, recommending approval of a second amendment to the agreement.

Action: The second amendment to the consultant agreement with Jacobs Consultancy, Inc. for Airport airspace and airfield analysis services, increasing the maximum cost of the agreement by $300,000, from $200,000 to an amount not to exceed $500,000 was approved. (9-0-2. Absent: Chirco, Nguyen.)

2.7 As recommended by the Parks and Recreation Commission on May 6, 2009, rename a new facility located at 110 N. Jackson Street as the "Dr. James Akiyama Wellness Center." (City Clerk)

Documents Filed: Memorandum from City Clerk Lee Price, dated May 11, 2009, transmitting the recommendations of the Parks and Recreation Commission.

Public Comments: Sophie Horiuchi-Forrester and Vic Nakamoto, Yu-Ai-Kai, spoke in full support of renaming the facility the "Dr. James Akiyama Wellness Center".

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, the new facility located at 110 N. Jackson Street was renamed the "Dr. James Akiyama Wellness Center". (9-0-2. Absent: Chirco, Nguyen.)

2.8 Adopt a resolution of support for Administration activities necessary to coordinate the planning host City responsibilities for the 2009 League of California Cities Annual Conference. CEQA: Not a Project. (City Manager's Office).

Documents Filed: Memorandum from Deputy City Manager Edward K. Shikada, dated April 29, 2009, recommending adoption of a resolution.

Action: Resolution No. 74927, entitled: "A Resolution of the Council of the City of San José Supporting Administration Activities Necessary to Coordinate the Planning and Hosting of the 2009 League of California Cities Annual Conference", was adopted. (9-0-2. Absent: Chirco, Nguyen.)

2.9 Approve the first amendment to the agreement with HF&H Consultants for environmental consultant services for various Environmental Service Department projects, increasing the total compensation by $250,000, from $250,000 to an amount not to exceed $500,000. CEQA: Not a Project. (Environmental Services)

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated May 11, 2009, recommending the approval of the first amendment to the agreement.

Action: The first amendment to the agreement with HF&H Consultants for environmental consultant services for various Environmental Service Department projects, increasing the total compensation by $250,000, from $250,000 to an amount not to exceed $500,000 was approved. (9-0-2. Absent: Chirco, Nguyen.)

2.10 Approve a fifth amendment to the agreement between the City and R3 Consulting Group, Inc., to provide solid waste consulting and rate modeling services to the Environmental Services Department, extending the term through December 31, 2010, and increasing the compensation by $130,000, from $600,000 to an amount not to exceed $730,000. CEQA: Not a Project. (Environmental Services)

2.10 (Cont'd.)

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated May 11, 2009, recommending approval of a fifth amendment to the agreement.

Action: The fifth amendment to the agreement between the City and R3 Consulting Group, Inc., to provide solid waste consulting and rate modeling services to the Environmental Services Department, extending the term through December 31, 2010, and increasing the compensation by $130,000, from $600,000 to an amount not to exceed $730,000 was approved. (9-0-2. Absent: Chirco, Nguyen.)

2.11 Adopt a resolution approving the annual certification of the City's Investment Policy, including certain revisions:
(a) Updating job titles of the City Investment Officials;
(b) Adding language in the authorized investments section to clarify and modify certain percent restrictions;
(c) Removing the requirement that the average maturity of the investment portfolio not exceed two years;
(d) Updating of the List of the Primary Government Securities Dealers;
(e) Making other clarifying changes thereto.
CEQA: Not a Project. (Finance)

Action: Dropped per Administration, rescheduled for June 9, 2009.

2.12 Approve a master plan for the new park site located at 1501 Almaden Road. CEQA: Negative Declaration, File No. PP08-166. Council District 7. SNI: Washington. (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated May 11, 2009, recommending approval of a master plan for the new park site.

Action: The master plan for the new park site located at 1501 Almaden Road was approved. (9-0-2. Absent: Chirco, Nguyen.)

2.13 Approve an agreement with the County of Santa Clara for construction, operation and maintenance of the Penitencia Creek Trail (King Road to Mabury Avenue). CEQA: Mitigated Negative Declaration, File No. PP03-04-134. Council District 4. (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated May 11, 2009, recommending approval of an agreement.

Action: The agreement with the County of Santa Clara for construction, operation and maintenance of the Penitencia Creek Trail (King Road to Mabury Avenue) was approved. (9-0-2. Absent: Chirco, Nguyen.)

2.14 Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Gift Trust Fund:

(a) Increase the appropriation to the Police Department for Internet Crimes Against Children Gifts by $11,500.

(b) Increase the estimate for Earned Revenue by $11,500.

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

Documents Filed: Memorandum from Police Chief Robert Davis and Budget Director Jennifer Maguire, dated May 11, 2009, recommending adoption of appropriation ordinance and funding sources resolution amendments.

Action: Ordinance No. 28580, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Gift Trust Fund for the Internet Crimes Against Children Gifts; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" and Resolution No. 74928, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 74461 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2008-2009 to Adjust Revenues in the Gift Trust Fund", were adopted. (9-0-2. Absent: Chirco, Nguyen.)

2.15 Report on bids and award of a contract for the Fleming Park Project to the low bidder, Joseph J. Albanese, Inc., for the base bid and Add Alternate Nos. 1 and 2 in the amount of $369,953, and approval of a contingency in the amount of $18,500. CEQA: Exempt, File No. PP07-237, November 21, 2007. Council District 5. (Public Works)

Action: Dropped per Administration.

2.16 Approve the proposed Fiscal Year 2008/2009 - 2013/2014 Work Plan for the Rule 20A and Rule 20B (In-Lieu Fee) Underground Utility Program. CEQA: Not a Project. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated May 11, 2009, recommending approval of the work plan.

Action: The proposed Fiscal Year 2008/2009 - 2013/2014 Work Plan for the Rule 20A and Rule 20B Underground Utility Program was approved. (9-0-2. Absent: Chirco, Nguyen.)

2.17 Approve an agreement with IBI Group for the Consultant design services for the Transportation Incident Management Center and Technology Training Center, from the date of execution to June 30, 2011, in an amount not to exceed $400,000. CEQA: Not a Project. (Transportation/Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen and Director of Transportation James Helmer, dated May 11, 2009, recommending an approval of an agreement.

2.17 (Cont'd.)

Action: The agreement with IBI Group for the Consultant design services for the Transportation Incident Management Center and Technology Training Center, from the date of execution to June 30, 2011, in an amount not to exceed $400,000 was approved. (9-0-2. Absent: Chirco, Nguyen.)

2.18 (a) Approve the CommUnity Resource Fair to be held on Sunday, June 7, 2009 at History San José.
(b) Approve the use of the Mayor's Special Event fund balance of $2,784.
(c) Approve and accept receipt of and use of various donations in support of the CommUnity Resource Fair on June 7, 2009.
(d) Approve appropriation of $35,000 in donations to the Mayor's Special Event fund to pay for event costs.
(City Clerk) (Rules Committee referral 5/27/09)

Documents Filed: Memorandum from City Clerk Lee Price, dated May 27, 2009, recommending approval of the actions as described above in 2.18(a)-(d).

