

## MINUTES OF THE CITY COUNCIL

**SAN JOSE, CALIFORNIA**

**TUESDAY, OCTOBER 20, 2009**

The Council of the City of San José convened in regular session at 9:00 a.m. in the Council Chambers at City Hall.

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

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

Upon motion unanimously adopted, Council recessed at 9:03 a.m. to a Closed Session in Room W133, to confer with Legal Counsel pursuant to (A) Government Code subsection (a) of Section 54956.9 with respect to existing litigation: (1) San José Silicon Valley Chamber of Commerce Political Action Committee, Compac Issues Fund, Sponsored by the San José Silicon Valley Chamber of Commerce, City of San José, San José Elections Commission, Does 1 through 10; Court: Superior Court of California, County of Santa Clara; Case No: 1-09-CV-14667; Amount of Money or Other Relief Sought: Challenge to SJMC 12.06.301. (B) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) International Association of Firefighters, Local 230; Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (2) Association of Legal Professionals of San José; Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; (3) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (4) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW; (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO; (6) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP; (7) Municipal Employees' Federation,

## **CLOSED SESSION (Cont'd.)**

AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (8) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP; (9) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (10) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3; (11) San José Police Officers' Association; Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. 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 11:02 a.m. and reconvened to Regular Session at 1:33 p.m. in the Council Chambers.

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

Absent: Council Members - None.

## **INVOCATION**

Mihir Meghani, MD, President and Co-Founder, Hindu American Foundation, provided the Invocation. (District 9)

## **PLEDGE OF ALLEGIANCE**

Mayor Reed led the Pledge of Allegiance.

Boy Scouts Pack 294 (District 10) led the Pledge of Allegiance at the evening Council session.

## **ORDERS OF THE DAY**

Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the Orders of the Day and the Amended Agenda were approved, and Item 3.9 was deferred to October 27, 2009. (11-0.)

## CEREMONIAL ITEMS

### **1.1 Presentation of a commendation to Alumawall for being a successful manufacturing business. (Economic Development)**

Action: Mayor Reed, Council Member Nguyen and Chief Development Officer Paul Krutko recognized Alumawall for being a successful manufacturing business.

### **1.2 Presentation of a commendation to the Hindu American Foundation. (Nguyen/Kalra)**

Action: Mayor Reed and Council Members Nguyen and Kalra recognized and commended the Hindu American Foundation.

### **1.4 Presentation of a commendation to the Alum Rock Village Business Association for their hard work in hosting the 2<sup>nd</sup> Annual Salsa Festival. (Campos) (Rules Committee referral 10/14/09)**

Action: Mayor Reed and Council Member Campos recognized and commended the Alum Rock Village Business Association for their hard work in hosting the 2<sup>nd</sup> Annual Salsa Festival.

### **1.6 Presentation of a commendation to the Association of the Vietnamese Elderly of the Bay Area for its dedicated work to support and foster civic participation among the elderly community in San José. (Constant) (Rules Committee referral 10/14/09)**

Action: Mayor Reed and Council Member Constant recognized the Association of the Vietnamese Elderly of the Bay Area for its dedicated work to support and foster civic participation among the elderly community in City of San José.

## CONSENT CALENDAR

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

### **2.1 Approval of Amended Regular Minutes: (a) Amended Regular Minutes of August 4, 2009**

Documents Filed: Memorandum from City Clerk Lee Price, dated October 9, 2009, recommending approval of an amendment to Page of the City Council Minutes of August 4, 2009.

Action: The amended Regular Minutes dated August 4, 2009, were approved. (11-0.)

- 2.2 (a) **ORD. NO. 28652 – Amending of Part 2 of Chapter 13.48 of Title 13 of the San José Municipal Code to Revise Section 13.48.110 to Eliminate the Requirement to forward a Historic Landmark Nomination to the Historic Landmarks Commission when the Historic Landmarks Commission is the Nominating Entity, allowing the Director of Planning, Building and Code Enforcement to initiate the procedure for Historic Landmark Designation, and making other Nonsubstantive Clarifying Changes.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28652 executed on October 16, 2009, submitted by the City Clerk.

Action: [Ordinance No. 28652](#) adopted.

- 2.3 (a) **Request for an excused absence for Vice Mayor Chirco from the Regular Meeting of the Rules and Open Government Committee on September 30, 2009 due to illness. (Chirco)**
- (b) **Request for an excused absence for Vice Mayor Chirco from the Regular Meeting of the Rules and Open Government Committee on October 28, 2009 due to illness – medical appointment. (Chirco)**
- (c) **Request for an excused absence for Council Member Constant from the Regular Meeting of the City Council on November 10, 2009 and the Regular Meeting of the Federated employees Retirement Board on November 12, 2009 due to authorized City business: attendance at the 2009 National League of Cities Congress of Cities Conference in San Antonio, Texas. (Constant)**
- (d) **Request for an excused absence for Vice Mayor Chirco from the Regular Meeting of the Rules and Open Government Committee on October 14, 2009 due to illness.**
- (e) **Request for an excused absence for Council Member Chu from the Study Session for the Redevelopment Agency Proposed FY2009-10 Operating & Capital Budget on November 9, 2009, the City Council Meeting/Closed Session on November 10, 2009 and the Neighborhood Services and Education Committee Meeting on November 12, 2009 due to authorized City business to attend the National League of Cities Congress of Cities and Exposition, San Antonio, TX. (Chu)**
- (f) **Requests for an excused absence for Council Member Chu from the Public Safety, Finance and Strategic Support Committee on November 19, 2009 due to authorized City business to attend the League of California Cities Board of Director’s Meeting, Anaheim, CA. (Chu)**  
**(Rules Committee referrals 10/7/08 and 10/14/09)**

Documents Filed: (1) Memoranda from Vice Mayor Chirco, dated September 30, 2009, and October 5, 2009, requesting excused absences due to illness. (2) Memorandum from Council Member Constant, dated October 5, 2009, requesting an excused absence due to authorized City business. (3) Memorandum from Vice Mayor Chirco, dated October 13, 2009, requesting an excused absence due to illness. (4) Memoranda from Council Member Chu, dated September 30, 2009 and October 5, 2009, requesting excused absences due to authorized City business.

**2.3 (Cont'd.)**

Action: The absences for Vice Mayor Chirco and Council Members Constant and Chu were excused. (11-0.)

**2.4 Approve settlement and authorize the City Attorney to execute a Settlement Agreement and Release with Julie La Blanc, providing for payment by the City in the amount of \$200,000 in settlement of her lawsuit. CEQA: Not a Project. (City Attorney's Office)**

Documents Filed: Memorandum from City Attorney Richard Doyle, dated October 2, 2009, recommending approval of the settlement and authorization to execute a Settlement and Release with Julie La Blanc.

