

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, SEPTEMBER 29, 2009

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

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

Absent: Council Members - Chirco. (Excused)

Upon motion unanimously adopted, Council recessed at 9:35 a.m. to a Closed Session in Room W133, to confer with Legal Counsel with respect to (A) to confer with Legal Counsel with respect to existing litigation pursuant to Government Code subsection (a) of Section 54956.9: (1) Vera v. City, et al.; Names of Parties Involved: John Vera and City of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-109820; Amount of Money or Other Relief Sought: Damages according to proof; (2) City of San José v. All Persons Interested in the Matter; Names of Parties Involved: City of San José and All Persons Interested in the Matter; Court: Superior Court of California, County of Santa Clara; Case No: 1-09-CV-148458; Amount of Money or Other Relief Sought: Validation of Convention Center Facility District Special Tax; (3) In re Moore; Amount of Money or Other Relief Sought: Administrative Appeal; (4) In re Loquiao; Amount of Money or Other Relief Sought: Administrative Appeal; (B) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager designee Alex Gurza; Employee Organizations: International Association of Firefighters (IAFF), Local 230 (IAFF#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; 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 11:55 a.m. and reconvened to Regular Session at 1:32 p.m. in the Council Chambers.

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

Absent: Council Members - Chirco. (Excused)

INVOCATION

San José Sikh Gurdwara Hymn Singers provided the Invocation.

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (10-0-1. Absent: Chirco.)

CEREMONIAL ITEMS

1.1 **Presentation of a commendation to Stevens Creek Toyota for their contribution to San José's economy and high ethical standards. (Economic Development/Constant)**

Action: Mayor Reed recognized and commended Stevens Creek Toyota for their contribution to San Jose's economy and high ethical standards.

1.2 **Presentation of a commendation to Solexant for developing the third-generation ultrathin-film PV technology. (Economic Development/Chu)**

Action: Mayor Reed and Council Member Chu recognized and commended Solexant for developing the third-generation ultrathin-film PV technology.

CONSENT CALENDAR

Upon motion by Council Member Pyle, seconded by Council Member Nguyen, and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (10-0-1. Absent: Chirco.)

2.2 (a) **ORD. NO. 28705 – Rezoning certain real property situated on the southwesterly side of Campbell Avenue, 950 feet northwesterly of Newhall Street, to the A(PD) Planned Development Zoning District. PDC08-068**

Documents Filed: Proof of Publication of the title of Ordinance No. 28705 executed on September 22, 2009, submitted by the City Clerk.

Action: [Ordinance No. 28705](#) was adopted. (10-0-1. Absent: Chirco.)

- 2.2 (b) **ORD. NO. 28706** – Rezoning certain real property situated at the northwest corner of North 6th Street and Jackson Street (601-621 North 6th Street) from LI Light Industrial to CP Commercial Pedestrian Zoning District. C09-024

Documents Filed: Proof of Publication of the title of Ordinance No. 28706 executed on September 22, 2009, submitted by the City Clerk.

Action: [Ordinance No. 28706](#) was adopted. (10-0-1. Absent: Chirco.)

- (c) **ORD. NO. 28707** – Rezoning certain real property situated at the southeast corner of East Saint John Street and North Fourth Street (156 East Saint John Street) from CG Commercial General to DC Downtown Commercial Zoning District. C09-009

Documents Filed: Proof of Publication of the title of Ordinance No. 28707 executed on September 22, 2009, submitted by the City Clerk.

Action: [Ordinance No. 28707](#) was adopted. (10-0-1. Absent: Chirco.)

- (d) **ORD. NO. 28708** – Prezoning certain real property situated at the southeast corner of East Mission Street and North Tenth Street from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District. PDC08-066

Documents Filed: Proof of Publication of the title of Ordinance No. 28708 executed on September 22, 2009, submitted by the City Clerk.

Action: [Ordinance No. 28708](#) was adopted. (10-0-1. Absent: Chirco.)

- (e) **ORD. NO. 28709** – Prezoning certain real property situated on both side of Hope Street, north of Southside Drive, from County of Santa Clara to R-1-8 Single-Family Residence Zoning District. C09-013

Documents Filed: Proof of Publication of the title of Ordinance No. 28709 executed on September 22, 2009, submitted by the City Clerk.

Action: [Ordinance No. 28709](#) was adopted. (10-0-1. Absent: Chirco.)

- 2.2 (f) **ORD. NO. 28710** – Prezoning certain real property situated on the south of Lewis Road, on both sides of Garden Avenue, Wall Street and Water Street north of Southside Drive, and also the real property situated south of Southside Drive, on both sides of Garden Avenue and east of Water Street, north of a straight line extending west of Jackie Drive, from County of Santa Clara to R-1-8 Single-Family Residence Zoning District. C09-013

Documents Filed: Proof of Publication of the title of Ordinance No. 28710 executed on September 22, 2009, submitted by the City Clerk.

Action: [Ordinance No. 28710](#) was adopted. (10-0-1. Absent: Chirco.)