Action: The CommUnity Resource Fair to be held on Sunday, June 7, 2009 at History San José, the use of the Mayor's Special Event fund balance of $2,784 and the appropriation of $35,000 in donations to the Mayor's Special Event fund to pay for event costs were approved. (9-0-2. Absent: Chirco, Nguyen.)

2.19 As recommended by the Rules and Open Government Committee on May 27, 2009:
(a) Appoint Clarence Madrilejos to the Human Rights Commission for an unexpired term ending December 31, 2010.
(b) Appoint Lee Jack Ellak to the Housing and Community Development Commission for an unexpired term ending December 31, 2011.
(c) Appoint Kevin Smith for a term ending June 30, 2012 and Elizabeth Kabanek for an unexpired term ending June 30, 2011 to the Traffic Appeals Commission.
(d) Appoint Johnny Khamis for an unexpired term ending December 31, 2009, and Dallas Radcliffe and Robert Braunstein for terms ending December 31, 2011 to the Small Business Development Commission.
(e) Appoint Michael Fitzgerald to the Landlord Position for an unexpired term ending December 31, 2010 and Ashok Naidu to the Neutral Position for an unexpired term ending December 31, 2011 on the Advisory Commission on Rents.
(f) Appoint Jose Castro for an unexpired term ending June 30, 2010 and Robert Levy for a term ending June 30, 2012 to the Parks and Recreation Commission.
(g) Appoint John Robinson to the Disability Advisory Commission for a term ending June 30, 2012.
(h) Appoint Mara Cleaves Wold to the Healthy Neighborhoods Leadership Committee.
(Chu/Nguyen/Herrera/Pyle/City Manager's Office)
(Rules Committee referral 5/27/09 – Items 9.1 and 9.2)

2.19 (Cont'd.)

Documents Filed: Memorandum from City Clerk Lee Price, dated May 28, 2009, transmitting the recommendations of the Rules and Open Government Committee.

Action: The appointments were approved. (9-0-2. Absent: Chirco, Nguyen.)

END OF CONSENT CALENDAR

ENVIRONMENTAL & UTILITY SERVICES

7.3 Adopt a resolution authorizing the City Manager to submit the City's application to the Department of Energy for $8,840,060 in Energy Efficiency and Conservation Block Grant funds as authorized by the American Recovery and Reinvestment Act of 2009. CEQA: Not a Project. (Environmental Services/Housing)

Documents Filed: (1) Memorandum from Mayor Reed, Vice Mayor Chirco and Council Members Kalra and Liccardo, dated May 21, 2009, recommending adoption of a comprehensive energy plan with amendments as depicted below in "Action". (2) Memorandum from Director of Environmental Services John Stufflebean, dated May 11, 2009, recommending adoption of a resolution.

Public Comments: Speaking in support to the City of San José Energy Plan were Brian Gitt, BKI, Alexis Ringwald, Valence Energy, Kelly Desy, SolFocus, Inc. and Bobby Ram, Sunpower.

Motion: Council Member Liccardo moved approval of the memorandum he cosigned with Mayor Reed, Vice Mayor Chirco and Council Member Kalra. Council Member Herrera seconded the motion.

A brief discussion followed.

Action: On a call for the question, the motion carried unanimously, the memorandum from Mayor Reed, Vice Mayor Chirco and Council Members Kalra and Liccardo, dated May 21, 2009, was accepted, approving the staff recommendations and adopting a comprehensive plan to deploy renewable energy, reduce energy consumption through efficiency and smart microgrid technology and design a program for residential retrofits and green work force development. The Energy Plan is meant to be a comprehensive strategy used to guide the City over the short term. This plan consists of three main points: (1) Renewable Energy (a) Install 50MW of renewable electricity on City owned lands for municipal use. (b) Develop a Request for Qualifications (RFQ) process to select a Solar Contractor/Vendor to produce an installation and financing plan and schedule. (2) Energy Efficiency (a) Perform energy audits and solar assessments on all City facilities. (b) Use funds for the Energy Efficiency and Conservation Block Grants (EECBG) to being a program to retrofit all City facilities to reduce energy consumption. (c) Extend the City Building Energy Project Program (CBEPP) revolving fund from 1 year to 2

7.3 (Cont'd.)

years. (d) Use EECBG funds to install additional smart street lights and apply the dollar savings from those lights to expand the pilot program across the City. (3) Community Involvement (a) Establish a voluntary Citywide energy efficiency and solar assessment district to allow all San José residents the opportunity to participate in the Green Vision and receive proceeds from the Federal Stimulus Package. (b) Coordinate work force training programs with universities, community colleges, job training organizations and labor unions to ensure the City has trained and qualified workers ready to meet the challenge of retrofitting the City facilities, residences and commercial buildings, and Resolution No. 74937, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute and Submit an Application to the U.S. Department of Energy for an American Recovery and Reinvestment Act of 2009 Energy Efficiency and Conservation Block Grant in an Amount Not To Exceed $8,840,600", was adopted. Staff was directed to return to Council with limitations on use of funds and resources needed. (9-0-2. Absent: Chirco, Nguyen.)

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone provided an update on the State Budget.

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

Documents Filed: The Rules and Open Government Committee Report dated April 29, 2009.

Action: Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, the Report of the Rules and Open Government Committee and the actions of April 29, 2009 were accepted. (8-0-3. Absent: Chirco, Kalra, Nguyen.)

3.3 Report of the Rules and Open Government Committee – May 6, 2009
Mayor Reed, Chair

Documents Filed: The Rules and Open Government Committee Report dated May 6, 2009.

Action: Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, the Report of the Rules and Open Government Committee and the actions of May 6, 2009 were accepted. (8-0-3. Absent: Chirco, Kalra, Nguyen.)

3.4 Report of the Rules and Open Government Committee – May 13, 2009
Mayor Reed, Chair

Action: Deferred to June 9, 2009 per Orders of the Day.

3.5 Report of the Public Safety, Finance and Strategic Support Committee – May 21, 2009 Council Member Nguyen, Chair

Documents Filed: The Public Safety, Finance and Strategic Support Committee Report dated May 21, 2009.

Action: Upon motion by Council Member Constant, seconded by Council Member Herrera and carried unanimously, the Report of the Public Safety, Finance and Strategic Support Committee and the actions of May 21, 2009 were accepted. (8-0-3. Absent: Chirco, Kalra, Nguyen.)

3.6 As recommended by the Council Salary Setting Commission, approve an ordinance setting the salaries and benefits of the Mayor and City Council for Fiscal Year (FY) 2009 - 2010 and FY 2010 - 2011 as follows:

(a) For the Mayor, maintain the annual salary at the current level of $127,000 for FY 2009 - 2010 and FY 2010 - 2011, respectively.

(b) For each Council Member, maintain the annual salary at the current level of $90,000 for FY 2009 - 2010 and FY 2010 - 2011, respectively.