Council Member Pyle shared her opinion that she does not approve of pornography in the work place and every Council Member concurred.

Motion: Council Member Pyle moved approval of the staff recommendations. Council Member Campos seconded the motion.

Public Comments: Ross Signorino expressed his views on the subject settlement.

Mayor Reed commented that the City of San José has a very strong policy about pornography in the work place and that it is regrettable that this incident happened.

Action: On a call for the question, the motion carried unanimously, the City Attorney was authorized to execute a Settlement Agreement and Release with Julie La Blanc, providing for payment by the City in the amount of \$200,000 in settlement of her lawsuit. (11-0.)

**2.5 Approve travel by Council Member Constant to San Antonio, TX on November 11-14, 2009 to attend the National League of Cities Congress of Cities and Exposition Conference. Source of Funds: Mayor & Council Travel Fund. (Constant) (Rules Committee referral 10/7/09)**

Documents Filed: Memorandum from Council Member Constant, dated October 2, 2009, requesting authorization to travel.

Action: The travel request for Council Member Constant was approved. (11-0.)

**2.6 Report on Request for Proposals for Landscaping Services for Community Facilities Districts 2 and 3, and authorize the Director of Finance to:**

- (a) Execute a service order with Jensen Landscape (San José, CA) for a one-year term and a maximum compensation not to exceed \$500,000.00.
- (b) Exercise four, one-year options to renew the purchase order subject to appropriation of funds.

**CEQA: Exempt, File No. PP04-191. Council District 8. (Finance)**

## 2.6 (Cont'd.)

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated September 28, 2009, recommending authorization for the Director of Finance to execute a service order with Jensen Landscape, including four, one-year options.

Action: The Director of Finance was authorized to execute a service order with Jensen Landscape for a one-year term and a maximum compensation not to exceed \$500,000 and to exercise four, one-year options to renew the purchase order subject to appropriation of funds. (11-0.)

## 2.7 **Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with the Santa Clara Valley Water District for cost sharing associated with water conservation programs in FY 2009-2010, under which the City will receive an amount not to exceed \$205,000 and the City will pay the District an amount not to exceed \$500,000 for a net cost to the City of \$295,000. CEQA: Not a Project. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated September 28, 2009, recommending adoption of a resolution. (2) Letter from the Treatment Plant Advisory Committee Chair Chuck Reed, dated September 28, 2009, stating concurrence with the Staff recommendations.

Action: [Resolution No. 75129](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with the Santa Clara Water District for Cost Sharing in Implementation of Water Conservation Programs for Fiscal Year 2009-2010", was adopted. (11-0.)

## 2.8 **Adopt a resolution authorizing the Director of Environmental Services to execute a first amendment to the New Construction of Various Equipment 2008-2009 Contract with Anderson Pacific Engineering and Construction Inc. to:**

- (a) **Change the contract term from a one year term with the option of two additional one year terms to a two year contract term.**
- (b) **Modify the compensation to enable the payment of the total contract amount up to \$1,450,930.00 over a two year term instead of paying the total contract amount over a one year term with two optional one year terms.**

**CEQA: Exempt, File No. PP08-202. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated September 28, 2009, recommending adoption of a resolution. (2) Letter from the Treatment Plant Advisory Committee Chair Chuck Reed, dated September 28, 2009, stating concurrence with the Staff recommendations.

Action: [Resolution No. 75130](#), entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Environmental Services to Execute a First Amendment with Anderson Pacific Engineering Construction, Inc. for New Construction of Various Equipment, FY2008-2009 (San José/Santa Clara Water Pollution Control Plant)", was adopted. (11-0.)

**2.9 Approval of an amendment to the agreement with Mobile Modular Management Corporation to:**

- (a) Extend the term of the agreement by six months to July 12, 2010, and
- (b) Increase the total maximum amount of compensation by \$23,465.76 from \$98,856.93 to a total contract amount no to exceed \$122,322.69.

**CEQA: Not a Project. (Environmental Services/General Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean and Director of General Services Peter Jensen, dated September 28, 2009, recommending approval of an amendment to the agreement. (2) Letter from the Treatment Plant Advisory Committee Chair Chuck Reed, dated September 28, 2009, stating concurrence with the Staff recommendations.

Action: An amendment to the agreement with Mobile Modular Management Corporation was approved to extend the term of the agreement by six months to July 12, 2010 and increase the total maximum amount of compensation by \$23,465.76 from \$98,856.93 to a total contract amount no to exceed \$122,322.69. (11-0.)

**2.10 Adopt a resolution supporting the goals of the East Foothills Community Wildfire Protection Plan for the area east of San José developed by the Santa Clara County FireSafe Council and authorizing the Mayor and the Fire Chief to sign the mutual agreement page of the East Foothills supporting the plan as requested by the Santa Clara County FireSafe Council. CEQA: Exempt, File No. PP09-169. (Fire)**

Documents Filed: Memorandum from Fire Chief Darryl Von Raesfeld, dated September 28, 2009, recommending adoption of a resolution.

Council Member Campos pulled Item 2.10 from the Consent Calendar for clarification on the East Foothills Community Wildfire Protection Plan for the area east of San José developed by the Santa Clara County FireSafe Council.

Public Comments: Allan Thompson, Santa Clara County FireSafe Council, expressed support to the Staff recommendations.

Action: Upon motion by Council Member Campos, seconded by Council Member Herrera and carried unanimously, [Resolution No. 75131](#), entitled: “A Resolution of the Council of the City of San José Supporting the Goals of the East Foothills Community Wildfire Protection Plan”, was adopted. (11-0.)

**2.11 Approval of a Transportation Fund for Clean Air grant agreement with the Santa Clara Valley Transportation Authority (VTA) in the amount of \$501,674 for the retiming of 109 traffic signals. CEQA: Resolution Nos. 60197 and 63179, File No. PP08-154. Council Districts 2, 3, 6, 7 and 10. SNI: 13th Street; Brookwood Terrace; Edenvale; Great Oaks; Five Wounds; Spartan-Keys; Tully-Senter and University. (Transportation)**

Documents Filed: Memorandum from Director of Transportation James Helmer, dated September 28, 2009, recommending approval of the grant agreement.

**2.11 (Cont'd.)**

Action: The Transportation Fund for Clean Air grant agreement with the Santa Clara Valley Transportation Authority in the amount of \$501,674 for the retiming of 109 traffic signals was approved. (11-0.)

**2.12 Adopt a resolution to repeal Resolution No. 74769 and to set forth the Master Parking Rate Schedule to:**

- (a) Continue the Parking Incentive Programs for Software and Environmental Businesses, Downtown Incubators, and new Business/Tenants in Class “B” & “C” buildings, and the Clean Air Vehicle Program through June 30, 2011.**
- (b) Add a special event rate (\$3-25) for the Woz/87 Parking Lot, Almaden/Balbach Parking Lot, and the City Hall Garage.**
- (c) Establish a flexible rate (\$0-25) for the Arena/Diridon Area Parking Meter District.**

**CEQA: Not a Project. Council District 3. (Transportation)**

Documents Filed: Memorandum from Director of Transportation James Helmer, dated September 28, 2009, recommending adoption of a resolution.