- (g) **ORD. NO. 28711** – Prezoning certain real property situated between Water Street and Hope Street north of Southside Drive from County of Santa Clara to R-2 Two-Family Residence Zoning District. C09-013

Documents Filed: Proof of Publication of the title of Ordinance No. 28711 executed on September 22, 2009, submitted by the City Clerk.

Action: [Ordinance No. 28711](#) was adopted. (10-0-1. Absent: Chirco.)

- (h) **ORD. NO. 28712** – Prezoning certain real property situated between Garden Avenue and Water Street, south of Southside Drive, from County of Santa Clara to R-2 Two-Family Residence Zoning District. C09-013

Documents Filed: Proof of Publication of the title of Ordinance No. 28712 executed on September 22, 2009, submitted by the City Clerk.

Action: [Ordinance No. 28712](#) was adopted. (10-0-1. Absent: Chirco.)

- (i) **ORD. NO. 28713** – Prezoning certain real property situated east of Monterey Road, approximately 720 feet south of Lewis Road, from County of Santa Clara to R-M Multi-Family Residence Zoning District. C09-013

Documents Filed: Proof of Publication of the title of Ordinance No. 28713 executed on September 22, 2009, submitted by the City Clerk.

Action: [Ordinance No. 28713](#) was adopted. (10-0-1. Absent: Chirco.)

- (j) **ORD. NO. 28714** – Prezoning certain real property situated south of Southside Drive, west of Water Street and east of Kenbrook Circle, from County of Santa Clara to R-M Multi-Family Residence Zoning District. C09-013

Documents Filed: Proof of Publication of the title of Ordinance No. 28714 executed on September 22, 2009, submitted by the City Clerk.

Action: [Ordinance No. 28714](#) was adopted. (10-0-1. Absent: Chirco.)

- 2.2 (k) **ORD. NO. 28715 – Rezoning certain real property situated east of Monterey Road, approximately 930 feet south of Lewis Road, and on both sides of Southside Drive from County of Santa Clara to CG Commercial General Zoning District. C09-013**

Documents Filed: Proof of Publication of the title of Ordinance No. 28715 executed on September 22, 2009, submitted by the City Clerk.

Action: [Ordinance No. 28715](#) was adopted. (10-0-1. Absent: Chirco.)

- (l) **ORD. NO. 28716 – Rezoning certain real property situated west of East Capitol Expressway, east of Monterey Road, south of Southside Drive and north of Rancho Drive from County of Santa Clara to R-1-8 Single-Family Residence Zoning District. C09-014**

Documents Filed: Proof of Publication of the title of Ordinance No. 28716 executed on September 22, 2009, submitted by the City Clerk.

Action: [Ordinance No. 28716](#) was adopted. (10-0-1. Absent: Chirco.)

- (m) **ORD. NO. 28717 – Rezoning certain real property situated south of Samaritan Drive, west of Union Avenue, north of Carlton Avenue, both sides of Dickens Avenue, Cooper Avenue, Charlotte Avenue, and Clydelle Avenue south of Carlton Avenue, and Winton Way south of Carlton Avenue from County of Santa Clara to R-1-8 Single-Family Residence Zoning District. C09-026**

Documents Filed: Proof of Publication of the title of Ordinance No. 28717 executed on September 22, 2009, submitted by the City Clerk.

Action: [Ordinance No. 28717](#) was adopted. (10-0-1. Absent: Chirco.)

- (n) **ORD. NO. 28718 – Extending the temporary moratorium on the establishment of new Bail Bonds Establishments pending the review and possible amendment of land use regulations applicable to such establishments, setting forth the findings to support the extension of such temporary moratorium, and making the effectiveness and applicability of the provisions of this ordinance retroactive to October 9, 2009.**

Documents Filed: Proof of Publication of the title of Ordinance No. 28718 executed on September 22, 2009, submitted by the City Clerk.

Action: [Ordinance No. 28718](#) was adopted. (10-0-1. Absent: Chirco.)

- 2.3 (a) **Request for an excused absence for Councilmember Constant from the Regular Meeting of the Rules and Open Government Committee on September 2, 2009 due to illness. (Constant)**
(Rules Committee referral 9/16/09)
- (b) **Request for an excused absence for Councilmember Constant from the Evening Meeting of the City Council on September 15, 2009 due to illness. (Constant)**
(Rules Committee referral 9/23/09)
- (c) **Request for an excused absence for Mayor Reed from the Regular Meeting of the Rules and Open Government Committee on September 16, 2009 due to Authorized City Business: Travel to San Francisco, CA for the Going Green West Conference. (Mayor)**
(Rules Committee referral 9/23/09)

Documents Filed: (1) Memorandum from Council Member Constant, dated September 3, 2009, requesting an excused absence due to illness. (2) Memorandum from Council Member Constant, dated September 22, 2009 requesting an excused absence due to illness. (3) Memorandum from Mayor Reed, dated August 26, 2009, requesting an excused absence due to authorized City business.

