



MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, SEPTEMBER 22, 2009

The Council of the City of San José convened in regular session at 1:33 p.m. in the Council Chambers at City Hall.

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

Absent: Council Members - None.

INVOCATION

Mount Pleasant High School Marching Band performed “The Liberty Bell”, by John Philip Sousa. (District 8)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Vice Mayor Chirco and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (11-0.)

CEREMONIAL ITEMS

- 1.1 Presentation of proclamation declaring September 21-27, 2009 as “Pollution Prevention Week” and presentation of a commendation to the City’s Trails Program Manager and Parks Development Group for their work which promotes pollution prevention. (Environmental Services)**

Action: Mayor Reed, City Manager Debra Figone and Director of Environmental Services John Stufflebean recognized the week of September 21-27, 2009 as “Pollution Prevention Week” in the City of San José; recognized and commended the City’s Trails Program Manager and Parks Development Group for promoting pollution prevention.

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.

1.2 Presentation of proclamation declaring San José's commitment to partnering with the U.S. Census Bureau to help ensure a full and accurate count in 2010. (Mayor)

Action: Mayor Reed recognized the City of San José's commitment to partnering with the U.S. Census Bureau to help ensure a full and accurate count in 2010.

1.3 Presentation of an artwork titled "Peaces of a Dream" by San José local artist Debbie Marie Arambula to the City of San José. (Constant) (Rules Committee referral 9/16/09)

Action: Council Member Constant introduced San José local artist Debbie Marie Arambula, who presented her artwork titled "Peaces of a Dream" to the City of San José. Mayor Reed accepted the piece on behalf of the City of San José.

1.4 Presentation of a proclamation recognizing September 21, 2009 as "World Alzheimer's Day" in the City of San José. (Herrera) (Orders of the Day)

Action: Mayor Reed and Council Member Herrera recognized September 21, 2009 as "World Alzheimer's Day" in the City of San José.

CONSENT CALENDAR

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

- 2.4 (a) Approve a lease agreement with Cirque du Soleil for the purpose of leasing portions of the City's "E" Parking Lot (Taylor/San Pedro/Mission) to Cirque du Soleil from December 14, 2009 to April 2, 2010 to allow Cirque du Soleil to present to the public its touring show, for rental consideration to the City of \$95,000.**
- (b) Direct staff to facilitate the permitting process required to authorize use of the "E" Parking Lot for Cirque du Soleil's touring show, which will include community outreach and City employee and public parking plans, and that the City hold a public hearing to consider amendment of the current Conditional Use Permit for this site.**
- (c) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:**
- (1) Establish a City-Wide appropriation to the Office of Economic Development for Cirque du Soleil in the amount of \$175,000; and**
 - (2) Increase the estimate for Other Revenue by \$175,000.**

CEQA: Exempt, File No. CPA05-015.02. Council District 3. (Economic Development)

Action: Deferred to September 29, 2009 per Administration.

- 2.5 Award the purchase of office furniture to Western Contract Interiors (San José, CA) for a total amount not to exceed \$384,150.01, including: delivery, assembly, installation and all applicable sales taxes, based upon a previously awarded bid that contained additional quantity pricing; and authorize the Director of Finance to:**
- (a) Execute purchase orders as required to meet the Airport's timeline for staff relocation to the North Concourse.**
 - (b) Approve a contingency in the amount of \$38,415 for any unforeseen changes or requirements.**
- CEQA: Not a Project. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated August 31, 2009, recommending award of the purchase, authorization to the Director of Finance to execute and approval of a contingency.

Action: The purchase of office furniture to Western Contract Interiors for a total amount not to exceed \$384,150.01, including: delivery, assembly, installation and all applicable sales taxes, based upon a previously awarded bid that contained additional quantity pricing was approved and the Director of Finance was authorized to execute purchase orders as required to meet the Airport's timeline for staff relocation to the North Concourse, with related contingency was approved. (11-0.)

