



CITY COUNCIL AGENDA

SEPTEMBER 22, 2009

SYNOPSIS

PETE CONSTANT
ASH KALRA
SAM LICCARDO
KANSEN CHU
NORA CAMPOS

DISTRICT 1
DISTRICT 2
DISTRICT 3
DISTRICT 4
DISTRICT 5

CHUCK REED MAYOR

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

DISTRICT 6
DISTRICT 7
DISTRICT 8
DISTRICT 9
DISTRICT 10

Welcome to the San José City Council meeting!

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

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

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

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

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

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

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

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

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

To request an accommodation or alternative format under the Americans with Disabilities Act for City-sponsored meetings, events or printed materials, please call (408) 535-1260 or (408) 294-9337 (TTY) as soon as possible, but at least three business days before the meeting.

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

- **Call to Order and Roll Call**
9:33 a.m. - Closed Session, Call to Order in Council Chambers
Canceled.

1:33 p.m. - Regular Session, Council Chambers, City Hall
Absent Council Members: None.
- **Invocation (District 8)**
Mount Pleasant High School Marching Band performed “The Liberty Bell” John Philip Sousa.
- **Pledge of Allegiance**
Mayor Reed led the Pledge of Allegiance.
- **Orders of the Day**
The Orders of the Day and the Amended Agenda were approved.
- **Closed Session Report**
No Report.

1. 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)
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; and recognized and commended the City’s Trails Program Manager and Parks Development Group for promoting pollution prevention.
- 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)
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)
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)
Mayor Reed and Council Member Herrera recognized September 21, 2009 as “World Alzheimer’s Day” in the City of San José.

2. CONSENT CALENDAR

- 2.1 **Approval of Minutes.**
There were none.
- 2.2 **Final adoption of ordinances.**
There were none.
- 2.3 **Mayor and Council Excused Absence Requests.**
There were none.

2. CONSENT CALENDAR

2.4 Agreement with Cirque du Soleil.

Recommendation:

- (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)
Deferred to 9/29/09 per Administration.

2.5 Purchase of Office Furniture for the Airport.

Recommendation: 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)

Approved.

2.6 Award of Open Purchase Orders for Supplies, Materials, Equipment and Services.

Recommendation: 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)

Approved.

2. CONSENT CALENDAR

2.7 Agreement with Advance Design Consultants for Auxiliary Chilled Water System Project.

Recommendation: 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)

Approved.

2.8 Arena/Diridon Area Parking Meter District.

Recommendation: 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)

Ordinance No. 28643 passed for publication.

2.9 Accept Gift of Artwork.

Recommendation: 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)

Accepted.

3. 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 next year’s conference.

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

Mayor Reed, Chair

Accepted.

3.3 Report of the Public Safety, Finance and Strategic Support Committee

Council Member Nguyen, Chair

No Report.

3. STRATEGIC SUPPORT SERVICES

3.4 Response to Grand Jury Report regarding IAFF Local 230.

Recommendation: 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)

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.

3.5 Executive Home Loan Program.

Recommendation: 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)]

Approved for new loans. (Note: does not apply to existing loans or those loans in the pipeline.)

3.6 Report of the Rules and Open Government Committee – August 19, 2009

Mayor Reed, Chair

Accepted.

3.7 Report of the Rules and Open Government Committee – August 26, 2009

Mayor Reed, Chair

Accepted.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Report of the Community & Economic Development Committee

Council Member Pyle, Chair

No Report.

4.2 Grant Application for “Pathways Out of Poverty.”

Recommendation: 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)

Resolution No. 75104 adopted.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.3 Rezoning real property located on the east side of Sunol Street.

Recommendation:

(a) Consideration of and vote on a Majority Protest to Rezoning 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.

**Protest upheld.
(7-3. Noes: Chirco, Oliverio; Reed)**

(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
No Action. (Procedurally Denied)

4.4 Rezoning real property located between McEvoy Street and Meridian Avenue, and south of Park Avenue.

Recommendation: 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
Ordinance Nos. 28645, 28646, 28647 passed for publication, as amended: 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.

5. NEIGHBORHOOD SERVICES

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

6. TRANSPORTATION & AVIATION SERVICES

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

- 6.2 **Agreement with Chevron for Actions at the Airport Fuel Facility.**

Recommendation: 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)

Resolution No. 75105 adopted.

7. ENVIRONMENTAL & UTILITY SERVICES

- 7.1 **Recycle Plus Pilot Programs.**

Recommendation: 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)

Ordinance No. 28644 adopted.

Resolution No. 75106 adopted.

7. ENVIRONMENTAL & UTILITY SERVICES

7.2 Reduction of Single-Use Carryout Bags.

Recommendation: 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.
- (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)]

Approved, as amended.

The memorandum from Mayor Reed, Council Members Campos, Liccardo and Chu, dated September 18, 2009, 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.**

Noes: Constant.

8. PUBLIC SAFETY SERVICES

9. JOINT COUNCIL/REDEVELOPMENT AGENCY

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

9.1 Purchase of Insurance Policies.

Recommendation: 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)

Resolution No. 75107 adopted.

- Notice of City Engineer's Pending Decision on Final Maps
None.
- Notice of City Engineer's Award of Construction Projects
None.
- Open Forum
There was none.
- 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)