Action: The absences for Council Member Constant and Mayor Reed were excused. (10-0-1. Absent: Chirco.)

- 2.4 (a) **Adopt an ordinance ratifying the final 2008-2009 appropriation increases detailed in this report.**
- (b) **Adopt the following 2008-2009 appropriation ordinance and funding sources resolution amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Central Fund:**
- (1) **Increase the Earned Revenue estimate by \$762,798;**
 - (2) **Increase the Transfer to Council District 1 by \$62,022;**
 - (3) **Increase the Transfer to Council District 2 by \$36,728;**
 - (4) **Increase the Transfer to Council District 3 by \$56,453;**
 - (5) **Increase the Transfer to Council District 4 by \$25,564;**
 - (6) **Increase the Transfer to Council District 5 by \$68,405;**
 - (7) **Increase the Transfer to Council District 6 by \$59,571;**
 - (8) **Increase the Transfer to Council District 7 by \$72,283;**
 - (9) **Increase the Transfer to Council District 8 by \$61,387;**
 - (10) **Increase the Transfer to Council District 9 by \$38,436;**
 - (11) **Increase the Transfer to Council District 10 by \$9,000;**
 - (12) **Increase the Transfer to City-Wide by \$244,425; and**
 - (13) **Increase the Transfer to the General Fund by \$28,524.**

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

Documents Filed: Memorandum from Budget Director Jennifer Maguire, dated September 16, 2009, recommending adoption of appropriation ordinance and funding sources resolution amendments.

2.4 (Cont'd.)

Action: [Ordinance No. 28648](#), entitled: “An Ordinance of the City of San José Authorizing and Ratifying Certain Encumbrances and/or Expenditures in Various Funds Made During City’s 2008-2009 Fiscal Year in Excess of Sums Appropriated Therefore”; [Ordinance No. 28649](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28349 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Central Fund for the Council Districts, for the City-Wide Construction and Conveyance Tax Fund, and for the General Fund; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”; and [Resolution No. 75108](#), 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 Tax and Property Conveyance Tax Fund: Parks Purposes Central Fund”, were adopted. (10-0-1. Absent: Chirco.)

2.5 **Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with Deborah Aschheim for the fabrication and installation of a public artwork at the Norman Y. Mineta San José International Airport Terminal B Arrivals Hall, in an amount not to exceed \$300,000. CEQA: Resolutions No. 67380 and 71451, PP 09-051. (Economic Development/Airport)**

Item 2.5 was pulled from the Consent Calendar for further discussion.

Public Comments: Sharon Sweeney spoke in favor of the project and presented slides of the proposed artwork. Ross Signorino offered his viewpoint on abstract art.

Brief Council discussion followed.

Action: Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, Item 2.5 was deferred to October 6, 2009, with direction to Staff to post the proposed artwork for public review. (10-0-1. Absent: Chirco.)

2.6 (a) **Authorizing the Director of Finance to execute the First Amendment to the Public Address System Agreement with Signatures Technology Inc., dba Com-Net Software (COM-NET) to expand the system into Terminals A+ and the Terminal A Baggage Claim area at the Norman Y. Mineta San José International Airport (SJC) and to increase the total compensation by an amount not to exceed \$623,464 from \$1,652,805 to \$2,276,269 including all hardware, software, sales tax and the first year of support and professional services.**

(b) **Increasing the contingency amount by \$100,000 from \$330,560 to \$430,560 and authorizing the Director of Finance to execute change orders as required; covering unanticipated changes in the system design and/or installation.**

CEQA: Resolution Nos. 67380 and 71451, File No. PP09-160. (Finance)

2.6 (Cont'd.)

Documents Filed: Memorandum from Director of Finance Scott P. Johnson, dated September 8, 2009, recommending a first amendment to an agreement with related contingency.

Action: [Resolution No. 75109](#), entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Finance to Execute the First Amendment to the Public Address System Agreement with Signatures Technology, Inc., DBA Com-Net Software to Expand the System into Terminals A+ and the Terminal A Baggage Claim Area at the Norman Y. Mineta San José International Airport", was adopted. (10-0-1. Absent: Chirco.)

2.7 Adopt a resolution authorizing the Director of Finance to:

- (a) **Negotiate and execute an agreement with Lavante, Inc. to provide audit and recovery services relating to the City's accounts payable vendor disbursements and invoices ("Recovery Audit Services") for an initial term commencing upon execution through June 30, 2010, with compensation to be paid on a fee recovery basis equal to 18% of actual claims recovered, subject to a \$100,000 maximum for any one claim realized.**
- (b) **Exercise three, one-year options to renew the Agreement, subject to the appropriation of funds.**

CEQA: Not a Project. (Finance)

Documents Filed: Memorandum from Director of Finance Scott P. Johnson, dated September 9, 2009, recommending adoption of a resolution.

Action: [Resolution No. 75110](#), entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Finance to Negotiate and Execute an Agreement with Lavante, Inc. to Provide Audit and Recovery Services", was adopted. (10-0-1. Absent: Chirco.)