(c) Retain the levels of health, dental, life insurance and other benefits through FY 2010 - 2011 in accordance with the benefits provided to management employees in Unit 99 and salary continuation insurance benefits as well as the City's contributions to CalPERS or PTC 457 plans through FY 2010 - 2011.

(d) Continue to require Council Members to pay $250 for each unexcused absence at scheduled Council meetings, pursuant to City Charter Section 407.

(e) Maintain a monthly vehicle allowance of up to $600 for the Mayor and City Council through June 30, 2011.

(City Clerk/City Attorney)

Motion: Council Member Constant moved approval of the memorandum he cosigned with Council Member Liccardo, recommending acceptance of the report from the Council Salary Setting Commission and the following action: (1) Reduce the Mayor and Council Member salaries by 3.75%, the same percentage reduction as the Council Appointees for FY2009-2010 and FY2010-2011. (a) Mayor's annual salary should be reduced from $127,000 to $122,238; (b) Council Member salaries should be reduced from $90,000 to $86,625. (2) Retain levels of health, dental, life insurance and other benefits through FY2010-2011 in accordance with the benefits provided to management employees in Unit 99 and salary continuation insurance benefits as well as the City's contributions to CalPERS or PTC 457 plans through FY2010 -2011. (3) Set the monthly vehicle allowance at $350 and including Item (d) from the Staff recommendations as described above: (4) Continue to require Council Members to pay $250 for each unexcused absence at scheduled Council meetings, pursuant to City Charter Section 407. Council Member Liccardo seconded the motion.

3.6 (Cont'd.)

City Attorney Richard Doyle responded to Council questions.

Discussion followed.

Public Comments: Corazon Tomalinas spoke in opposition to the Council Salary Setting Commission recommendations. Ross Signorino suggested Staff look at what insurance companies use for the cost of operation of a vehicle.

Council Member Chu requested to amend the motion to make it a voluntary program. The amendment was not accepted by Council Member Constant.

Substitute Motion: Council Member Herrera moved to accept the report of the Council Salary Setting Commission and to implement it as a voluntary program. Council Member Chu seconded the motion.

During the discussion, it was noted that Vice Mayor Chirco and Council Member Nguyen were not present and should be included in these discussions. Therefore Council Member Herrera rescinded the substitute motion and Council Member Constant rescinded the original motion with the intent to continue this issue in one week.

Action: Upon motion by Council Member Constant, seconded by Council Member Herrera and carried unanimously, Item 3.6 was continued to June 9, 2009. (9-0-2. Absent: Chirco, Nguyen.)

3.7 Adopt a resolution to:

(a) Authorize the issuance of the City of San José General Obligation Bonds, Series 2009 (Public Safety Projects) in the not-to-exceed aggregate principal amount of $9,000,000 to be sold at a competitive sale.

(b) Approve, in substantially final form, the Fiscal Agent Agreement, Official Notice Inviting Bids, and Preliminary Official Statement and authorize the City Manager, or other authorized officers, to execute these documents and other related documents as necessary in connection with the issuance of the 2009 Bonds.

CEQA: Not a Project. (Finance)

Documents Filed: (1) Memorandum from Deputy Director of Finance Julia Cooper, dated May 18, 2009, recommending adoption of a resolution. (2) Supplemental memorandum from Deputy Director of Finance Julia Cooper, dated May 2, 2009, transmitting the Preliminary Official Statement, Appendix A for the City of San José General Obligation Bonds, Series 2009.

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

Deputy Director of Finance Julia Cooper and City Attorney Richard Doyle responded to Council questions.

3.7 (Cont'd.)

Council Member Liccardo requested to amend the motion to request that Staff modify the Preliminary Official Statement to highlight the fact that Table 24 does not reflect the current funding status of the Pension Plans. Council Members Constant and Oliverio accepted the amendment.

Action: On a call for the question, the motion carried unanimously, Resolution No. 74929, entitled: "A Resolution of the Council of the City of San José Authorizing the Issuance of Its General Obligation Bonds, Authorizing and Directing the Execution of a Fiscal Agent Agreement and Certain Other Related Documents and Authorizing Actions Related Thereto", was adopted. Staff was requested to modify the Preliminary Official Statement to highlight the fact that Table 24 does not reflect the current funding status of the Pension Plans. (9-0-2. Absent: Chirco, Nguyen.)

3.8 As recommended by the Rules and Open Government Committee on May 20, 2009, adopt a position of support for AB419 (De La Torre), Recycled Water. (Environmental Services)
[Rules Committee referral 5/20/09 – Item 6.1(a)]

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

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, a position of support for AB419 was adopted. (9-0-2. Absent: Chirco, Nguyen.)

3.9 As recommended by the Public Safety, Finance and Strategic Support Committee on May 21, 2009, accept the audit of the Police Department Auto Theft Unit. (City Auditor)
(Public Safety, Finance and Strategic Support Committee referral 5/21/09-Item 3.7)

Documents Filed: Memorandum from City Clerk Lee Price, dated May 28, 2009, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the audit of the Police Department Auto Theft Unit was accepted. (9-0-2. Absent: Chirco, Nguyen.)

3.10 As recommended by the Rules and Open Government Committee on May 27, 2009, adopt an oppose position for AB761 (Calderon). (Housing)
[Rules Committee referral 5/27/09 – Item 6.1(a)]

Documents Filed: Memorandum from City Clerk Lee Price, dated May 28, 2009, transmitting the recommendations of the Rules and Open Government Committee.

3.10 (Cont'd.)

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, an oppose position for AB761 was adopted. (9-0-2. Absent: Chirco, Nguyen.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.2 (a) Preliminary approval of the report as filed by the Hotel Business Improvement District Advisory Board, or as modified by Council; and adoption of a resolution of intention to levy the annual assessment for Fiscal Year 2009-2010, and set June 16, 2009 at 1:30 p.m. as the date and time for the public hearing on the levy of the proposed assessments. CEQA: Exempt, File No. PP08-048. (Economic Development)

(b) Preliminary approval of the report as filed by the Downtown Business Improvement District Advisory Board, or as modified by Council; and adoption of a resolution of intention to levy the annual assessment for Fiscal Year 2009-2010, and set June 16, 2009 at 1:30 p.m. as the date and time for the public hearing on the levy of the proposed assessments. CEQA: Exempt, File No. PP08-048. Council District 3. SNI: St. James Square; University; Josefa/Auzerais; Burbank/DelMonte. (Economic Development)

(c) Preliminary approval of the report as filed by the Japantown Business Improvement District Advisory Board, or as modified by Council; and adoption of a resolution of intention to levy the annual assessment for Fiscal Year 2009-2010, and set June 16, 2009 at 1:30 p.m. as the date and time for the public hearing on the levy of the proposed assessments. CEQA: Exempt, File No. PP08-048. Council District 6. (Economic Development)

(d) Preliminary approval of the report as filed by the Willow Glen Business Improvement District Advisory Board, or as modified by Council; and adoption of a resolution of intention to levy the annual assessment for Fiscal Year 2009-2010, and set June 16, 2009 at 1:30 p.m. as the date and time for the public hearing on the levy of the proposed assessments. CEQA: Exempt, File No. PP08-048. Council District 6. (Economic Development)

Documents Filed: Memoranda from Chief Development Officer Paul Krutko, three dated May 11, 2009 and one dated May 1, 2009, recommending adoption of resolutions.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Kalra and carried unanimously, Resolution No. 74930, entitled: "A Resolution of the Council of the City of San José Declaring Its Intent to Levy Assessments for Fiscal Year 2009-2010 in the Hotel Business Improvement District Pursuant to the Parking and Business Improvement Area Law of 1989; and Setting a Date and Time for the Public Hearing"; Resolution No. 74931, entitled: "A Resolution of the Council of the City of San José Declaring Its Intent to Levy Assessments for Fiscal Year 2009-2010 in the Downtown Business Improvement District Pursuant to the Parking and Business Improvement Area

4.2 (Cont'd.)