- 2.6 Approve the award of open purchase orders for supplies, materials, equipment and services for FY 2009-2010 #2 and authorize the Director of Finance to execute the purchase orders. CEQA: See Administration's memo to Council for specific CEQA clearance determinations on each recommended action. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated August 31, 2009, recommending approval of the purchase orders and authorization for the Director of Finance to execute.

Action: The award of open purchase orders for supplies, materials, equipment and services for FY 2009-2010 #2 was approved and the Director of Finance was authorized to execute the purchase orders. (11-0.)

- 2.7 Approve a continuation agreement with Advance Design Consultants, Inc. for consultant services for the Auxiliary Chilled Water System Project for the City Hall Network Operations Center extending the term from April 1, 2009 to October 30, 2009, and increasing the amount of compensation by \$15,000, for a total agreement amount not to exceed \$149,000. CEQA: Not a Project. (Public Works/General Services)**

Documents Filed: Memorandum from Director of Public Works Katy Allen and Director of General Services Peter Jensen, dated August 31, 2009, recommending approval of a continuation agreement.

2.7 (Cont'd.)

Action: The continuation agreement with Advance Design Consultants, Inc. for consultant services for the Auxiliary Chilled Water System Project for the City Hall Network Operations Center extending the term from April 1, 2009 to October 30, 2009, and increasing the amount of compensation by \$15,000, for a total agreement amount not to exceed \$149,000 was approved. (11-0.)

2.8 Approve an ordinance amending Chapter 11.40 of Title 11 of the San José Municipal Code to establish an Arena/Diridon Area Parking Meter District and to make certain other additions and amendments as described herein. CEQA: Resolution No. 72767, Use of Downtown Strategy 2000 FEIR, File No. PP09-167. Council District 3. (Transportation)

Documents Filed: Memorandum from Director of Transportation James Helmer, dated August 31, 2009, recommending approval of an ordinance.

Mayor Reed and Council Member Liccardo thanked the Department of Transportation and Redevelopment Agency Staff for their work on this project.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, [Ordinance No. 28643](#), entitled: “An Ordinance of the City of San José Amending Chapter 11.40 of Title 11 of the San José Municipal Code to Add Section 11.40.025 to Define Parking Meter, Amend Section 11.40.025 to Revise the Boundary of the Downtown Business Parking Meter District, Add Section 11.40.250 to Establish the Arena/Diridon Area Parking Meter District and To Amend Sections 11.40.350, 11.40.370, 11.40.380, 11.40.390, 11.40.400 and 11.40.420 To Update the Parking Meter Provisions to Include Multiple Space Parking Meters or Pay Stations”, was passed for publication. (11-0.)

2.9 Pursuant to Municipal Code Section 12.08.040(c), accept and receive gift of artwork titled “Peaces of a Dream” by San José local artist Debbie Marie Arambula. (Constant) (Rules Committee referral 9/16/09)

Documents Filed: Memorandum from City Clerk Lee Price, dated September 18, 2009, transmitting the recommendations of the Rules and Open Government Committee.

Action: Pursuant to Municipal Code Section 12.08.040(c), the artwork titled “Peaces of a Dream” by San José local artist Debbie Marie Arambula was accepted.

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone reported on her attendance at the International City Managers' Association (ICMA) 95th Annual Conference in Montreal. She noted session of topics included: Challenging and Turbulent Times, Making Cities Sustainable, Pension Reform, Wellness Programs and Civic Engagement. She added that San José will be serving as the host City at next year's conference.

3.2 Report of the Rules and Open Government Committee – September 2, 2009 Mayor Reed, Chair

Documents Filed: The Rules and Open Government Committee Report dated September 2, 2009.

Public Comments: Cathy Brandhorst spoke off topic.

Action: Upon motion by Council Member Pyle, seconded by Vice Mayor Chirco and carried unanimously, the Report of the Rules and Open Government Committee and the actions of September 2, 2009, were accepted. (10-0-1. Absent: Herrera.)

3.4 Accept the response to the Santa Clara County Civil Grand Jury Report titled “City of San José Hosed by IAFF Local 230 Executives.” CEQA: Not a Project. (City Manager’s Office)

Documents Filed: Memorandum from City Manager Debra Figone, dated September 3, 2009, recommending approval of the response to the Grand Jury Report.