Action: [Resolution No. 75132](#), entitled: “A Resolution of the Council of the City of San José To Set Forth the Master Parking Rate Schedule for Municipal On and Off Street Parking Facilities to Continue and Expand Various Parking Incentive Programs Through June 30, 2011; To Add a Special Event Parking Rate (\$3-\$25) for the Almaden/Balbach and Woz/87 Parking Lots and the City Hall Garage; Establish a Flexible Rate (\$0-\$25) for the Arena/Diridon Area Parking Meter District; To Delete Certain Parking Facilities No Longer Owned or Operated by City; To Make Certain Other Clarifying Changes and To Repeal Resolution No. 74769 Effective Upon City Council Approval”, was adopted. (11-0.)

- 2.13 (a) Approve the First Amendment to the Amended and Restated Cooperative Agreement between the City of San José and the Santa Clara Valley Transportation Authority for the Route 101/De La Cruz Boulevard/Trimble Road Interchange Reconstruction Project, extending the term of the agreement from October 24, 2009 through December 31, 2010, at no additional cost to the City.**
- (b) Adopt a resolution authorizing the City Manager to negotiate and execute a Second Amendment to the Amended and Restated Cooperative Agreement between the City of San José and the Santa Clara Valley Transportation Authority for the Route 101/De La Cruz Boulevard/Trimble Road Interchange Reconstruction Project, expanding the scope of services and increasing the City’s contribution by \$150,000 from \$700,000 to \$850,000.**

**CEQA: EIR Resolution No. 72768, adopted on June 21, 2005. Council Districts 3 and 4. (Transportation)**

Documents Filed: Memorandum from Director of Transportation James Helmer, dated October 6, 2009, recommending approval of the first agreement and adoption of a resolution.

**2.13 (Cont'd.)**

Action: The First Amendment to the Amended and Restated Cooperative Agreement between the City of San José and the Santa Clara Valley Transportation Authority for the Route 101/De La Cruz Boulevard/Trimble Road Interchange Reconstruction Project, extending the term of the agreement from October 24, 2009 through December 31, 2010, at no additional cost to the City was approved and [Resolution No. 75133](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Second Amendment to the Restated Cooperative Agreement Between the City of San José and the Santa Clara Valley Transportation Authority”, was adopted. (11-0.)

- 2.14 Approve travel by Council Member Nguyen to New York City, NY on November 9-10, 2009 to participate in “Changing the Odds: Learning from the Harlem Children’s Zone Model” as part of a delegation that includes members from the Franklin McKinley School Board and the Silicon Valley Education Foundation. Source of Funds: David and Lucille Packard Foundation. (Nguyen)  
[Rules Committee referral 10/17/09 – Item A(1)(a)]**

Documents Filed: Memorandum from Council Member Nguyen, dated October 7, 2009, requesting approval of travel.

Action: The travel request for Council Member Nguyen was approved. (11-0.)

- 2.15 As recommended by the Rules and Open Government Committee on October 14, 2009, consider the following City Council and Redevelopment Agency Sponsored Special Events:**

- (a) Youth Job Fair:**
  - (1) Approve the Youth Job Fair as a City Council Sponsored Special Event.**
  - (2) Approve and accept in-kind donations from business to support the event.**
- (b) District 2 Edenvale Technology Park Resource Fair:**
  - (1) Approve the District 2 Edenvale Technology Park Resource Fair as a City and Redevelopment Agency Sponsored Special Even.**
  - (2) Approve and accept in-kind donations from various individuals, businesses, or community groups to support the event.**
- (c) District 4 Mid Autumn Festival:**
  - (1) Approve the District 4 Mid Autumn Festival as a City Council Sponsored Special Event.**
- (d) District 5 Christmas Toy Drive:**
  - (1) Approve the District 5 Christmas Toy Drive as a City Council Sponsored Special Event.**
  - (2) Approve and accept donations from various individuals, businesses, or community groups to support the event.**

**(City Clerk)**

**[Rules Committee referral 10/17/09 – Items H(3) – H(6)]**

## 2.15 (Cont'd.)

Documents Filed: Memorandum from City Clerk Lee Price, dated October 16, 2009, transmitting the recommendations of the Rules and Open Government Committee.

Action: The City Council and Redevelopment Agency sponsored special events were approved. (11-0.)

### END OF CONSENT CALENDAR

## STRATEGIC SUPPORT SERVICES

### 3.2 Report of the Rules and Open Government Committee – September 23, 2009 Mayor Reed, Chair

Documents Filed: The Rules and Open Government Committee Report dated September 23, 2009.

Action: Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, the Report of the Rules and Open Government Committee and the actions of September 23, 2009, were accepted. (11-0.)

- 3.4
- (a) **Accept the 2008-2009 City Manager's Annual Report of the Finances of the City of San José in compliance with City Charter 701(F).**
  - (b) **Adopt Appropriation Ordinance and Funding Sources Resolution amendments in various operating and capital funds to implement the 2008-2009 Annual Report recommendations, including appropriate technical adjustments, as detailed in Section III (Recommended Budget Adjustments and Clean-Up Actions).**
  - (c) **Adopt a resolution approving amendments to City Council Policy 1-18 entitled Operating Budget and Capital Improvement Program Policy to modify the distribution of General Fund Ending Fund Balance and the Sale of Surplus Property Proceeds as described in the Mayor's June budget Message for Fiscal Year 2009-2010 and approved by the City Council.**
  - (d) **Adopt a resolution amending Resolution No. 72737 (the Schedule of Fees & Charges) as amended to eliminate the subpoenaed officer court appearance fee.**
- (City Manager's Office)

*Note: Item 3.4 was heard in conjunction with Item 3.6.*

Documents Filed: (1) The 2008-2009 Annual Report dated September 2009 from the Office of the City Manager. (2) Staff presentation on the 2008-2009 Annual Report dated October 20, 2009.

### 3.4 (Cont'd.)

Budget Director Jennifer Maguire presented an overview of the 2008-2009 Annual Report and Assistant Director of Finance Julia Harper Cooper summarized the Proposition 1A Securitization Program; and responded to Council questions.

Motion: Council Member Constant moved acceptance of the 2008-2009 City Manager's Annual Report of the Finances of the City of San José in compliance with City Charter 701(F) and the actions required for implementation. Council Member Oliverio seconded the motion.

Public Comments: Bob Brownstein stated that there should be full disclosure of any excess fund balances. Ross Signorino commented that everyone should shop in San José because taxes are needed here.