Law of 1989; and Setting a Date and Time for the Public Hearing"; Resolution No. 74932, entitled: "A Resolution of the Council of the City of San José Declaring Its Intent to Levy Assessments for Fiscal Year 2009-2010 in the Japantown Business Improvement District Pursuant to the Parking and Business Improvement Area Law of 1989; and Setting a Date and Time for the Public Hearing" and Resolution No. 74933, entitled: "A Resolution of the Council of the City of San José Declaring Its Intent to Levy Assessments for Fiscal Year 2009-2010 in the Willow Glen Business Improvement District Pursuant to the Parking and Business Improvement Area Law of 1989; and Setting a Date and Time for the Public Hearing", were adopted. (9-0-2. Absent: Chirco, Nguyen.)

4.3 Adopt a resolution authorizing the approval of a substantial amendment to the Consolidated Plan – Annual Action Plan 2008-2009 for the following purposes:

(a) Approve a shortened citizen participation comment period of 7 days in accordance with federal guidance related to the Community Development Block Grant recovery (CDBG-R) federal stimulus funding.

(b) Approve the awards of the CDBG-R, as specified in the Council memo dated May 19, 2009, and authorize the Director of Housing to negotiate and execute all non-capital agreements and contracts not requiring CEQA/NEPA review and to negotiate all capital project agreements and contracts, including any amendments or modifications, and after CEQA/NEPA review and City Council project approval, to execute all documents, for the expenditure of federal stimulus CDBG-R funds on behalf of the City.

CEQA: Not a Project. (Housing)

Documents Filed: Memorandum from Director of Housing Leslye Krutko, dated May 19, 2009, recommending adoption of a resolution.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, Resolution No. 74934, entitled: "A Resolution of the Council of the City of San José Approving Amendments to the 2008-2009 Consolidated Plan - Annual Action Plan and Funding Proposal for Community Block Grant Recovery Federal Stimulus Funds", was adopted, including modification to the original proposal and change the proposed budget by deleting the Streetlight Conversion project and reallocating the $265,463 to Administration and Planning. (9-0-2. Absent: Chirco, Nguyen.)

4.4 Conduct a public hearing and approve an ordinance to establish a Rule 20A Underground Utility District along Coleman Avenue between West Hedding Street and Spring Street, North Market Street between West Julian Street and West St. James Street, and Devine Street between North San Pedro Street and North First Street. CEQA: Mitigated Negative Declaration, File No. PP08-257. Council District 3. (Public Works)

4.4 (Cont'd.)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated May 11, 2009, recommending conducting a public hearing and approval of an ordinance.

Public Comments: Joseph Corona, Local Union 270, asked whether the businesses along this particular site and project will have to pay fees.

Director of Public Works Katy Allen provided comments about the project and added that she will answer the speaker's questions.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, Ordinance No. 28581, entitled: "An Ordinance of the City of San José Establishing Rule 20A Underground Utility District Along Coleman Avenue Between West Hedding Street and Spring Street, North Market Street Between West Julian Street and West St. James Street and Devine Street Between North San Pedro Street and North First Street", was passed for publication. (9-0-2. Absent: Chirco, Nguyen.)

4.5 Consideration of an ordinance of the City of San José amending Title 23 of the San José Municipal Code, the Sign Ordinance, to amend Section 23.04.030 to increase the maximum height for freestanding signs in the Capitol Expressway Auto Mall Signage Area; to amend Section 23.04.156 to modify the requirements for vertical projecting signs in the Urban Mixed Use Sign Zone; and to make other related clarifying changes. CEQA: Exempt, PP09-111. (Planning, Building and Code Enforcement)
Citywide

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated May 20, 2009, recommending approval of an ordinance. (2) Proof of Publication of Notice of Public Hearing, executed on May 21, 2009, submitted by the City Clerk.

Director of Planning, Building and Code Enforcement Joseph Horwedel requested that the Sign Ordinance to increase maximum height for freestanding signs in the Capital Expressway Auto Mall Signage Area be deferred to provide for additional community outreach.

Action: Upon motion by Council Member Constant, seconded by Council Member Herrera and carried unanimously, Ordinance No. 28582, entitled: "An Ordinance of the City of San José Amending Section 23.04.156 of Chapter 23.04 of Title 23 of the San José Municipal Code to Amend the Requirements for Vertical Projecting Signs in the Urban Mixed Use Sign Zone and Making Other Related, Nonsubstantive Clarifying Changes", was passed for publication, the action to amend the Sign Ordinance to increase maximum height for freestanding signs in the Capital Expressway Auto Mall Signage Area was deferred to provide for additional community outreach. (8-0-3. Absent: Chirco, Chu, Nguyen.)

NEIGHBORHOOD SERVICES

5.1 Report of the Neighborhood Services and Education Committee – May 14, 2009 Council Member Campos, Chair

Documents Filed: The Neighborhood Services and Education Committee Report dated May 14, 2009.

Action: Upon motion by Council Member Campos, seconded by Council Member Liccardo and carried unanimously, the Report of the Neighborhood Services and Education Committee and the actions of May 14, 2009 were accepted. (8-0-3. Absent: Chirco, Chu, Nguyen.)

5.2 (a) Accept the Strong Neighborhoods Initiative Hoffman/Via Monte Neighborhood Improvement Plan Amendment as the renewed community vision for the future of the Hoffman/Via Monte SNI Planning Area; and,

(b) Encourage Hoffman/Via Monte area residents, property owners and community members to continue to dedicate their time, energy and resources towards the Plan and this Amendment while continuing with their community-building activities.

CEQA: Resolution No. 71045. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1). Council District 10. SNI: Hoffman/ Via Monte. (City Manager's Office/Redevelopment Agency) (Deferred from 5/5/09 – Item 5.2 and 5/19/09 – Item 5.2)

Documents Filed: (1) Memorandum from Planning Commission Secretary Joseph Horwedel, dated April 27, 2009, transmitting the recommendation of the Planning Commission. (2) Strong Neighborhoods Initiative Hoffman/Via Monte Neighborhood Improvement Plan Amendment dated May 2009. (3) Strong Neighborhoods Initiative Hoffman/Via Monte Neighborhood Implementation Plan dated April 2002.