2.8 (a) Adopt a resolution authorizing:

- (1) **A funding commitment of Community Development Block Grant (CDBG) funds in the amount of \$150,000 to Legal Aid Society of Santa Clara County (Legal Aid);**
- (2) **Approval of a Substantial Amendment to City's FY 2009-2010 Consolidated Annual Action Plan (ConPlan);**
- (3) **The Housing Director to negotiate and execute a CDBG grant agreement not to exceed \$150,000; and**
- (b) **Approval of the following Appropriation Ordinance amendments in the Community Development Block Grant Fund (441) for 2009-2010:**
 - (1) **Decrease the CDBG Program Development and Monitoring appropriation by \$150,000;**
 - (2) **Establish an appropriation for Legal Aid Fair Housing Program in the amount of \$150,000.**

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

2.8 (Cont'd.)

Documents Filed: Memorandum from Director of Housing Leslye Krutko and Budget Director Jennifer Maguire, dated September 8, 2009, recommending adoption of a resolution and appropriation ordinance amendments.

Item 2.8 was pulled from the Consent Calendar by Director of Housing Leslye Krutko to read comments from the Law Foundation of Silicon Valley into the public record.

Action: Upon motion by Council Member Campos, seconded by Council Member Liccardo and carried unanimously, [Resolution No. 75111](#), entitled: "A Resolution of the Council of the City of San José Authorizing a Funding Commitment of Community Block Grant Funds to Legal Aid Society of Santa Clara County for the Fair Housing Program", and [Ordinance No. 28650](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the Community Development Block Grant Fund for the Legal Aid Fair Housing Program; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", were adopted. (10-0-1. Absent: Chirco.)

- 2.9
- (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 from 9/22/09 – Item 2.4)

Documents Filed: (1) Joint memorandum from Chief Development Officer Paul Krutko and Budget Director Jennifer Maguire, dated August 31, 2009, recommending adoption of appropriation ordinance and funding sources resolution amendments. (2) Supplemental memorandum from Chief Development Officer Paul Krutko, dated September 17, 2009, providing contract terms and to clarify the amended agreement.

2.9 (Cont'd.)

Action: The lease agreement with Cirque du Soleil and authorization of parking lot use was approved, and [Resolution No. 75112](#), 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 General Fund”; and [Ordinance No. 28651](#), entitled: “An Ordinance of the Council of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the General Fund for the Cirque Du Soleil Project; Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”, were adopted. (10-0-1. Absent: Chirco.)

2.10 **As recommended by the Rules and Open Government Committee on September 23, 2009, adopt a neutral position on SB 402 (Wolk) Recycling: Beverage Containers: Redemption Payments and Restoration of Funding. (Environmental Services)** **[Rules Committee referral 09/23/09 – Item D(1)(a)]**

Documents Filed: Memorandum from City Clerk Lee Price, dated September 24, 2009, submitting recommendations of the Rules and Open Government Committee.

Public Comments: Voicing support for SB 402 and urging Council’s support of the measure, were: Joel Corona (California Waste Solutions); Gina Garcia, Marina Blanco, Marlen Rodriguez, Neil Kozuma and Bob Hennessy (San Jose Conservation Corps); Steve Jones (Garden City Sanitation); Gil Chesó (Allied Waste/Republic Service); and Michael Gross (Green Waste Recovery).

Director of Environmental Services John Stufflebean responded to questions from Council and recommended support of SB 402.

Chief Deputy City Manager Ed Shikada clarified issues regarding the bill and answered questions from Council.

Action: Upon motion by Council Member Campos, seconded by Council Member Liccardo and carried unanimously, a position of support was adopted for SB 402 (Wolk) Recycling: Beverage Containers: Redemption Payments and Restoration of Funding. (10-0-1. Absent: Chirco.)

- 2.11 As recommended by the Rules and Open Government Committee on September 23, 2009, appoint David Walker to the Downtown Parking Board as an At-Large representative to a four year term ending June 30, 2013. (Reed/Liccardo)
[Rules Committee referral 09/23/09 – Item G(1)]**

Documents Filed: Memorandum from City Clerk Lee Price, dated September 24, 2009, transmitting a recommendation from the Rules and Open Government Committee.

Action: The appointment of David Walker to the Downtown Parking Board as an At-Large representative to a four year term ending June 30, 2013, was approved. (10-0-1. Absent: Chirco.)

- 2.12 As recommended by the Rules and Open Government Committee on September 23, 2009, appoint John Salah, Airport Commissioner for Norman Y. Mineta San José International Airport to the Airport Noise Advisory Committee. (Airport)
[Rules Committee referral 09/23/09 – Item G(2)]**

Documents Filed: Memorandum from City Clerk Lee Price, dated September 24, 2009, transmitting the recommendations from the Rules and Open Government Committee.

Action: The appointment of John Salah, Airport Commissioner for Norman Y. Mineta San José International Airport to the Airport Noise Advisory Committee, was approved. (10-0-1. Absent: Chirco.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

The City Manager reported that the City of San José was honored by the Silicon Valley/San Jose Business Journal with three significant “Structures 2009” awards last week.