Action: On a call for the question, the motion carried unanimously, the 2008-2009 Annual Report dated September 2009 from the Office of the City Manager was accepted, [Ordinance No. 28653](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the Various Funds to Implement 2008-2009 Annual Report Recommendations and Make Appropriate Technical Adjustments; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption"; [Resolution No. 75128](#), entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 74956 to Implement the 2008-2009 Annual Report Recommendations and Make Appropriate Technical Adjustments to Adjust Revenues in Various Operating Funds"; [Resolution No. 75134](#), entitled: "A Resolution of the Council of the City of San José Approving Revisions to City Council Policy 1-18, Operating Budget and Capital Improvement Program Policy" and [Resolution No. 75135](#), entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 72737 as Previously Amended by Resolutions Numbers 73019, 73056, 73242, 73637, 73831, 73879, 73881, 74035, 74047, 74452, 74839, 74841 and 74981 To Eliminate the Subpoenaed Officer Court Appearance Fee", were adopted. (11-0.)

### 3.5 **Acceptance of Team San José performance measures for 2009-2010. CEQA: Not a Project. (Economic Development)**

Action: Deferred to November 3, 2009 per Rules and Open Government Committee.

### 3.6 **Adopt a resolution approving the form of Purchase and Sale Agreement and related documents with respect to the sale of the City of San José's Proposition 1A Receivable from the State of California and authorizing the City Manager, or other authorized officers, to execute and deliver these documents, and authorizing and directing other actions as necessary in connection with the completion of the sale of the Proposition 1A Receivable. (Finance/City Manager's Office)**

*Note: Item 3.6 was heard in conjunction with Item 3.4.*

### 3.6 (Cont'd.)

Documents Filed: (1) Memorandum from Assistant Director of Finance Julia Harper Cooper and Budget Director Jennifer Maguire, dated October 6, 2009, recommending adoption of a resolution. (2) Supplemental memorandum from Assistant Director of Finance Julia Harper Cooper and Budget Director Jennifer Maguire, dated October 16, 2009, transmitting an update to the status of the budget clean-up bill (SB 67) which provides for a few critical changes to the enacted legislation for Proposition 1A Securitization that was necessary in order to make the program viable.

Action: Upon motion by Council Member Constant, seconded by Council Member Oliverio and carried unanimously, [Resolution No. 75136](#) was adopted. (11-0.)

### 3.7 **As recommended by the Elections Commission, approve an ordinance amending Chapter 12.06 of Title 12 of the San José Municipal Code related to Campaign Finance Regulations. (City Attorney/City Clerk)**

Documents Filed: (1) Memorandum from Mayor Reed, dated October 14, 2009, recommending acceptance of the staff recommendations with modifications. Memorandum from Council Members Campos, Kalra and Pyle, dated October 15, 2009, recommending acceptance of the staff recommendations, including additions and modifications. (3) Supplemental memorandum from City Attorney Richard Doyle, dated October 13, 2009, providing information concerning constitutionality of contribution limits. (4) Memorandum from City Clerk Lee Price, dated October 8, 2009, transmitting the early distribution of proposed revisions to Title 12 of the San José Municipal Code as it relates to the City's Campaign Finance Regulations. (5) Staff presentation on the Proposed Revisions to the Municipal Code - Recommendations from the Elections Commission dated October 20, 2009. (6) Speaker card from Ben Field, South Bay Labor Council, noting his support for the staff recommendations but declined to speak.

Senior Deputy City Attorney Lisa Herrick presented the proposed Revisions to the Municipal Code – Recommendations from the Elections Commission.

City Attorney Richard Doyle explained implications of the Consumer Price Index to keep up with inflation and responded to Council questions.

Motion: Council Member Campos moved approval of the memorandum she cosigned with Council Members Kalra and Pyle, including revising the effective date to January 1, 2011. Council Member Liccardo seconded the motion.

Council Member Constant requested to amend the motion, and as amended by Senior Deputy City Attorney Lisa Herrick, to include a cost of living adjustment based on the San Francisco Bay Area Consumer Price Index (CPI), as published by the U.S. Department of Labor, Bureau of Statistics. The amendment was accepted by Council Members Campos and Liccardo.

Mayor Reed expressed support to the recommendations.

### **3.7 (Cont'd.)**

Action: On a call for the question, the motion carried unanimously, the proposed ordinance was approved, revising Chapter 12.06 of the Municipal Code as recommended by the Elections Commission, with the following modifications: (1) Increase the contribution limits as recommended by the Elections Commission effective January 1, 2011. (2) Include a cost of living adjustment based on the San Francisco Bay Area Consumer Price Index (CPI), as published by the U.S. Department of Labor, Bureau of Statistics. (3) Maintain the City's current requirement that candidates and candidate controlled committees itemize all contributions received, including those less than \$100. The City Council referred to the Elections Commission a review of the formula used to calculate the Voluntary Expenditure Limit (VEL) with a request to make a recommendation to the City Council. [Ordinance No. 28654](#), entitled: "An Ordinance of the City of San José Amending Sections 12.06.210, 12.06.310 and 12.06.540 of the San José Municipal Code to Increase Contribution Limits and Impose an Annual Increase on Contribution Limits Based on the Consumer Price Index; Amending Sections 12.06.230, 12.06.310 and 12.06.320 to Clarify the Contributions Regulated; and Repealing Sections 12.06.270 and 12.06.280 to Eliminate Redundancy", was passed for publication, as amended. (11-0.)

### **3.9 Report of the Rules and Open Government Committee – September 30, 2009 Mayor Reed, Chair**

Action: Deferred to October 2, 2009 per Orders of the Day.

## **COMMUNITY & ECONOMIC DEVELOPMENT**

### **4.1 Report of the Community & Economic Development Committee – September 28, 2009 Council Member Pyle, Chair**

Documents Filed: The Community & Economic Development Committee Report dated September 28, 2009.

Action: Upon motion by Council Member Pyle, seconded by Council Member Kalra and carried unanimously, the Report of the Community & Economic Development Committee and the actions of September 28, 2009, were accepted. (10-0-1. Absent: Campos.)

- ### **4.2 As recommended by the Community and Economic Development Committee:**
- (a) Accept Report on Evaluation of Service Delivery Changes in the Proposed FY2009-10 Budget.**
  - (b) Adopt a Resolution:**
    - (1) Approving a new Council Policy 0-41 entitled "Service Delivery Evaluation" establishing a decision making framework to evaluate service delivery models.**
    - (2) Revising Council Policy 0-29, the "Public Private Competition Policy".**

## 4.2 (Cont'd.)

Documents Filed: (1) Memorandum from Mayor Reed, dated October 14, 2009, recommending approval of the staff recommendations with amendments. (2) Memorandum from Council Member Pyle, dated October 15, 2009, stating recommendations as described in "Action". (3) Memorandum from City Clerk Lee Price, dated October 16, 2009, transmitting the recommendations of the Community & Economic Development Committee. (4) Staff presentation on Competition Policy Review, Evaluating Service Delivery dated October 20, 2009.