Deputy City Manager Norberto Duenas, Strong Neighborhoods Manager Laura Lam and Senior Planner Juan Borrelli provided the Staff report on the Strong Neighborhoods Initiative Hoffman/Via Monte Neighborhood Improvement Plan Amendment.

Public Comments: Speaking in support to the Strong Neighborhoods Initiative Hoffman/Via Monte Neighborhood Improvement Plan Amendment were Laura Munguia, Melissa Blomquist, Carmen Navarro, Brenda Perales, Liliana Marines, Jesus Romo, Oscar Perez and Luis Gonzalez.

Action: Upon motion by Council Member Pyle, seconded by Council Member Kalra and carried unanimously the Strong Neighborhoods Initiative Hoffman/Via Monte Neighborhood Improvement Plan Amendment as the renewed community vision for the future of the Hoffman/Via Monte Strong Neighborhoods Initiative Planning Area was accepted and the Hoffman/Via Monte area residents, property owners and community members were encouraged to continue to dedicate their time, energy and resources towards the Plan and this Amendment while continuing with their community-building activities. (9-0-2. Absent: Chirco, Nguyen.)

5.3 As recommended by the Neighborhood Services and Education Committee on May 14, 2009 approve the Early Care and Education Investment in the Future Strategic Work Plan 2009-2014. (Library)
(Neighborhood Services and Education referral 5/14/09 – Item 3.2)

Documents Filed: Memorandum from City Clerk Lee Price, dated May 21, 2009, transmitting the recommendations of the Neighborhood Services and Education Committee.

Director of Library Department Jane Light provided an overview of the early care and education investment in the future strategic work plan 2009-2014.

Public Comments: Elaine Curran and Corazon Tomalinas, Early Care and Education Commission, spoke in support to the Staff recommendations.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the Early Care and Education Investment in the Future Strategic Work Plan 2009-2014 was approved. (9-0-2. Absent: Chirco, Nguyen.)

5.4 As recommended by the Neighborhood Services and Education Committee on May 14, 2009, adopt a resolution approving revision to Council Policy 3-1, the Parks, Recreation and Neighborhood Services Volunteer Policy. (PRNS)
(Neighborhood Services and Education referral 5/14/09 – Item 3.3)

Action: Deferred to June 9, 2009 per Orders of the Day.

5.6 (a) As recommended by the Neighborhood Services and Education Committee on May 14, 2009:

(1) Direct the City Attorney to draft an amendment to the Neighborhoods Commission ordinance to adjust the dates of the two-year pilot to reflect the date of the formal appointment of the Commission members.

(2) Approve the preliminary Neighborhoods Commission work plan and direct Administration to develop a formal work plan in consultation with the Commission for consideration by the Neighborhood Services and Education Committee at a subsequent meeting.

(3) Direct the Administration to complete outreach effort relating to the evaluation of efficiencies and opportunities to consolidate or eliminate any of the City's existing board and commission.

(Neighborhood Services and Education referral 5/14/09 – Item 3.5)

(b) Appoint the Neighborhoods Commission nominees to serve as Neighborhoods Commissioners for the two-year duration of the pilot.

(City Clerk/City Manager's Office/Housing)

5.6 (Cont'd.)

Documents Filed: (1) Memorandum from City Clerk Lee Price, dated May 21, 2009, transmitting the recommendations of the Neighborhood Services and Education Committee. (2) Supplemental memorandum from City Attorney Richard Doyle, dated May 29, 2009, transmitting background and information on the applicants for the Neighborhoods Commission. (3) Supplemental memorandum from Deputy City Manager Norberto Duenas, dated May 29, 2009, providing a list of the Neighborhood Commission appointees.

Deputy City Manager Norberto Duenas and Strong Neighborhoods Manager Laura Lam outlined the Distinctive Neighborhood Program Policy Options Program and responded to Council questions.

Action: Upon motion by Council Member Herrera, seconded by Council Member Liccardo and carried unanimously, the City Attorney was directed to draft an amendment to the Neighborhoods Commission ordinance to adjust the dates of the two-year pilot to reflect the date of the formal appointment of the Commission members. The preliminary Neighborhoods Commission work plan was approved. The Administration was directed to develop a formal work plan in consultation with the Commission for consideration by the Neighborhood Services and Education Committee at a subsequent meeting. The Administration was directed to complete outreach effort relating to the evaluation of efficiencies and opportunities to consolidate or eliminate any of the City's existing board and commission. (9-0-2. Absent: Chirco, Nguyen.)

Council Member Herrera abstained from Item 5.6(b) due to a potential conflict of interest (she has a relative who is a member of the Neighborhoods Commission).

Action: Upon motion by Council Member Campos, seconded by Council Member Constant and carried unanimously, the Neighborhoods Commission nominees were appointed to serve as Neighborhoods Commissioners for the two-year duration of the pilot. (8-0-1-2. Disqualified: Herrera. Absent: Chirco, Nguyen.)

TRANSPORTATION & AVIATION SERVICES

6.1 (a) Approve a funding agreement with the Metropolitan Transportation Commission for development of a Diridon Station Area Plan in the amount of $750,000 to be paid to the City.

(b) Approve a funding and cooperative agreement with the Valley Transportation Authority in the amount of $100,000 to be paid to the City.

(c) Adopt a resolution authorizing the City Manager, or designee, to negotiate and execute a consultant services agreement with Field Paoli Architects, A Professional Corporation for preparation of the Diridon Station Area Plan, in an amount not to exceed $950,000.

6.1 (d) Adopt the following 2008-2009 Funding Sources Resolution and Appropriation Ordinance amendments in the Construction Excise Tax Fund (465):

(1) Decrease the estimate for Earned Revenue by $850,000;

(2) Decrease the Reserve - Diridon Station Expansion Planning by $850,000;

(3) Increase the Diridon Station Expansion Planning appropriation to the Department of Transportation by $850,000; and

(4) Decrease the Ending Fund Balance by $850,000.

CEQA: Not a Project. Council Districts 3 and 6. SNI: Burbank/Del Monte, Delmas Park. (Transportation/City Manager's Office)

Documents Filed: Memorandum from Director of Transportation James Helmer and Budget Director Jennifer Maguire, dated May 11, 2009, recommending approval of a funding agreement, a funding and cooperative agreement, a resolution and appropriation ordinance and funding sources resolution amendments.

Deputy Director of Transportation Hans Larsen provided a brief Staff report and responded to Council questions.

Public Comments: Justin Fried, ABAG, spoke in favor of the Diridon Station Area Plan.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, a funding agreement with the Metropolitan Transportation Commission for development of a Diridon Station Area Plan in the amount of $750,000 and a funding and cooperative agreement with the Valley Transportation Authority in the amount of $100,000 both to be paid to the City were approved; Resolution No. 74935, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager or Its Designee to Negotiate and Execute an Agreement with Field Paoli Architects, A Professional Corporation, for the Preparation of the Diridon Station Area Plan, in an Amount Not To Exceed $950.000"; Ordinance No. 28583, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Construction Excise Tax Fund for the Diridon Station Expansion Planning Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" and Resolution No. 74936, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 74461 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2008-2009 to Adjust Revenues in the Construction Excise Tax Fund", were adopted. (8-0-3. Absent: Chirco, Kalra, Nguyen.)