City Manager Debra Figone presented opening comments.

Director of Employee Relations Alex Gurza provided the overview of the Santa Clara County Civil Grand Jury Report.

Motion: Council Member Constant moved approval of the response to the Santa Clara County Civil Grand Jury Report titled “City of San José Hosed by IAFF Local 230 Executives”. Council Member Oliverio seconded the motion.

City Attorney Richard Doyle and Director of Employee Relations Alex Gurza responded to Council questions and concerns.

Discussion followed.

Substitute Motion: Council Member Nguyen moved to defer action on this item in order to provide Local 230 an opportunity to respond to the City Manager’s Response to the Grand Jury Report. Council Member Herrera seconded the motion.

3.4 (Cont'd.)

Public Comments: Jerry Mungai, Randy Sekany, San José Fire Fighters, and Ross Signorino offered comments about the Santa Clara County Civil Grand Jury Report.

Council Member Constant noted that the Grand Jury pointed out inadequacies in the policy and the City should address those issues.

Council Member Kalra expressed support to the substitute motion.

Mayor Reed, Council Member Chu and Vice Mayor Chirco objected to the substitute motion. Vice Mayor Chirco noted that Local 230 still has an opportunity to provide a response separately from the City.

On a call for the question, the substitute motion failed. (5-6. Noes: Chirco, Constant, Liccardo, Oliverio, Pyle; Reed.)

Council Member Constant requested to amend his original motion to direct Staff to clarify in the response that the minimum staffing was a previous joint agreement between the City and Local 230. Council Member Oliverio accepted the amendment.

Action: On a call for the question, the original motion carried unanimously, the response to the Santa Clara County Civil Grand Jury Report titled “City of San José Hosed by IAFF Local 230 Executives” was accepted, as amended, with Staff directed to clarify in the response that minimum staffing was a joint agreement between the City and Local 230 negotiated in 1996. (11-0.)

3.5 **As referred by the Rules and Open Government Committee on September 9, 2009, require City Council approval of any expenditure of funds currently allocated to the Executive Home Loan Program. (Constant)** **[Rules Committee referral 9/9/09 – Item A(2)(a)]**

Documents Filed: Memorandum from City Clerk Lee Price, dated September 9, 2009, transmitting the recommendations of the Rules and Open Government Committee.

Motion: Council Member Constant moved approval to require the City Council to approve any expenditure of funds currently allocated to the Executive Home Loan Program. This applies to new loans only and does not apply to existing loans or those loans in the pipeline. Council Member Liccardo seconded the motion.

City Attorney Richard Doyle and City Manager Debra Figone responded to Council questions.

Public Comments: Jerry Mungai expressed comments about the Executive Home Loan Program.

3.5 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, City Council approval of any expenditure of funds currently allocated to the Executive Home Loan Program was approved for new loans. (Note: does not apply to existing loans or those loans in the pipeline.) (11-0.)

3.6 **Report of the Rules and Open Government Committee – August 19, 2009** **Mayor Reed, Chair**

Documents Filed: The Rules and Open Government Committee Report dated August 19, 2009.

Public Comments: Cathy Brandhorst spoke off topic.

Action: Upon motion by Council Member Pyle, seconded by Vice Mayor Chirco and carried unanimously, the Report of the Rules and Open Government and the actions of August 19, 2009 were accepted. (8-0-3. Absent: Constant, Kalra, Nguyen.)

3.7 **Report of the Rules and Open Government Committee – August 26, 2009** **Mayor Reed, Chair**

Documents Filed: The Rules and Open Government Committee Report dated August 26, 2009.