Mayor Reed, Vice Mayor Chirco, Council Members Constant, Chu, Campos and Herrera provided meeting disclosures.

City Manager Debra Figone offered opening remarks.

Senior Analyst Sheila Tucker and Chief Deputy City Manager Ed Shikada presented the Competition Policy Review – Evaluating Service Delivery.

Mayor Reed urged his colleagues to support his memorandum to implement the recommendations of the stakeholder groups.

Motion: Council Member Constant moved approval of the memorandum from Mayor Reed, dated October 14, 2009, approving the staff recommendations with amendments. Council Member Liccardo seconded the motion.

Substitute Motion: Council Member Pyle moved approval of her memorandum dated October 15, 2009, stating recommendations as further described in "Action". Council Member Nguyen seconded the motion.

Council Member Herrera requested to amend the substitute motion to amend Item (b) in action to provide public access to these records as identified in the Request for Proposal (RFP) through requests to the City under the same terms and conditions that the City provides City records and at the same cost. Any request for additional record keeping will be done on a yearly basis through review of the contract. The amendment was accepted by Council Members Pyle and Nguyen.

City Attorney Richard Doyle responded to Council questions and comments.

Public Comments: Speaking to the Competition Policy Review – Evaluating new service delivery models were Nancy Ostrowski, AEA/IFPTE Labor Union 21, Jerry Barousse, Elisa Koff-Ginsborg, Bob Brownstein, Working Partnerships, Michele Beetolone, Gay Gale, City Association of Management Personnel, Pat Sausedo, San José Silicon Valley Chamber of Commerce, Ben Field, South Bay Labor Council, Peter Szegg, Jerry Mungai, Linda Dittes and Yolanda Cruz, AFSCME/MEF, and Ross Signorino.

## 4.2 (Cont'd.)

Extensive Council discussion followed.

Council Member Campos requested to amend the substitute motion to refer to the Elections Commission the proposed “Pay to Play” prohibition (campaign contribution restrictions) for further analysis and comparison with other large cities, i.e. Oakland and San Francisco, with a request to make a recommendation to the City Council. The amendment was accepted by Council Members Pyle and Nguyen.

Mayor Reed and Council Members Constant and Oliverio expressed opposition to the substitute motion.

Action: On a call for the question, the substitute motion carried, [Resolution No. 75137](#) was adopted, as amended by the memorandum from Council Member Pyle, dated October 15, 2009, as modified: (i) Amend Step #1 of the proposed Council Policy 0-41 entitled Service Delivery Evaluation to read, as follows: For the purposes of this Policy, a business case analysis will be undertaken to evaluate Service Delivery changes that are expected to result in the addition, deletion, or reclassification of four (4) or more City full-time equivalent (FTE) positions. (ii) Add to the Revised Council Policy 0-29 entitled Public Private Competition Policy a provision regarding public access to records that requires the contractor and their subcontractors to: (a) Keep and maintain records that ordinarily and necessarily would be required by the City in order to perform the service or activity. (b) Provide public access to these records as identified in the Request for Proposal (RFP) through requests to the City under the same terms and conditions that the City provides City records and at the same cost. Any request for additional record keeping will be done on a yearly basis through review of the contract. (c) Ensure confidential and exempt records are not disclosed except as authorized by City ordinance or policy. (iii) Report back to Community & Economic Development Committee the number of City services that have been reviewed by the Service Delivery Evaluation Policy and the number of City services that have been changed but did not go through the more extensive Service Delivery Evaluation in January of 2011. Include information about length of time to award a contract, cost difference to the City, customer (City) satisfaction and provide Staff evaluation on the policies to determine if Council should consider any other changes to the policies. The City Council referred to the Elections Commission the proposed “Pay to Play” prohibition (campaign contribution restrictions) for further analysis and comparison with other large cities (similar to Oakland and San Francisco) with a request to make a recommendation to the City Council. (7-4. Noes: Constant, Liccardo, Oliverio; Reed.)

- 4.2 (b) (3) **Consider revising the staff recommendations, as amended by the memorandum from Council Member Kalra, dated September 25, 2009, as modified by the Community and Economic Development Committee on September 28, 2009.**

(City Manager’s Office)

[Community and Economic Development Committee referral 9/28/09 – Item D(3)]

Action: There was no action taken on Item 4.2(b)(3).

- 4.3 As recommended by the Community and Economic Development Committee on September 28, 2009, accept staff's verbal progress update report on the Mayors' Budget Message directive to review marketing budgets and identify opportunities to improve collaboration and use resources most effectively on the effort to communicate key San José messages through the national /international media. (Economic Development/Redevelopment Agency/Mayor)  
[Community and Economic Development Committee referral 9/28/09 – Item D(4)]**

Action: Deferred to October 27, 2009 per Rules and Open Government.

## **TRANSPORTATION & AVIATION SERVICES**

### **6.1 Report of the Transportation and Environment Committee – October 5, 2009 Council Member Liccardo, Chair**

Documents Filed: the Transportation and Environment Committee Report dated October 5, 2009.

Motion: Council Member Liccardo moved approval of the Transportation and Environment Committee Report and the actions of October 5, 2009. Council Member Herrera seconded the motion.

Motion: Richard Calhoun expressed his opposition to acceptance of the report on the indoor air quality in the context of Item 6.1(d)(4), Green Building Ordinance for New Private Sector Construction with regard to formaldehyde emitted from building materials.

Linda Kincaid, Industrial Hygienist, spoke in objection and discussed tests for formaldehyde levels; she claimed that GreenPoint rated homes have higher formaldehyde emission levels than homes that do not receive GreenPoint Rating.

Mayor Reed asked for clarification about Build It Green's testimony from the Transportation and Environment Committee on October 5, 2009. Director of Planning, Building and Code Enforcement Joseph Horwedel replied that Build It Green's representative addressed the issues that were raised at the Committee meeting and added that although Staff feels this is a very important issue it should be addressed at the State level.

Mayor Reed referred the tracking and monitoring of the State regulations of indoor air quality testing to the Legislative Staff; Staff to return to Council with a report or any action that needs to be taken by the City Council. Council Members Liccardo and Herrera accepted the amendment.

Action: On a call for the question, the motion carried unanimously, the Report of the Transportation and Environment Committee and the actions of October 5, 2009, were accepted, with the Legislative Staff to track and monitor the State regulations of indoor air quality testing to the Legislative Staff; Staff to return to Council with a report or any action that needs to be taken by the City Council. (10-0-1. Absent: Constant.)