ENVIRONMENTAL & UTILITY SERVICES

7.1 (a) Approve a consultant agreement with AECOM USA, Inc., for consultant services including preparation of a sewer alignment study, design and construction documents, and construction administration services for the 60-Inch Brick Interceptor Phase VIA Project, from the date of execution to December 31, 2012, in a total amount not to exceed $3,211,378.

(b) Adopt the following Appropriation Ordinance amendments in the Sewer Service and Use Charge Capital Improvement Fund (545):

(1) Increase the 60" Brick Interceptor, Phases VIA & VIB appropriation by $1,900,000.

(2) Decrease the Edenvale Sanitary Sewer Supplement, Phases VA and VB appropriation by $1,900,000.

CEQA: Exempt, File No. PP09-078. Council Districts 3 and 4 (Public Works/City Manager's Office)

Documents Filed: Memorandum from Director of Public Works Katy Allen and Budget Director Jennifer Maguire, dated May 11, 2009, recommending approval of a consultant agreement and adoption of an appropriation ordinance amendments.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the consultant agreement with AECOM USA, Inc., for consultant services was approved and Ordinance No. 28584, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Sewer Service and Use Charge Capital Improvement Fund for the 60 Inch Brick Interceptor, Phase VIA and VIB Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. (8-0-3. Absent: Chirco, Kalra, Nguyen.)

7.2 (a) Accept this report regarding: the status of County-wide efforts for reducing single-use carryout bags and encouraging shopping with reusable bags; San José stakeholder engagement efforts; 2009 Municipal Regional Water Permit litter mitigation requirements; and program options for San José to address plastic and paper bag usage.

(b) Direct staff to incorporate the Council input on the options contained in this report into a proposal for Council consideration in September 2009 to reduce carryout bags in San José.

(c) Direct staff to continue development of an outreach campaign to promote the use of reusable bags in San José, in collaboration with other similar regional initiatives, which includes the provision of reusable bags at an estimated cost of $95,000.

(d) Direct staff to incorporate the Council input on the options contained in this report into the City's legislative position for a state-wide program to reduce the use of single-use carryout bags and to work to have such bills introduced or amended to achieve the City's goals.

CEQA: Not a Project. (Environmental Services)

Action: Dropped; Referred to Community and Economic Development Committee.

OPEN FORUM

(1) Marcus Eriksen and Anna Cummins, Algalita Marine Research Foundation, expressed concerns about the impact of plastics on the environment and human health.

(2) Steve Mahan, Santa Clara Valley Blind Center, urged the Council to continue funding the Santa Clara Valley Blind Center as they are the only agency in San José that services this unique population.

(3) Speaking in protest to recent actions by the San José Police Officers' Association: Lila, Charisse Domingo, Bennie Love, Gail Noble, Chip Brown, Raj Jayadev, Moses Avites, Danny Pines, Ramon Vasquez, Adrian Avila, Silicon Valley De-Bug, Aaron Resendez, Basta Coalition, Angel Luna, Darlene Wallach, Richard Konda, Asian Law Alliance, Betsy Wolf-Graves, ACLU Board, Anu Mandarilli, Charlotte Casey, San José Peace and Justice, Fred Hirsh, Brian Helmle, San José Copwatch, Jesse, Donna Wallach, Aram James, Sandy Perry, CHAM, Jean Melesaine, Mark Petersen-Perez, Demore Carter, Victor Guendulain and Elizabeth Gonzalez.

(4) David Wall voiced his support for the San José Police Department.

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 5:14 p.m.

RECESS/RECONVENE

The City Council recessed at 5:14 p.m. from the afternoon Council Session and reconvened at 7:07 p.m. in the Council Chambers, City Hall.

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

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

City Clerk Lee Price read the requests for continuance of the applications. Upon motion by Council Member Pyle, seconded by Council Member Chu, and carried unanimously, the below noted continuances and actions were taken as indicated. (9-0-2. Absent: Chirco, Nguyen.)

CEREMONIAL ITEMS

1.3 Presentation of a commendation to the San José District 10 Disaster and Emergency Preparedness Conference Team for their hard work organizing all aspects of the conference. (Pyle)

Action: Mayor Reed and Council Member Pyle recognized and commended the San José District 10 Disaster and Emergency Preparedness Conference Team for their hard work organizing all aspects of the conference.

1.4 Presentation of a commendation to Wesley Mukoyama, retiring Executive Director of Yu-Ai-Kai, for his years of dedicated service to the residents of Japantown and the entire City of San José. (Liccardo)
(Deferred from 5/19/09 – Item 1.6)

Action: Mayor Reed and Council Member Liccardo recognized and commended Wesley Mukoyama, retiring Executive Director of Yu-Ai-Kai, for his years of dedicated service to the residents of Japantown and the entire City of San José.

1.5 Presentation of a commendation to California Waste Solutions for receiving the International Festivals and Events Association's "Gold Award for Best Sponsor" for the San José Holiday Parade. (Chu)
(Rules Committee referral 5/20/09)

Action: Mayor Reed and Council Member Chu recognized and commended California Waste Solutions for receiving the International Festivals and Events Association's "Gold Award for Best Sponsor" for the San José Holiday Parade.

1.7 Presentation of a commendation to the winners of the Falcon Naming Contest. (Mayor)
(Rules Committee referral 5/27/09)

Action: Mayor Reed recognized and commended the winners of the "Falcon Naming Contest": Trisha, fourth grader at James Franklin Smith Elementary School, named a female falcon "Ilahay" of Persian origin meaning "angel"; NaTalya, third grader at Brooktree Elementary School, named a female falcon "Kya" which means "diamond in the sky" of African origin; Alejandra, first grader, Baker Elementary School and Johnathan, fourth grader, Village School, both named a female falcon "Tierra", which means "earth" in Spanish and Rahul, first grader, Baker Elementary School, named the male falcon "Veer", of Hindu origin meaning "brave".

PUBLIC HEARINGS ON CONSENT CALENDAR

Upon motion by Council Member Pyle, seconded by Council Member Constant and carried unanimously, the Public Hearings on Consent Calendar were approved and the below listed actions were taken as indicated. (9-0-2. Absent: Chirco, Nguyen.)

11.1 (a) Consideration of an ordinance rezoning the real property located on the west side of South Winchester Boulevard, approximately 550 feet southerly of Stevens Creek Boulevard (369 S Winchester Blvd) from A(PD) Planned Development District to A(PD) Planned Development District to allow up to 4,685 square feet of commercial/retail uses including a drive through on a 0.64 gross acre site, (Dennee Glenford V Jr Trustee, Owner; Glen Dennee Company Mark Brading, Developer). Council District 1. SNI: None. CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0).
PDC08-052 – District 1

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC08-052, dated May 6, 2009, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated May 15, 2009, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing, executed on May 1, 2009, submitted by the City Clerk.