Action: Upon motion by Vice Mayor Chirco, seconded by Council Member Pyle and carried unanimously, the Report of the Rules and Open Government and the actions of August 26, 2009 were accepted. (7-0-4. Absent: Constant, Herrera, Kalra, Nguyen.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.2 **Adopt a resolution authorizing the City Manager, or designee, to submit an application on behalf of the Green Careers Initiative consortium for the U.S. Department of Labor's "Pathways Out of Poverty" grant in an amount not to exceed \$2,500,000. CEQA: Not a Project. Council Districts 3, 4, 5, 6, 7 and 8. SNI: West Evergreen, Mayfair, East Valley/680, Five Wounds/Brookwood Terrace, 13th Street, University, Burbank/Del Monte, Spartan/Keyes, Washington. (Economic Development)**

Documents Filed: Memorandum from Chief Development Officer Paul Krutko, dated August 31, 2009, recommending adoption of a resolution.

Deputy Director Office of Economic Development Jeff Ruster provided the staff report.

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

4.2 (Cont'd.)

Public Comments: Jerry Mungai spoke in objection to the Staff recommendations and expressed personal concerns; he was directed to speak with the Deputy Director.

Speaking in support to the Staff recommendations were Louise Auerhahn, Working Partnerships USA and Ross Signorino.

Mayor Reed expressed his support and his thanks to Neil Struthers, CEO, Santa Clara and San Benito Counties, Building & Construction Trades Council and Cindy Chavez, Executive Officer, South Bay AFL-CIO Labor Council. Council Members Kalra, Liccardo and Pyle also expressed their support.

Action: On a call for the question, the motion carried unanimously, [Resolution No. 75104](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager or Designee to Execute and Submit an Application to the U.S. Department of Labor for a Pathways Out of Poverty Grant in an Amount Not To Exceed \$2,500,000", was adopted. (11-0.)

NEIGHBORHOOD SERVICES

5.1 Report of the Neighborhood Services and Education Committee – September 10, 2009 Council Member Campos, Chair

Documents Filed: The Neighborhood Services and Education Committee Report dated September 10, 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 September 10, 2009 were accepted. (11-0.)

TRANSPORTATION & AVIATION SERVICES

6.2 Adopt a resolution authorizing the City Manager to negotiate and execute an Agreement with Chevron U.S.A. Inc. for coordinated corrective actions at the existing Norman Y. Mineta San José International Airport Jet Fuel Facility commingled plume site at a cost to the City not to exceed \$1,800,000 and authorizing the Director of Aviation to approve additional expenditures in excess of \$1,800,000, subject to appropriation of funds by Council. CEQA: Resolution Nos. 67380 and 71451, File No. PP 09-145. (Airport) (Deferred from 9/15/09 – Item 6.2)

Documents Filed: Memorandum from Director of Aviation William Sherry, dated August 3, 2009, recommending adoption of a resolution.

6.2 (Cont'd.)

Public Comments: Ross Signorino commented that Norman Y. Mineta San José International Airport is the friendliest airport in the United States, as voted for by the pilots.

Action: Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, [Resolution No. 75105](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with Chevron U.S.A. for Coordinated Corrective Action at the Norman Y. Mineta San José International Airport Jet Fuel Facility Commingled Plume Site at a Cost to the City Not To Exceed \$1,800,000”, was adopted. (8-0-3. Campos, Chu, Herrera.)

ENVIRONMENTAL & UTILITY SERVICES

7.1 Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the Integrated Waste Management Fund (Fund 423) necessary to implement Recycle Plus pilot programs:

- (a) Increase the Beginning Fund Balance by \$1,706,000; and
 - (b) Increase the Yard Trimmings / Street Sweeping appropriation by \$1,706,000.
- CEQA: Mitigated Negative Declaration and addenda thereto, File No PP09-165. (Environmental Services/City Manager’s Office)**

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated August 31, 2009, recommending adoption of appropriation ordinance and funding sources resolution amendments.

Director of Environmental Services John Stufflebean provided an overview of the Recycle Plus Pilot Programs and responded to Council questions.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, [Ordinance No. 28644](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the Integrated Waste Management Fund for the Yard Trimmings/Street Sweeping Project; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption” and [Resolution No. 75106](#), 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 Integrated Waste Management Fund”, were adopted. (10-0-1. Absent: Herrera.)