**6.3 As recommended by the Transportation and Environment Committee on October 5, 2009:**

- (a) Accept this staff report on key special event recycling accomplishments and opportunities for improvement**
- (b) Effective May 1, 2010, require special events with over 1,000 attendees, as a condition of their Event Authorization to do the following:**
  - (1) Ban Styrofoam™ use by food vendors;**
  - (2) Require the use of use # 1 Polyethylene terephthalate plastic recyclable beverage containers for cups 7oz and greater, and paper cups for less than 7 oz.; and**
  - (3) Collect, at minimum, plastics, glass, metals, and cardboard for recycling.**
- (c) Establish a Green Events Grants Program to help off-set additional costs associated with producing green events in San José.**

**(Environmental Services)**

**[Transportation and Environment Committee referral 10/5/09 – Item C(1)]**

Action: Deferred to November 10, 2009 per Administration.

## **PUBLIC SAFETY SERVICES**

- 8.1 (a) Rescind the staff recommendations as noted in the memorandum dated August 18, 2009; and**
- (b) Direct staff to develop a work plan that addresses broader concerns expressed by the City's gaming businesses, as noted in the supplemental memo, and return in November with a recommendation specific to addressing the card room's Funding Sources.**

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

**(Deferred from 9/1/09 – Item 8.1 and 9/29/09 – Item 8.1)**

Documents Filed: (1) Memorandum from Mayor Reed, dated October 9, 2009, recommending acceptance of the supplemental memorandum from Staff, dated October 5, 2009, including direction to Staff as described in "Action". (2) Supplemental memorandum from Deputy City Manager Deanna J. Santana, dated October 5, 2009, recommending rescinding the Staff recommendation; and direct Staff to develop a work plan that addresses broader concerns expressed by the City's gaming businesses and return in November with a recommendation specific to addressing the cardroom's funding sources.

Motion: Vice Mayor Chirco moved approval of the memorandum from Mayor Reed, dated October 9, 2009, with direction to Staff, including the Staff recommendations in the supplemental memorandum dated October 5, 2009. Council Member Pyle seconded the motion.

Public Comments: Ross Signorino commented about rising crime rate around the cardrooms.

## 8.1 (Cont'd.)

Deputy City Manager Deanna J. Santana noted that Staff will return to Council in December 2009 or January 2010 with a work plan that addresses broader concerns expressed by the City's gaming businesses with a recommendation specific to addressing the cardroom's funding sources.

Action: On a call for the question, the motion carried, the memorandum from Mayor Reed, dated October 9, 2009, was approved, accepting Staff's recommendation in the supplemental memorandum dated October 5, 2009, to develop a work plan and to return in *December 2009 or January 2010* with a recommendation regarding funding sources and to direct Staff to implement the following: (1) Incorporate into the Municipal Code an appeal process for the Chief of Police to review revocation of temporary licenses. (2) Amend the Municipal Code to specify that, if approval of the application of a license takes longer than 180 days, the gaming administrator must give a written explanation of the reasons for the delay and an estimated date for completion of the review, which will be updated every two months until the application has been issued, withdrawn or denied. (3) Streamline the license renewal process and allow the gaming administrator to grant extensions of existing licenses so that Staff can focus efforts on reducing the backlog of pending licenses. (4) Direct the City Manager to develop performance measures for timely issuance of work permits and licenses and make quarterly reports to the Community & Economic Development Committee on the status of all pending permits and licenses starting in January 2010 and continuing until such time as permitting and licensing are meeting performance measures. (5) Incorporate into the pending audit of card room regulatory oversight efficiency and effectiveness: (a) a comparison of the scope and cost of background investigations for licenses for owners, key employees and third party proposition players with the State and other California jurisdictions with at least 20 tables; (b) a comparison of the cost of oversight by the State and other California jurisdictions with at least 20 tables; (c) an evaluation of whether the City has the appropriate levels of police officers and auditors for the work that needs to be done, unless that analysis is completed in the Police Sworn/Non-Sworn Staffing audit due out in November. (6) Whether or not fees are modified in November, bring back to the City Council recommendations for changes in table fees and license fees at appropriate cost recovery levels on the City Auditor's assessments of the efficiency and effectiveness of the regulatory function. (7) Amend the municipal code to add a review and approval of new administrative regulations by the Chief of Police before they become final. (8) Streamline the process for approval of substitute permissible games if the game and its rules have been approved for card rooms by the California Gambling Control Commission. (9) Amend the City's Conflict of Interest rules to increase the gaming administrator's financial disclosure requirements to include sources of income from entities doing business in California. (10) Compare City codes and regulations to State law and regulations and bring back for Council consideration changes to the City's Municipal Code to eliminate duplication, redundancies and inefficiencies. (10-0-1. Noes: Campos.)

- 8.2 (a) **Adopt a resolution:**
- (1) **Authorizing the City Manager to negotiate and execute an agreement with the County of Santa Clara to accept program funds from the County for 2008 State Homeland Security Grant Program funding for Police and Fire Department training and exercise events in an amount up to \$1,204,946 and Fire Department funding for the 2008 Metropolitan Medical Response System Grant Program in the amount of \$321,221; and**
  - (2) **Authorizing the City Manager to negotiate and execute additional amendments to the agreement and all related documents without further Council authorization.**
- (b) **Adopt the following appropriation ordinance and funding sources resolution amendments in the General Fund in fiscal year 2009-2010:**
- (1) **Establish a city-wide appropriation to the Fire Department for the 2008 Metropolitan Medical Response System (MMRS) Grant Program in the amount of \$321,221; and**
  - (2) **Increase the estimate for Revenue from the Federal Government by \$321,221.**

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

Documents Filed: Memorandum from Police Chief Robert Davis, Fire Chief Darryl Von Raesfeld and Budget Director Jennifer Maguire, dated September 28, 2009, recommending adoption of a resolution, appropriation ordinance and funding sources resolution amendments and a resolution.

Action: Upon motion by Council Member Constant, seconded by Vice Mayor Chirco and carried unanimously, [Resolution No. 75138](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with the County of Santa Clara to Accept Program Funds from the County for 2008 State Homeland Security Grant Program Funding for Police and Fire Department Training and Exercise Events in an Amount Not To Exceed \$1,204,946 and Fire Department Funding for the 2008 Metropolitan Medical Response System Grant Program in an Amount Not To Exceed \$321,221 and Additional Amendments to the Agreement and All Related Documents Without Further Council Authorization"; [Ordinance No. 28655](#), entitled: "An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the General Fund for the 2008 Metropolitan Medical Response System Grant Program; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption" and [Resolution No. 75139](#), 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", were adopted. (11-0.)

## **ADJOURNMENT**

The Council of the City of San José adjourned the afternoon session at 5:05 p.m.

## **RECESS/RECONVENE**

The City Council recessed at 5:05 p.m. from the afternoon Council Session and reconvened at 7:04 p.m. in the Council Chambers, City Hall.