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

Action: The recommendation of the Planning Commission and the Planning Director was approved, Ordinance No. 28585, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property on the West Side of Winchester Boulevard Approximately 550 Feet Southerly of Stevens Creek Boulevard (369 South Winchester Boulevard) to A(PD) Planned Development Zoning District", was passed for publication. (9-0-2. Absent: Chirco, Nguyen.)

11.1 (b) Consideration of an ordinance rezoning the real property located on the southwest side of Camden Avenue, approximately 180 feet northwest of S. Bascom Avenue (2270 Camden Avenue) from the CP Commercial Pedestrian to the CN Commercial Neighborhood Zoning District to allow commercial uses on a 0.4 gross acre site (Akbar and Mary Nazemian, et al, Owners). CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.
C09-012 – District 9

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C09-012, dated May 12, 2009, recommending approval. (2) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated May 27, 2009, transmitting an electronic communication from Trevor Gillis, a residential property owner located in the City of Campbell, approximately 130 feet southwesterly of the subject property regarding the proposed rezoning. (3) Proof of Publication of Notice of Public Hearing, executed on May 15, 2009, submitted by the City Clerk.

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

Action: The recommendation of the Planning Director was approved, Ordinance No. 28586, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property on the Southwest of Camden Avenue, Approximately 180 Feet Northwest of South Bascom Avenue (2270 Camden Avenue) to CN Commercial Neighborhood Zoning District", was passed for publication. (9-0-2. Absent: Chirco, Nguyen.)

END OF PUBLIC HEARINGS ON CONSENT CALENDAR

PUBLIC HEARINGS

11.2 Consideration of an ordinance rezoning the real property located at the southwest corner of Edwards Avenue and South 1st Street from LI Light Industrial and R-M Multiple Family Residence Zoning Districts to A(PD) Planned Development Zoning District to allow relocation of one National Register eligible house, demolition of five structures and construction of up to 50 residential units and approximately 5,350 square feet of commercial/retail space on a 1.08 gross acre site (Barriga Emilio et al, Jose Montero, Owner). SNI: Washington. CEQA: Mitigated Negative Declaration. PDC08-035 – District 3

Action: Continued to June 16, 2009 per Administration.

11.3 Conduct an Administrative Hearing and consider an appeal of the Planning Commission's decision to deny, as mandated by code, a Conditional Use Permit and Determination of Public Convenience or Necessity to allow off-sale of alcoholic beverages at an existing retail store on a 0.13 gross acre site, in the CP Pedestrian Commercial Zoning District, located at/on the northeast corner of Bird Avenue and Auzerais Avenue (394 Bird Ave) (Tedrose Shiferaw, Appellant; John L. and Joyce L. Oliver, Owner). SNI: Delmas Park. CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend the City Council deny the subject Conditional Use Permit and not make a Determination of Public Convenience or Necessity by finding that the required finding for a Determination of Public Convenience or Necessity cannot be made and that there is not a significant overriding public benefit served by the proposed off-sale of alcohol (7-0-0).
CP08-007/ABC08-009 – District 3

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP08-007/ABC08-009, dated April 1, 2009, recommending denial. (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated May 11, 2009, recommending denial of the subject Conditional Use Permit and make a Determination of Public Convenience or Necessity by finding that the required findings for a Determination of Public Convenience or Necessity cannot be made and that there is not a significant overriding public benefit served by the proposed off-sale of alcohol. (3) Proof of Publications of Notices of Public Hearings, executed on May 15, 2009 and May 22, 2009, 2009, submitted by the City Clerk.

Director of Planning, Building and Code Enforcement Joseph Horwedel noted that Staff recommended denial of the subject Conditional Use Permit.

Mayor Reed opened the public hearing.

Tedrose Ababe Shiferaw appealed the Planning Commission's decision to deny the subject permit. Aggegedetch Desta, the Applicant/Owner, Abyssinis Market, spoke to the merits of issuing the permit.

11.3 (Cont'd.)

Public Comments: Speaking in support to the denial of the Conditional Use Permit were Jo Dene Perrin, Delmas Park Neighborhood Action Council, Bactash Amini, Dwayne Green and Eva Reese.

Speaking in favor of granting the Conditional Use Permit were Kristina Scarola, Patricia Belarano, Jim Cherkas and Sherine Hastings.

Assegedetch Desta, Applicant, expressed her desire to make her small business thrive and presented for the record, two hundred signatures from the community in support of the Conditional Use Permit.

Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Oliverio and carried unanimously, Resolution No. 74938 was adopted to uphold the denial of the appeal. (9-0-2. Absent: Chirco, Nguyen.)

11.4 Adopt a resolution to designate the area generally bounded on the north by Interstate 280, on the east by the rear property lines of the commercial properties on the west side of South First Street, on the west by the Guadalupe River, and on the south by portions of Willow Street and the rear property lines of properties on the north side of Willow Street, as the Guadalupe/Washington Conservation Area, excluding Assessor Parcel Numbers 264-36-122 (32 Union Street), 264-36-104 (21 Sutter Street), and 264-36-069 (24 Sutter Street) (Various Owners/City of San José, Applicant). CEQA: Exempt. SNI: Washington. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0). CA09-001 – Districts 3 & 7

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CA09-001, dated April 29, 2009. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated May 14, 2009, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing, executed on May 17, 2009, 2009, submitted by the City Clerk. (4) Historic Evaluation Tally Sheets Phase 1 and Phase 2.

Principal Planner Akoni Danielsen provided a brief report on the proposed Conservation Area Historic Designation.

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

11.4 (Cont'd.)

Action: Upon motion by Council Member Liccardo, seconded by Council Member Oliverio and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, Resolution No. 74939, entitled: "A Resolution of the Council of the City of San José Designating, Pursuant to the Provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, the Guadalupe/Washington Conservation Area, Generally Bounded on the North by Interstate 280, On the East by the Rear Property Lines of the Commercial Properties, On the West Side of South First Street, On the West by the Guadalupe River and On the South by Portions of Willow Street and the Rear Property Lines of Properties on the North Side of Willow Street, as a Conservation Area with a Distinctive Character Conveying (1) A Sense of Cohesiveness through Its Architecture, Urban Design, Setting, Materials or Geography and (2) History", was adopted. (8-0-3. Absent: Chirco, Kalra, Nguyen.)

NEIGHBORHOOD SERVICES

5.5 As recommended by the Neighborhood Services and Education Committee on May 14, 2009, accept the findings of the Distinctive Neighborhood Program. (Planning, Building and Code Enforcement)
(Neighborhood Services and Education referral 5/14/09 – Item 3.4)

Documents Filed: Memorandum from City Clerk Lee Price, dated May 21, 2009, transmitting the recommendations of the Neighborhood Services and Education Committee.

Senior Planner Sally Zarnowitz Notthoff provided an overview of the Distinctive Neighborhood Program Policy Options and responded to Council questions.