7.2 As referred by the Community and Economic Development Committee on August 24, 2009:

- (a) Direct staff to return to Council with an ordinance to prohibit the use of single-use carryout plastic and paper bags.

- 7.2 (b) **The ordinance shall:**
- (1) **Apply to all retailers but exclude restaurants.**
 - (2) **Exempt non-profit and social service organizations.**
 - (3) **Exempt the use of “green” paper bags, containing at least 50% recycled content and direct staff to work with retail industry and return to Council with a recommendation on whether a .10 or .25 cent fee for retailers to cover additional costs of “green” paper is appropriate.**
 - (4) **Be effective no earlier than December 31, 2010, to allow for sufficient consumer education and “ramp-up” time.**
 - (5) **If the California legislature passes legislation relating to a fee or ban on single-use bags before the date of December 31, 2010, this item should return to Council to determine whether to maintain, alter, or eliminate the municipal ordinance.**
 - (6) **Exempt bulk or off the shelf purchases of plastic or paper bags.**
- (c) **Direct staff to continue to support legislation that would implement a state-wide program that would significantly reduce use of single-use carryout bags.**
- (d) **Direct staff to continue its aggressive outreach campaign to promote the use of reusable bags in collaboration with similar regional initiatives prior to the implementation of the ordinance.**

(Chirco/Liccardo/Chu/Campos)

[Community and Economic Development Committee referral 8/24/09 – Item D(3)]

Documents Filed: (1) Memorandum from Mayor Reed and Council Members Campos, Liccardo and Chu, dated September 18, 2009, recommending adoption of the recommendations contained in the memorandum from Vice Mayor Chirco and Council Members Liccardo, Chu and Campos, dated August 24, 2009, with amendments. (2) Memorandum from City Clerk Lee Price, dated September 10, 2009, transmitting the recommendations of the Community & Economic Development Committee. (3) Letter from Frances Jones, Chair, Senior Citizens Commission, dated September 17, 2009, in support of the proposed ban on plastic bags and paper bags, but with no fees. (4) Letter from Keith Jones, 7-Eleven, forwarding 1,403 letters of opposition to the fee for take out bags. (5) Letter from the Law Offices of Stephen L. Joseph, Esquire, dated September 18, 2009, regarding an objection and notice of intent to litigate on the subject of a plastic bag fee. (6) Letter from the Hispanic Political Action Committee of Silicon Valley, dated September 15, 2009, expressing concern about the various ban and fees on single-use bags. (7) Three emails dated September 18, 2009, in support to the ban on plastic bags. (8) Letter from La Raza Roundtable, dated September 17, 2009, regarding the ban on plastic bags. (9) Four separate letters from various businesses dated September 15, September 16, September 17, and September 18, 2009, regarding buying/recycling plastic bags and film. (10) Petition dated September 15, 2009, containing signatures from 99 business owners expressing opposition to any proposed paper or plastic bag tax. (11) Letter from twenty-three business owners, dated September 22, 2009, expressing opposition to a tax on plastic and paper bags.

Director of Environmental Services John Stufflebean provided the presentation on the Reduction of Single-Use Carryout Bags.

7.2 (Cont'd.)

Mayor Reed, Vice Mayor Chirco and Council Members Liccardo, Campos, Constant, Pyle, Nguyen and Kalra provided meeting disclosures.

Motion: Council Member Liccardo moved approval of the memorandum he cosigned with Mayor Reed and Council Members Campos and Chu, dated September 18, 2009 and the recommendations as indicated above in Item 7.2(a)-(d), with additional outreach to be provided to ethnic Chambers of Commerce. Council Member Nguyen seconded the motion.

City Attorney Richard Doyle and Director of Environmental Services John Stufflebean responded to Council questions and concerns.