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

Absent: Council Members - None.

City Clerk Lee Price read the requests for continuance of the applications. Upon motion by Council Member Herrera, seconded by Council Member Pyle, and carried unanimously, the below noted continuances and actions were taken as indicated. (11-0.)

## **CEREMONIAL ITEMS**

- 1.3 Presentation of a commendation to Rocketship Mateo Sheedy Elementary School for being the highest performing elementary school in San José and Santa Clara County and third in California. (Campos)  
(Rules Committee referral 10/14/09)**

Action: Mayor Reed and Council Member Campos recognized and commended the Rocketship Mateo Sheedy Elementary School for being the highest performing elementary school in San José and Santa Clara County and third in California.

- 1.5 Presentation of a proclamation declaring October as “Filipino History Month” in the City of San José. (Chu)  
(Rules Committee referral 10/14/09)**

Action: Mayor Reed and Council Member Chu recognized the month of October 2009 as “Filipino History Month” in the City of San José.

## **STRATEGIC SUPPORT SERVICES**

- 3.8 (a) As recommended by the Rules and Open Government Committee, approve the Sunshine Reform Task Force (SRTF) recommendations, as amended, on Law Enforcement Records, Police Department Statistical Reports and Fire Department Statistical Reports.**
- (b) Adopt a resolution implementing these provisions on a pilot basis.  
CEQA: Not a Project. (City Manager’s Office)**

### 3.8 (Cont'd.)

Documents Filed: (1) Memorandum from Mayor Reed, dated October 15, 2009, recommending approval of the Rules and Open Government Committee amended Sunshine Reform Task Force recommendations. (2) Information memorandum from Mayor Reed, dated October 19, 2009, transmitting Law Enforcement Records correspondence, including items inadvertently left out of the Staff report. (3) Memorandum from Council Members Kalra, Campos and Chu, dated October 16, 2009, recommending approval of the Sunshine Reform Task Force recommendations with amendments. (4) Memorandum from Director of Communications Tom Manheim, dated September 28, 2009, recommending approval of the Sunshine Reform Task Force recommendations with direction to Staff to proceed with implementation. (5) Supplemental memorandum from Director of Communications Tom Manheim, dated October 16, 2009, transmitting the actual proposal Sunshine Reform Task Force language which was omitted previously. (6) Staff presentation on the Law Enforcement Records, Police Statistical Reports and Fire Statistical Reports dated October 20, 2009. (7) Letter from Bob Brownstein, Working Partnerships USA, dated October 5, 2009, regarding the disclosure of police records proposed by the SRTF. (8) Letter from Walter Wilson, African-American Community Services Agency, dated October 8, 2009, encouraging adoption of the SRTF recommendations. (9) Letter from Ron Cottingham, Peace Officers Research Association of California, dated October 20, 2009, supporting sunshine law as in the form of the California Public Records Act and the Freedom of Information Act. (10) Letter from James Zahradka II, Senior Attorney, Public Interest Law Firm, dated October 10, 2009, expressing support to the SRTF recommendations as amended by the memorandum from Council Members Kalra, Campos and Chu. (11) Four emails from the public all dated October 20, 2009, regarding the SRTF recommendations.

Mayor Reed provided meeting disclosures.

Director of Communications Tom Manheim presented an overview of the Law Enforcement Records, Police Department Statistical Reports and Fire Department Statistical Reports.

Burt Robinson described the Sunshine Reform Task Forces' work on the police records. Virginia Holtz was also present.

Santa Clara County District Attorney Delores Carr expressed concern about the current proposal because records are released before her office has a chance to review them; the proposal violates public policy (invasion of privacy) and is detrimental to the District Attorney when prosecuting crimes. She requested one modification to the last paragraph of Attachment A, 6.1, 6.1.1.010: to add "and others" by the California Constitution.

Police Chief Robert Davis expressed concern about the Sunshine Reform Task Force recommendations because of the potential harm to public safety by disclosing private information.

### 3.8 (Cont'd.)

Public Comments: Speaking in support to the memorandum from Council Members Kalra, Campos and Chu and the Sunshine Reform Task Force recommendations were, Sushmita Majumdar, Sterling Larnerd, Skyler Poras, Abdi Soltani, ACLU of Northern California, Jethroe Moore II, Walter Wilson, African American Community Services, Richard Konda, Asian Law Alliance, Besty Wolf-Graves, Charisse Domingo, Raj Jayadev, Silicon Valley De-Bug, Tony Alexander, Michael Chase, Aaron Resendez, Sam Ho, David Parker, Ed Rast, Aram James and Vinh Pham.

Speaking in support to the memorandum from Mayor Reed amending the Sunshine Reform Task Force recommendations were, Scott Seaman, California Police Chief's Association, Ross Signornio, Forrest Williams, George Beattie, San José Police Officers' Association, Van Le and Sandy Davis, UMCA Rape Crisis.

Sam Orozio and Kerri Hamilton remained neutral on the subject.

Extensive Council discussion followed.

Motion: Vice Mayor Chirco moved approval of the memorandum from Mayor Reed, dated October 15, 2009, approving the Rules and Open Government Committee amended Sunshine Reform Task Force recommendations. Council Member Constant seconded the motion. The revision suggested by District Attorney Darlene Carr to revise the last paragraph of Attachment A, 6.1, 6.1.1.010, to add: "and others" by the California Constitution, was accepted by Vice Mayor Chirco and Council Member Constant.

Substitute Motion: Council Member Kalra moved approval of the memorandum he cosigned with Council Members Campos and Chu, dated October 16, 2009, including amendments from Council Member Liccardo. Council Member Campos seconded the motion.

City Attorney Richard Doyle and Senior Deputy City Attorney Lisa Herrick responded to Council questions.

Council Member Chu provided meeting disclosures.

Expressing objection to the substitute motion because of public safety issues were Mayor Reed and Council Members Pyle, Oliverio and Herrera.

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

Discussion on the original motion followed.

### 3.8 (Cont'd.)

Council Member Herrera requested to amend the motion to request the City Manager to return to the Council with further discussion about the release of law enforcement records when the Police Department's records management system has been installed. The amendment was accepted, as amended by Vice Mayor Chirco. Council Member Constant accepted the amendment.

Action: On a call for the question, the original motion carried, Approved, as amended: (1) Revise Section 6.1.1.010 (Reports Prepared by Law Enforcement): "...including the right of privacy afforded to victims *and others* by the California Constitution". (2) City Manager to return to the Council with further discussion about the release of law enforcement records when the Police Department's records management system has been installed and [Resolution No. 75140](#), entitled: "A Resolution of the Council of the City of San José (1) Approving the Sunshine Reform Task Force II Report and Recommendations on Police Reports, Police Department Statistical Reports and Fire Department Statistical Reports, as Amended by the Rules & Open Government Committee and (2) Directing Implementation of the Approved Recommendations on Police Reports on a Pilot Basis", was adopted. (7-4. Noes: Campos, Chu, Kalra, Nguyen.)