3.2 Report of the Rules and Open Government Committee – September 9, 2009 Mayor Reed, Chair

Documents Filed: The Rules and Open Government Committee Report dated September 9, 2009.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Pyle and carried unanimously, the Report of the Rules and Open Government Committee and the actions of September 9, 2009 were accepted. (10-0-1. Absent: Chirco.)

3.3 Report of the Public Safety, Finance and Strategic Support Committee – September 17, 2009, Councilmember Nguyen, Chair

Documents Filed: The Public Safety, Finance and Strategic Support Committee Report dated September 17, 2009.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried unanimously, the Report of the Public Safety, Finance and Strategic Support Committee and the actions of September 17, 2009 were accepted. (10-0-1. Absent: Chirco.)

3.5 Adopt a resolution amending the terms of the current retiree healthcare agreement with the City Association of Management Personnel (CAMP), which would extend the reopener to commence meeting and conferring on retiree healthcare benefits for future employees and a medical reimbursement program for future retirees from January 2010 to January 2011. CEQA: Not a Project. (City Manager’s Office)

Documents Filed: Memorandum from Director of Employee Relations Alex Gurza, dated September 11, 2009, recommending adoption of a resolution.

City Manager Debra Figone expressed appreciation to CAMP for their leadership efforts.

Action: Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, [Resolution No. 75114](#), entitled: “A Resolution of the Council of the City of San José Approving an Amendment to the Retiree Healthcare Agreement Between the City of San José and the City Association of Management Personnel (CAMP)”, was adopted. (10-0-1. Absent: Chirco.)

3.6 (a) Approve an agreement with Prudential Insurance Company of America (Prudential) for a group plan to make voluntary long-term care (LTC) insurance services available to City of San José Employees, Retirees and their dependents/beneficiaries for the period of January 1, 2010 through December 31, 2013.

(b) Approve an option to renew contracts with no additional increase in rates for two additional years, through December 31, 2015.

CEQA: Not a Project. (Human Resources)

Documents Filed: Memorandum from Director of Human Resources Mark Danaj, dated September 15, 2009, recommending approval of an agreement with related options.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera, and carried unanimously, the agreement with Prudential Insurance Company of America for a group plan to make voluntary long-term care insurance services available to City of San José Employees, Retirees and their dependents/beneficiaries for the period of January 1, 2010 through December 31, 2013 with an option for renewal contracts was approved. (10-0-1. Absent: Chirco.)

- 3.7 As recommended by Public Safety, Finance and Strategic Support Committee on September 17, 2009, accept the City Auditor’s Audit titled “Audit of the Park Trust Fund: The Department of Parks, Recreation and Neighborhood Services Has Improved Administration of the Park Trust Fund and Can Further Strengthen its Policies and Procedures,” with the exception of Recommendation #6, Attempt to secure interest accrual on in-lieu fees not yet paid by the Redevelopment Agency. (City Auditor)
[Public Safety, Finance and Strategic Support Committee referral 9/17/09 – Item D(2)]**

Documents Filed: Memorandum from City Clerk Lee Price transmitting the recommendation of the Public Safety, Finance & Strategic Support Committee.

City Auditor Sharon Winslow-Erickson offered a brief report on the Audit of the Park Trust Fund.

Division Manager of Parks, Recreation and Neighborhood Services Matt Cano responded to questions from Council

Action: Upon motion by Council Member Nguyen, seconded by Council Member Constant and carried unanimously, the City Auditor’s audit, titled “Audit of the Park Trust Fund: The Department of Parks, Recreation and Neighborhood Services Has Improved Administration of the Park Trust Fund and Can Further Strengthen its Policies and Procedures,” with the exception of Recommendation #6, Attempt to secure interest accrual on in-lieu fees not yet paid by the Redevelopment Agency, was accepted. (10-0-1. Absent: Chirco.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.2 Consider an ordinance amending Part 2 of Chapter 13.48 of Title 13 of the San José Municipal Code, entitled “Designation,” to revise Section 13.48.110.C to streamline the historic landmark designation process by either:**
- (a) Allowing the City Council greater discretion on whether to initiate the procedure for the designation of a landmark so nominated; or**
 - (b) Allowing the Director of Planning, Building and Code Enforcement to initiate the procedure for the designation of a nominated landmark.**
- CEQA: Not a Project. (Planning, Building and Code Enforcement)
(Continued from 6/30/09- Item 4.2, 8/4/09 – Item 4.2 and 9/1/09 – Item 4.2)**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated September 14, 2009, recommending approval of an ordinance. (2) Letter from Interim Executive Director Brian K. Grayson, Preservation Action Council of San Jose urging support of the Staff recommendation. (3) Proof of Publication of Notice of Public Hearing, executed on May 15, 2009, submitted by the City Clerk.

4.2 (Cont'd.)

Director of Planning, Building and Code Enforcement Joseph Horwedel, provided a presentation on the historical landmark designation process.