Motion: Council Member Oliverio moved approval of the findings of the Distinctive Neighborhood Program. Council Member Liccardo seconded the motion.

Public Comments: Speaking in support to the Distinctive Neighborhood Program were Lorie Bird, Ruth Cavagnaro, SHPNA, Terri Balandra, Fiesta Lanes Action Group, Larry Ames, Kevin Fish, Jean Dresden, Brian Grayson, Preservation Action Council of San José and Richard Zappelli, Willow Glen Neighborhood Assocation.

Action: On a call for the question, the motion carried unanimously, the findings of the Distinctive Neighborhood Program were accepted. (9-0-2. Absent: Chirco, Nguyen.)

PUBLIC SAFETY SERVICES

8.1 (a) Accept the report on the work of the Public Intoxication Task Force and the following recommendations in response to the City Council's Referral dated November 18, 2008:

(1) Non-criminal sanctions and alternatives to arrests under Penal Code Section 647(f):

(a) Consider the service delivery benefits of a Sobering Station, with the acknowledgement that the City Council should deliberate on the costs to implement this option.

(b) Develop and implement, in coordination with the District Attorney's Office, Department of Corrections and Superior Court, a pilot program that would not seek prosecution of Public Intoxication [Penal Code Section 647(f)] arrests until an individual is arrested for a sixth offense in a rolling twelve month period.

(2) Procedures that an officer should satisfy to obtain objective evidence to support findings to arrest under Penal Code Section 647(f):

(a) Offer Preliminary Alcohol Screening (PAS) testing and document the results in Incident Reports or an individual's refusal of the testing.

(b) Conduct Field Coordination Tests, such as line walking and standing balance tests, for all potential public intoxication arrests in which a person appears able to safely participate in the tests and a safe environment exists for the officer to consider conducting these tests to assess a violation of Penal Code 647(f), and document the results in Incident Reports, when an individual submits or declines to participate with the test.

(c) Improve Police Officer training in regards to how to recognize someone who is subject to arrest for a violation of Penal Code Section 647(f), identify and pursue alternatives to arrest, and document the evidence supporting the charge(s) against those who are arrested.

(b) Provide status reports on the implementation of the above recommendations to the Public Safety, Finance and Strategic Support Committee.

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

Documents Filed: (1) Memorandum from City Manager Debra Figone, dated May 19, 2009, recommending acceptance of the report and the recommendations as described above in Item 8.1. (2) The Report on the Public Intoxication Task Force and Recommendations dated June 2, 2009. (3) Staff PowerPoint slide presentation on the Public Intoxication Task Force and Recommendations dated June 2, 2009.

City Manager Debra Figone provided opening comments.

8.1 (Cont'd.)

Deputy City Manager Deanna J. Santana and Police Chief Robert Davis summarized the Public Intoxication Task Force and recommendations.

Public Comments: Speaking to the Report on the Public Intoxication Task Force recommendations were Kathy Cordova and Otis Watson, Task Force Members, Raj Jayedev, Betsy Wolf-Graves and Skyler Porras, ACLU of Northern California, and Donna Wallach.

Police Chief Robert Davis responded to Council questions. District Attorney Dolores Carr provided comments.

Motion: Council Member Liccardo moved approval of the Staff recommendations, including a pilot program that would not seek prosecution of Public Intoxication arrests until an individual is arrested for a sixth offense in a rolling twelve month period. Council Member Herrera seconded the motion.

Mayor Reed suggested that all the other issues for the scope such as resisting arrest and disturbing the peace, be referred to the Public Safety, Finance and Strategic Support Committee work plan in order to be further evaluated.

Extensive Council discussion followed.

Council Member Constant requested to amend the motion to modify the recommendation to state the arrest of an individual for a third offense in lieu of a sixth offense. The amendment was not accepted by Council Members Liccardo and Herrera.

Council Member Kalra objected to several of the Task Force recommendations.

Action: On a call for the question, the motion carried, the work of the Public Intoxication Task Force and the recommendations in response to the City Council's referral dated November 18, 2008 were accepted and Staff was directed to provide status reports on the implementation of the recommendations to the Public Safety, Finance and Strategic Support Committee. (8-1-2. Noes: Kalra. Absent: Chirco, Nguyen.)

OPEN FORUM

(1) Adrian Flores, Building Respect Through Dance, commented that educating children about the dangers of alcohol works and suggested that the San José Police Department consider more opportunities to speak to youth.

(2) Jane Lawson, Park Peace Officer Association of San José, and Sylvia Lowe, Overfelt Gardens Volunteer, expressed support for Mayor Reed's proposal to maintain funding for the Park Rangers Program to ensure San José parks remain clean, green and open to all.

ADJOURNMENT

The Council of the City of San José was adjourned at 10:13 p.m. in memory of James Little, the son of a District 8 Constituent, who was killed in an automobile accident in Los Angeles County, CA where he was attending college. (Herrera)

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

smd/6-2-09 MIN

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JOINT COUNCIL REDEVELOPMENT ITEMS

The Joint Council Redevelopment Agency Board convened at 4:12 p.m. to consider Items 8.1 and 8.2 in a Joint Session.

8.1 (a) City Council and Redevelopment Agency Board direction to proceed with developing plans to:

(1) Demolish the former Martin Luther King, Jr. Library building on West San Carlos Street to clear the path for the expansion of the San Jose Convention Center;

(2) Relocate the City staff currently housed in the former Martin Luther King, Jr. Library building to the City Hall and other City-owned facilities.

(b) Adoption of a resolution by the City Council authorizing the City Manager to negotiate and execute short-term office space in the Downtown to relocate City staff being relocated from the former Martin Luther King, Jr., Library building.

CEQA: Resolution No. 72767 and addendum thereto, File No. PP08-002. [MERGED] (Deferred from 5/19/09 - Item 8.1)

Action: Deferred to June 16, 2009.

8.2 (a) Approval by the City Council and Redevelopment Agency Board of a Cooperation Agreement between the City and the Agency outlining responsibilities for the implementation and use of Neighborhood Stabilization Program grant funds secured from the U.S. Department of Housing and Urban Development (HUD).

(b) Adoption of a resolution by the Redevelopment Agency Board amending the FY 2008-2009 Revenue Resolution to add $5,311,624 transferred from the City; amending the FY 2008-2009 Capital Budget to add $5,311,624 to the SNI Rental Housing Development new project line in the Strong Neighborhoods Initiative Redevelopment Area; and amending the FY 2008-2009 appropriations resolution.

CEQA: Not a Project. [TULLY-SENTER SNI]

Documents Filed: Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes and City Manager Debra Figone, dated May 21, 2009, recommending approval of a cooperation agreement and adoption of a resolution.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the Cooperation Agreement between the City and the Agency outlining responsibilities for the implementation and use of Neighborhood Stabilization Program grant funds secured from the U.S. Department of Housing and Urban Development was approved and Redevelopment Agency Resolution No. 5909 was adopted. (8-0-3. Absent: Chirco, Kalra, Nguyen.)

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