## TRANSPORTATION & AVIATION SERVICES

- 6.2 Adopt a resolution modifying the US-101/Oakland/Mabury Transportation Development Policy to allow for the participation of the Flea Market site in the Policy, and to facilitate near term retail and residential development at the Flea Market site and establish a phasing plan for construction of the interchange improvements concurrent with development. Department of Transportation and Planning Commission recommend approval (6-0-1). CEQA: EIR Resolution No. 74195.1, File No. PP07-172 (King and Dobbin Transit Village and the US 101-Oakland/Maybury Transportation Development Policy). Council Districts 3 and 4. SNI: 13<sup>th</sup> Street. (Transportation)**

Documents Filed: (1) Memorandum from Planning Commission Secretary Joseph Horwedel, dated September 24, 2009, transmitting the recommendation of the Planning Commission. (2) Proof of Publication of Notice of Public Hearing, executed on October 10, 2009, submitted by the City Clerk.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, [Resolution No. 75141](#), entitled: "A Resolution of the Council of the City of San José Amending the U.S./Oakland/Mabury Transportation Development Policy to Add Specific Provisions for the Development of the Flea Market Site to Address Its Traffic Impacts on U.S./101 and the Vicinity", was adopted. (8-0-1. Absent: Chirco, Constant, Herrera.)

## **PUBLIC HEARINGS ON CONSENT CALENDAR**

- 11.1 (a) Consideration of an ordinance rezoning the real property located on the north side of Kiely Boulevard, 550 feet westerly of Saratoga Avenue (370 S. Kiely Blvd) from the CP Commercial Pedestrian Zoning District to the CN Commercial Neighborhood Zoning District to facilitate the development of auto sales use on a 1.17 gross acre site (Lopina John M Trustee & Et Al, Owner; Stevens Creek Toyota Steve Cornelius, Developer). CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required. C09-029 – District 1**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C09-029, dated September 25, 2009, recommending approval. (2) Proof of Publication of Notice of Public Hearing, executed on March 6, 2009, submitted by the City Clerk.

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

Action: Upon motion by Council Member Pyle, seconded by Council Member Nguyen and carried unanimously, the recommendation of the Planning Director was approved, [Ordinance No. 28656](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the North Side of Kiely Boulevard, 500 Feet Westerly of Saratoga Avenue (370 South Kiely Boulevard) to the CN Commercial Neighborhood Zoning District”, was passed for publication. (8-0-3. Absent: Chirco, Constant, Herrera.)

## **END OF PUBLIC HEARINGS ON CONSENT CALENDAR**

## **PUBLIC HEARINGS**

- 11.2 Consideration of an ordinance rezoning the real property located on both sides of Berryessa Road just west of Union Pacific Railroad tracks (Flea Market – 1590 Berryessa Road) from A(PD) Planned Development Zoning District (File No. PDC03-108) to A(PD) Planned Development Zoning District to allow modifications to the previously approved General Development Plan, which include the elimination of prohibited uses, such as “vehicle related uses” and “detached single-family and two-family dwellings” (Flea Market Inc., Owner/Developer). CEQA: Reuse of the Flea Market EIR. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-1-1). PDC09-006 – District 4**

## 11.2 (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC09-006, dated September 16, 2009. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated January 29, 2009, transmitting the Planning Commission recommendation of approval with three conditions: to allow: the addition of a gas station as a permitted use in the North Village Commercial area; the project's participation in the amended U.S.-101/Oakland/Mabury Transportation Development Policy, and single family detached dwellings in the North Village Neighborhood as a permitted use on a 120.4 gross acre site located on both sides of Berryessa Road just west of Union Pacific Railroad tracks and east of Coyote Creek (Flea Market). (3) Proof of Publication of Notice of Public Hearing, executed on August 7, 2009, submitted by the City Clerk.

Mayor Reed and Council Members Chu, Campos, Nguyen and Liccardo provided meeting disclosures.

Motion: Council Member Chu moved approval of the Planning Commission recommendation to allow: (1) the addition of a gas station as a permitted use in the North Village Commercial area; (2) the project's participation in the amended U.S.-101/Oakland/Mabury Transportation Development Policy, and (3) single family detached dwellings in the North Village Neighborhood as a permitted use on a 120.4 gross acre site located on both sides of Berryessa Road just west of Union Pacific Railroad tracks and east of Coyote Creek (Flea Market). Council Member Pyle seconded the motion.

Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti provided the Staff report on the Flea Market Site.

Mayor Reed opened the public hearing.

Erik Schoennauer, representing the Applicant, agreed with the Planning Commission recommendations.

Public Comments: Kerri Hamilton suggested the densities be reduced further. Cassandra Blair stated that the higher density is better for the future of San José.

Mayor Reed closed the public hearing.

Assistant Director of Planning, Building, and Code Enforcement Laurel Prevetti responded to Council questions and comments.

Vice Mayor Chirco and Council Member Oliverio voiced objection to the rezoning because the project should continue with high density in the transit oriented district with no reduction in housing.

Council Member Liccardo requested to amend the motion to add that detached single family housing be allowed and limited to 3.5 acres as proposed by the Applicant. The amendment was accepted by Council Members Chu and Pyle.

## 11.2 (Cont'd.)

Action: On a call for the question, the motion carried, the recommendation of the Planning Commission was approved, and [Ordinance No. 28657](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on Both Sides of Berryessa Road, West of Union Pacific Railroad Tracks and East of Coyote Creek, from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District", was passed for publication as amended, with detached single family housing allowed and limited to 3.5 acres as proposed by the Applicant. (8-2-1. Noes: Chirco, Oliverio. Absent: Constant.)

## 11.3 Consideration of a First Amendment to the Development Agreement with Novellus Systems, Inc. and Vista Montana as approved by Ordinance No. 28154 and entered into on December 20, 2007 to extend the reservation of the residential unit capacity under the North San José Area Development Policy an additional two years relative to the development of certain real properties located in North San José. CEQA: Addendum to the North San José Area Development Policy Update Final Environmental Impact Report. DA - Novellus – District 4

Action: Continued to November 3, 2009 in the afternoon per Administration.

## OPEN FORUM

Danny Garza commented about the shooting of Daniel Pham and his dissatisfaction with the San José Police Department regarding the incident.

## ADJOURNMENT

The Council of the City of San José was adjourned at 11:24 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC  
City Clerk

smd/10-20-09 MIN

Access the video, the agenda and related reports for this meeting by visiting the City's website at <http://www.sanoseca.gov/clerk/agenda.asp> or <http://www.sanoseca.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.