Public Comments: Speaking in support to prohibit the use of single-use carryout plastic and paper bags were Kerri Hamilton, Citizens for Environmental and Economic Justice (CEEJ), Nicole Reynoso, Jessica Martinez-Esquivel, San José High Academy, Gerard McGuire, Christine Dindia, Diocese of San José, Megan Fluke, Sierra Club, Brian Schmidt, Committee for Green Foothills, Tom Leddy, Roosevelt Park Neighborhood Association, Marshall Woodmansee, Tessa Woodmansee, Bruce Wolfe, San Francisco Regional Water Board, Sophia, Adriane Farkoua, Felicia Madsen, Save the Bay, Bryan Early, Californians Against Waste, Brett Calhoun, Santa Clara Valley Water District, Gil Chesio, Allied Waste, Patricia Luna, Pirouz Maghsoudnia, Eric Hom, San José Downtown Association, Laura Kasa, Save Our Shores, Ann Webb, Ross Signorino, Michael La Rocca, Deborah Arant, Shasta Hanchett Park Neighborhood Association and Emily Hanson, Greenwaste Recovery.

Speaking in opposition to prohibit the use of single-use carryout plastic and paper bags because of the impacts on small businesses, the associated fees, it should be State action imposed and that there is a viable market for plastics and film were Tim James, California Growers Association, Keith De Filippis, Ty Greaves, Berryessa-Milpitas Republican Association, Rich Tatom, Peter Soulé, Jan Soulé, Ricky Tatom, Joy Nishimura, Fred Vela, George Smigelski, Kevin Kittilo, Eugene Imperato, Lynx Recyclers, Patty Moore, Moore Recycling Association, Megan Menno, Heather Lomeli, 7-Eleven, Jay Chinoy, Nancy Gallardo, Clement Mauroal, Sandy Taylor and James Durran, Hispanic Chamber of Commerce.

Council Member Campos requested to amend the motion to include small business outreach. Council Members Liccardo and Nguyen accepted the amendment.

Council Member Constant stated that he does not support any associated fees.

7.2 (Cont'd.)

Action: On a call for the question, the motion carried, the recommendations were approved, as amended, the memorandum from Mayor Reed, Council Members Campos, Liccardo and Chu, dated September 18, 2009, was approved, adopting the reduction of single-use carryout bags recommendations as noted above in 7.2(a)(b)(c)(d), with the following amendments: (1) Finish environmental review of the ordinance before adoption. (2) Develop a method for measuring success and establish a baseline of data. (3) Obtain acceptance and support from both the Santa Clara County Cities Association and Santa Clara County Recycling and Waste Reduction Commission. (4) Amend Item (2)(c) exempting “green” paper bags that contain 50% recycle content to exempting “green” paper bags that contain 40% recycle content to conform with industry standards. (5) Additional outreach to include the ethnic Chambers of Commerce and small businesses. (9-1-1. Noes: Constant. Absent: Herrera.)

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Joint Council/Redevelopment Agency Board was convened at 5:01 p.m. to Consider Item 9.1 in a Joint Session.

9.1 Adopt a resolution authorizing the Director of Human Resources to select and purchase certain City and Redevelopment Agency insurance policies (property and liability for the City; property only for the Redevelopment Agency) for the period October 1, 2009 to October 1, 2010 at a cost not to exceed \$2,000,000 with the following insurance carriers:

- (a) **Property Insurance including Boiler and Machinery coverage: Factory Mutual Insurance Company, or Chartis.**
- (b) **Airport Owners and Operators Liability coverage: ACE Property & Casualty Insurance Company and Lloyds of London, or Chartis.**
- (c) **Secondary Employment Law Enforcement Professional Liability coverage: Indian Harbor Insurance Company, or Philadelphia Insurance Company.**
- (d) **Automobile Liability (Airport/WPCP only) and Airport Shuttle Bus coverage: St. Paul Travelers.**
- (e) **Police Aircraft Hull and Liability coverage: Westchester Fire Insurance Company, or Chartis.**

CEQA: Not a Project. (Human Resources)

Documents Filed: (1) Memorandum from Director of Human Resources Mark Danaj, dated August 31, 2009, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Human Resources Mark Danaj, dated September 14, 2009, approving clarification to the original recommendation, substituting a modified Appendix A which more accurately supports the recommendation and explains the criteria to be used for selection between the present and new alternative insurance carriers.