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

Action: Upon motion by Council Member Kalra, seconded by Council Member Herrera, and carried unanimously, the recommendation of the Planning Director was approved, [Ordinance No. 28652](#) entitled: "An Ordinance of the City of San José Amending Part 2 of Chapter 13.48 of Title 13 of the San José Municipal Code, entitled "Designation," to revise Section 13.48.110.C to Streamline the Historic Landmark Designation Process by Allowing the Director of Planning, Building and Code Enforcement to Initiate the Procedure for the Designation of a Nominated Landmark (Option "B")" was passed for publication. (10-0-1. Absent: Chirco.)

4.3 **Report on bids and award of contract for the SNI 13S01d: Couplet Conversion – Julian Street and St. James Street Project to the low bidder, Joséph J. Albanese, Inc., to include the base bid and Add Alternate No. 2, in the amount of \$3,535,968.85, and approval of a contingency in the amount of \$176,800. CEQA: Negative Declaration and addenda thereto, File Nos. PP02-05-115 and PP08-126. Council District 3. SNI: 13th Street. (Public Works)**

Action: Deferred to October 6, 2009 per Administration.

TRANSPORTATION & AVIATION SERVICES

6.1 **Report of the Transportation and Environment Committee – September 14, 2009 Councilmember Liccardo, Chair**

Documents Filed: The Transportation and Environment Committee Report dated September 14, 2009.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the Transportation and Environment Committee Report and the actions of September 14, 2009 were accepted.

ENVIRONMENTAL & UTILITY SERVICES

- 7.1** As recommended by the Transportation and Environment Committee on August 17, 2009, direct the City Attorney's Office to draft an ordinance amending the San José Municipal Code to prohibit the use of potable water for indoor uses for which recycled water is allowed in non-residential buildings and condition development approval on the installation of plumbing that allows for the use of recycled water, in compliance with provisions of the Plumbing Code. (Environmental Services)
[Transportation and Environmental Committee Referral 8/17/09 – Item D(2)]
(Deferred from 9/1/09 – Item 7.1)

Action: Dropped per Administration.

PUBLIC SAFETY SERVICES

- 8.1** Approve the following actions and 2009-2010 Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund resulting from implementation of the new Gaming Control Ordinance (Title 16) and in order to achieve a service delivery model that is fully cost recovery and implement greater operational efficiencies:
- (a) **Gaming Control Administration/Regulation Unit:**
 - (1) Adopt a resolution amending the adopted 2009-2010 Fees and Charges Resolution No. 72737 (the Schedule of Fees & Charges) as amended, to decrease the Cardroom Card Table Fee from \$25,527 per table to \$22,162 per table.
 - (b) **Gaming Control Licensing/Work Permit Unit:**
 - (1) Adopt the following 2009-2010 Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:
 - (a) Increase the Police Department's 2009-2010 General Fund Personal Services appropriation by \$219,956;
 - (b) Decrease the Police Department's 2009-2010 General Fund Non-Personal/Equipment appropriation by \$80,378;
 - (c) Increase the revenue estimate in the General Fund for Licenses and Permits by \$139,578.
 - (2) Authorize the addition of 2.0 Senior Auditor positions in the Police Department Division of Gaming Control as of January 2, 2010, with interim assistance obtained through January 2010.
 - (3) To make the following changes to the Work Permit Fees by adopting a resolution amending the adopted 2009-2010 Fees and Charges Resolution No. 72737 (the Schedule of Fees & Charges) as amended to:
 - (a) Change the Work Permit to Work Permit Fees – Cardroom Employee Work Permit and increase from \$333 per initial issue plus fingerprint fees to \$470 per initial issue plus fingerprint fees;

- 8.1 (b) (3) (b) **Change the Renewal to Work Permit Fees – Cardroom Employee Work Permit Renewal Fee and decrease from \$333 per renewal plus fingerprint fees to \$307 per renewal plus fingerprint fees;**
 - (c) **To add a Third Party Providers of Proposition Player Service Work Permit Fee as follows: \$470 per initial issue plus fingerprint fees;**
 - (d) **To add a Third Party Providers of Proposition Player Service Work Permit Renewal Fee as follows: \$307 per renewal plus fingerprint fees;**
 - (e) **To increase the General (Non-Criminal) Fingerprint Fee from \$10 per card to \$20 per card;**
 - (4) **To make the following changes to the Cardroom License Fees by adopting a resolution amending the adopted 2009-2010 Fees and Charges Resolution No. 72737 (the Schedule of Fees & Charges) as amended to:**
 - (a) **To remove the note under the service description under “Cardroom License Application Fee Deposit,” and add the explanation that “Cardroom License” refers to all categories of Licenses required under Title 16, including: Key Employee, Stock Ownership, Funding Source (Third Party Providers of Proposition Player Service), Funded Player and Funding Source Employee, Financial Source and Landowner, and amend the fee as follows: \$10,000 initial deposit for costs plus additional time billed at actual costs of the application processing and investigation, billed at top salary step, including benefits and overhead plus any actual costs such as, but not limited to, transportation, travel, and lodging for any City . . .**
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- 8.1 (b) (4) (a) **. . . employees. Additional deposits after the initial deposit may be required depending on the length, complexity, and scope of the investigation. At such time as a licensing hearing is requested by the applicant, a further deposit to pay the anticipated costs of the licensing hearing shall be required, including the cost of the hearing officer billed at top salary step, and the cost of services of the City Attorney’s Office;**

- 8.1 (b) (4) (b) To add a Cardroom License Renewal Application Fee Deposit and add the explanation that “Cardroom License” refers to all categories of Licenses required under Title 16, including: Key Employee, Stock Ownership, Funding Source (Third Party Providers of Proposition Player Service), Funded Player and Funding Source Employee, Financial Source and Landowner, and establish the fee as follows: \$5,000 initial deposit for costs plus additional time billed at actual costs of the application processing and investigation, billed at top salary step, including benefits and overhead plus any actual costs such as, but not limited to, transportation, travel, and lodging for any City employees. Additional deposits may be required after the initial deposit depending on the length, complexity, and scope of investigation. At such time as a licensing hearing is requested by the applicant, a further deposit to pay the anticipated costs of the licensing hearing shall be required, including the cost of the hearing officer billed at top salary step, and the cost of services of the City Attorney’s Office shall be required;
- (5) Adopt a resolution amending the adopted 2009-2010 Fees and Charges Resolution No. 72737 (the Schedule of Fees & Charges) as amended to: Amend the “Cardroom Permit Amendment Fee” fee as follows: \$5,000 initial deposit per amendment for costs plus additional time billed at actual costs of the application processing investigation, and holding the licensing hearing before the hearing officer, billed at top salary step, including benefits and overhead plus any actual costs such as, but not limited to, transportation, travel, and lodging for any City employees. Additional deposits after the initial deposit may be required depending on the length, complexity, and scope of the investigation and application hearing. The final cost of services, including the cost of services of the City Attorney’s Office at the application hearing shall also be included in the final fee determination by the Chief of Police at the close of the application hearing;
- (6) Adopt a resolution amending the adopted 2009-2010 Fees and Charges Resolution No. 72737 (the Schedule of Fees & Charges) as amended to Change the title “Appeal Hearing Deposit” to “Regulatory Action and Cease and Desist Hearing Fee” and amend the fee as follows: payment of the City’s reasonable costs of investigation and prosecution of the case, including attorneys’ fees incurred by the City up to the date of the hearing;

CEQA: Not a Project. (Police/City Manager’s Office)
(Deferred from 9/1/09 – Item 8.1)

Action: Deferred to October 20, 2009 by the Rules & Open Government Committee.

8.2 Approve the agreement between the City of San José and the Consortium for Police Leadership in Equity for research on issues of sociological and psychological dynamics in law enforcement and in police/community relations in the City of San José, with no monetary compensation by the City. (Police Department)

Documents Filed: (1) Memorandum from Deputy City Manager Deanna J. Santana, dated September 16, 2009, recommending approval of the agreement between the City of San José and the Consortium for Police Leadership in Equity (CPLE). (2) Supplemental memorandum from Deputy City Manager Deanna J. Santana, dated September 23, 2009, providing the proposed research agreement between the City of San José and the CPLE.

City Manager Debra Figone and City Attorney Richard Doyle provided clarifications to the agreement.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried unanimously, the agreement between the City of San José and the Consortium for Police Leadership in Equity for research on issues of sociological and psychological dynamics in law enforcement and in police/community relations in the City of San José, with no monetary compensation by the City, was approved. (10-0-1. Absent: Chirco.)

JOINT COUNCIL/REDEVELOPMENT AGENCY

9.1 Adopt resolutions by the City Council and the Redevelopment Agency Board amending the “City of San José Policy on Implementation of the Inclusionary Housing Requirement of Health & Safety Code Section 33413(b)(2)” for redevelopment project areas by providing a waiver of the requirement for a very low-, low- or moderate-income restriction on a for-sale unit when the affordable housing price is within five percent (5%) of the unrestricted market value of the unit. CEQA: Not a project. (Redevelopment Agency/City Manager’s Office)

(a) **Adopt a resolution by the City Council approving revisions to Council Policy 9-11, currently entitled “Distribution of Arena Tickets,” to broaden its application to distribution of any tickets or passes by the City to City/Agency officials and employees.**

(b) **Adopt a resolution by the Redevelopment Agency Board approving Revised Council Policy 9-11 as it applies to Agency officials and employees.**

CEQA: Not a Project. (Redevelopment Agency/City Manager’s Office)

Documents Filed: Memorandum from City Manager Debra Figone and Executive Director of the Redevelopment Agency Harry S. Mavrogenes, dated September 15, 2009, recommending adoption of resolutions.

Director of Housing Leslye Krutko responded to questions from Council.

9.1 (Cont'd.)