9.1 (Cont'd.)

Action: Upon motion by Council Member Oliverio, seconded by Council Member Constant and carried unanimously, [Resolution No. 75107](#), entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Human Resources to Select and Purchase Insurance Policies for the Period October 1, 2009 to October 1, 2010 at a Cost Not To Exceed \$2,000,000”, was adopted. (10-0-1. Absent: Herrera.)

The Joint Council/Redevelopment Agency Board was adjourned at 5:02 p.m.

COMMUNITY & ECONOMIC DEVELOPMENT

4.3 (a) **Consideration of and vote on a Majority Protest to Prezoning PDC08-034 filed pursuant to Part 5 of Chapter 20.120 of the City’s Zoning Code to protest a rezoning to A(PD) Planned Development Zoning District that would allow up to 117 multi-family residential studio units above a podium garage and up to 2,000 square feet of commercial on a 1.32 gross acre site.**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated September 2, 2009, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC08-034, dated September 2, 2009. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated September 10, 2009, transmitting the recommendation of the Planning Commission. (3) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated September 14, 2009, transmitting the report describing the implication of the protests on the procedure for the City Council’s consideration of the proposed rezoning. (4) Proof of Publication of Notice of Public Hearing, executed on August 28, 2009, submitted by the City Clerk. (5) Copy of the White Paper, the Formal Protest of the Property Owners, dated September 22, 2009. (6) Eleven correspondences from the public dated September 22, 2009, regarding the rezoning of PDC08-034.

Director of Planning, Building and Code Enforcement Joseph Horwedel provided the Staff Report on the Zoning Protest for Sunol Court. He stated that if the protest is upheld, the application is denied and in order for the protest to be overturned, a two-thirds vote was required (eight Council Member vote) and the Council will then vote separately on the merits of the project. He added that the Council has the option to deny the project without first considering the protest.

City Attorney Richard Doyle responded to Council questions and comments.

Mayor Reed and Council Members Constant and Campos provided meeting disclosures.

Mayor Reed opened the public hearing.

4.3 (Cont'd.)

Public Comments: Speakers in support to uphold the protest, deny the rezoning and keep the area zoned commercial were Mary Fortune, Sam Blackford, Carlo America, Daniel Fortune, June Cheim, Norman Koepnik, James Marcus, Richard Nieset, Deborah Arant, Helen Chapman, Shasta Hanchett Park Neighborhood Association, Michael La Rocca, Randi Kinman, Burbank/Del Monte Neighborhood Association, Bob Sippel, Rose Garden Neighborhood Association, Chet Lockwood, Terri Balandra, FLAG, Brian Ward, Buena Vista Neighborhood Association and Lorna Chang.

Chris Neil, Applicant, spoke to the merits of the project and will continue to address all the items raised by the neighbors and adjacent property owners. Also speaking in support to the rezoning were Kelly Snider, Nick Rajkovich, Shiloh Ballard, Gary Olimpia, Mike Daley, Ross Signorino, Lester Fontech, Susan Dutton, EAH Property Management, Phyllis Ward, Affordable Housing Network, Jerry Lebsch, Cary Dritz and Dixie Baus, Core Affordable Housing.

Mayor Reed closed the public hearing.

Motion: Council Member Liccardo moved to uphold the protest and deny the rezoning project. Council Member Pyle seconded the motion.

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

Mayor Reed, Vice Mayor Chirco and Council Member Oliverio objected to the motion on the floor.

Action: On a call for the question, the motion to uphold the protest and to deny the rezoning, was carried. (7-3-1. Noes: Chirco, Oliverio; Reed. Absent: Herrera.)