Action: Upon motion by Council Member Pyle, seconded by Council Member Liccardo and carried unanimously, [Resolution No. 75114](#), entitled: “A Resolution of the Council of the City of San José Amending the Joint City/Redevelopment Agency Inclusionary Housing Policy to Provide a Waiver of the Requirement for a Low-, Low- or Moderate-Income Restriction on a For-Sale Unit when the Affordable Housing Price is Within Five Percent (5%) of the Unrestricted Market Value of the Unit”; Redevelopment Agency Resolution No. 5931, entitled “A Resolution of the Board of Directors of the Redevelopment Agency of the City of San José Amending the Joint City/Redevelopment Agency Inclusionary Housing Policy to Provide a Waiver of the Requirement for a Very Low-, Low- or Moderate-Income Restriction on a For-Sale Unit When the Affordable Housing Price is Within Five Percent (5%) of the Unrestricted Market Value of the Unit”, were adopted. (10-0-1. Absent: Chirco.)

- 9.2 (a) **Adopt a resolution by the City Council approving revisions to Council Policy 9-11, currently entitled “Distribution of Arena Tickets,” to broaden its application to distribution of any tickets or passes by the City to City/Agency officials and employees.**
- (b) **Adopt a resolution by the Redevelopment Agency Board approving Revised Council Policy 9-11 as it applies to Agency officials and employees.**
- CEQA: Not a Project. (Redevelopment Agency/City Manager’s Office)**

Documents Filed: Memorandum from City Manager Debra Figone and Executive Director of the Redevelopment Agency Harry S. Mavrogenes, dated September 18, 2009, recommending adoption of resolutions.

City Attorney Richard Doyle and Chief Deputy Counsel Patricia Deignan provided clarification on the revised Council policy.

Public Comments: Ross Signorino offered suggestions on streamlining the process.

Extensive Council discussion followed.

Action: Upon motion by Council Member Pyle, seconded by Council Member Liccardo and carried unanimously, [Resolution No. 75115](#), entitled: “A Resolution of the Council of the City of San José Approving Revisions to City Council Policy 9-11 Regarding Distribution of Tickets to City and Redevelopment Agency Officials”; and Redevelopment Agency Resolution No. 5932, entitled: “A Resolution of the Board of Directors of the Redevelopment Agency of the City of San José Approving Revised City Council Policy 9-11, Currently Entitled “Distribution of Arena Tickets”, as it Applies to Agency Officials and Employees”, were adopted. (10-0-1. Absent: Chirco.)

STRATEGIC SUPPORT SERVICES

3.4 Accept staff's presentation to the City Council on ethical issues related to gifts. (City Attorney's Office)

Documents Filed: Memorandum from City Attorney Richard Doyle, dated September 16, 2009, recommending acceptance of the Staff's presentation on ethical issues related to recent changes in California law.

Action: The Staff presentation was received.

OPEN FORUM

Cathy Brandhorst expressed personal viewpoints on homelessness.

ADJOURNMENT

The Council of the City of San José was adjourned at 3:51 p.m. in memory of Donna Ward, Senior Librarian, who passed away September 14, 2009. (Library)

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

rmk/09/29/09MIN

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.

JOINT REDEVELOPMENT AGENCY ITEMS

The Joint Redevelopment Agency Board convened at 3:47 p.m. to consider Item 8.1 in a Joint Session.

- 8.1 (a) The Redevelopment Agency Board adopt a resolution approving amendments to the Redevelopment Agency's FY 2009-10 Adopted Capital Budget, adding \$2,804,532 for City Support Services and various capital projects in redevelopment areas and amending the FY 2009-10 Agency appropriations resolution.**
- (b) The City Council and Redevelopment Agency Board approve an amendment to the FY 2009-10 Cooperation Agreement to make payments to the City for 2nd Quarter Redevelopment Services and project expenses.**
- CEQA: Not a project. [MERGED]**

Documents Filed: Memorandum from Executive Director of the Redevelopment Agency Harry S. Mavrogenes and City Manager Debra Figone, dated September 18, 2009, recommending adoption of a resolution and approval of an amendment to the FY 2009-2010 Cooperation Agreement. (2) Supplemental memorandum from City Attorney Richard Doyle, dated September 25, 2009, including provisions to the original agreement.

Action: Upon motion by Council Member Chu, seconded by Council Member Liccardo and carried unanimously, Redevelopment Agency Resolution No. 5933, entitled: "A Resolution of the Board of Directors of the Redevelopment Agency of the City of San José Approving Amendments to the Redevelopment Agency's FY 2009-2010 Adopted Capital Budget, Adding \$2,804,532 for City Support Services and Various Capital Projects in Redevelopment Areas and Amending the FY 2009-2010 Agency Appropriations Resolution Agency Board", was adopted, and amendment to the FY 2009-2010 Cooperation Agreement to make payments to the City for 2nd Quarter Redevelopment Services and project expenses was approved. (10-0-1. Absent: Chirco.)

The Council of the City of San José and Redevelopment Agency Board was adjourned at 3:51 p.m.