- (b) **Consideration of an ordinance rezoning the real property located on the east side of Sunol Street, approximately 120 feet north of W. San Carlos Street from Unincorporated Santa Clara County to A(PD) Planned Development Zoning District to allow up to 117 multi-family residential studio units above a podium garage, and up to 2,000 square feet of commercial on a 1.32 gross acre site (James R Marcus Owner/Core Affordable Housing Applicant). SNI: Burbank/Del Monte. CEQA: Mitigated Negative Declaration. (The proposed rezoning would not go into effect until annexation occurs of the existing unincorporated County Island (Sunol No. 82) which will be considered at a separate City Council Hearing for which a separate hearing notice will be distributed). Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-1-0).**

PDC08-034 – District 6

Action: There was no action on Item 4.3(b). (Procedurally Denied)

4.4 Consideration of an ordinance rezoning the real property located between McEvoy Street and Meridian Avenue, and south of Park Avenue from unincorporated Santa Clara County to R-1-8 Single-Family Residence, R-M Multiple Residence, CP Commercial Pedestrian, CIC Combined Industrial Commercial, and Light Industrial, on an approximately 56 gross acre area (County Island) consisting of approximately 282 parcels (Multiple Owners). SNI: Burbank/Del Monte. CEQA: Resolution No. 65459. (The proposed rezoning would not go into effect until annexation occurs of the existing unincorporated County Island (Sunol No. 82) which will be considered at a separate City Council Hearing for which a separate hearing notice will be distributed). Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1).

C08-023 – District 6

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated September 2, 2009, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C08-023, dated September 2, 2009. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated September 10, 2009, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing, executed on August 28, 2009, submitted by the City Clerk.

Motion: Council Member Oliverio moved approval of the Staff recommendations with Staff directed to change the designation for parcels fronting Sunol (1.07 acres) from RM Multiple Residence Zoning District to CIC Combined Industrial Commercial and designate the parcel fronting onto West San Carlos Street (0.15 acre) CP Commercial Pedestrian. Council Member Constant seconded the motion.

Mayor Reed opened the public hearing.

Public Comments: Speaking in opposition to the proposed rezoning were Deborah Arant, Richard Nieset, Shasta Hanchett Park Neighborhood Association, Michael La Rocca, Randi Kinman, Burbank/Del Monte Neighborhood Association, Chet Lockwood, Terri Balandra, FLAG, Brian Ward, Buena Vista Neighborhood Association, Bob Sippel, Rose Garden Neighborhood Association and Norman Koepernik.

James Marcus, property owner, spoke to the merits of the proposed rezoning and project.

Mayor Reed closed the public hearing.

Council Member Campos provided meeting disclosures.

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

4.4 (Cont'd.)

Action: On a call for the question the motion carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, [Ordinance No. 28645](#), entitled: “An Ordinance of the City of San José Prezoning Certain Real Property Situated on the South Side of Park Avenue Between Grand Avenue and Race Street and Both Sides of Lincoln Avenue Between Park Avenue and Pacific Avenue and Between Sunol Street and South Morrison Avenue in the County of Santa Clara to R-1-8 Single Family Residential Zoning District”; [Ordinance No. 28646](#), entitled: “An Ordinance of the City of San José Prezoning Certain Real Property Situated on the South Side of West San Carlos Street, North of Morris Avenue and East of Lincoln Avenue and on the South Side of Park Avenue Between Sunol Street and McEvoy Street in the County of Santa Clara to CIC Combined Industrial Commercial Zoning District”, [Ordinance No. 28647](#), entitled: “An Ordinance of the City of San José Prezoning Certain Real Property Situated on the East Side of Meridian Avenue, on the South Side of Park Avenue and the North Side of West San Carlos Street and West of McEvoy Street in the County of Santa Clara to CP Commercial Pedestrian Zoning District”, were passed for publication, as amended, with Staff directed to change the designation for parcels fronting Sunol (1.07 acres) from RM Multiple Residence Zoning District to CIC Combined Industrial Commercial and designate the parcel fronting onto West San Carlos Street (0.15 acre) CP Commercial Pedestrian. (10-0-1. Absent: Herrera.)

ADJOURNMENT

The Council of the City of San José was adjourned at 6:32 p.m. in memory of retired San José Police Officer, Richard “Rocky” Bridges. (Constant)

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

smd/9-22-09 MIN

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