



CITY COUNCIL AGENDA

NOVEMBER 10, 2009

SYNOPSIS

PETE CONSTANT
ASH KALRA
SAM LICCARDO
KANSEN CHU
NORA CAMPOS

DISTRICT 1
DISTRICT 2
DISTRICT 3
DISTRICT 4
DISTRICT 5

CHUCK REED MAYOR

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

DISTRICT 6
DISTRICT 7
DISTRICT 8
DISTRICT 9
DISTRICT 10

Welcome to the San José City Council meeting!

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

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

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

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

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

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

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

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

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

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

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

- **Call to Order and Roll Call**
 - 9:30 a.m.** - Closed Session, Call to Order in Council Chambers
Absent Council Members: Chu, Nguyen. (Excused)
 - 1:34 p.m.** - Regular Session, Council Chambers, City Hall
Absent Council Members: Chu, Constant, Nguyen. (Excused)
 - 7:06 p.m.** - Continue Joint/RDA Budget Public Hearing, Council Chambers, City Hall
Absent Council Members: Campos, Chu, Constant, Nguyen, Pyle. (Excused)
- **Invocation (District 10)**
Bernard Smith performed “God Bless America” in honor of Veterans’ Day.
- **Pledge of Allegiance**
Vice Mayor Chirco and students from Lynnewood Elementary School led the Pledge of Allegiance.
- **Orders of the Day**
The Orders of the Day and the Amended Agenda were approved, and Item 4.3 was heard in conjunction with the San José Financing Authority Meeting.

- **Closed Session Report**
City Attorney Doyle disclosed the following Closed Session actions of November 10, 2009:

A. Authority to Initiate Litigation:

Authority to initiate litigation was given in one (1) matter. The name of the action and the defendant(s), as well as the substance of the litigation shall be disclosed to any person upon inquiry once the action is formally commenced.

Council Vote: Ayes:	Campos, Chirco, Constant, Herrera, Kalra, Liccardo, Oliverio, Pyle; Reed.
Noes:	None.
Disqualified:	None.
Absent:	Chu, Nguyen. (Excused)
Vacant:	None.

1. CEREMONIAL ITEMS

- 1.1** Presentation of a commendation to Xactly Corporation for their innovative approach in optimizing sales performance for small and large companies. (Economic Development)
Vice Mayor Chirco, Council Member Liccardo and Chief Development Officer Paul Krutko recognized and commended Xactly Corporation for their innovative approach in optimizing sales performance for small and large companies.
- 1.2** Presentation of a proclamation declaring November 14, 2009 as “World Diabetes Day” in the City of San José. (Liccardo)
Vice Mayor Chirco and Council Member Liccardo recognized November 14, 2009 as “World Diabetes Day” in the City of San José. Dr. Patrick Kearns, Valley Medical Center, accepted the plaque.

2. CONSENT CALENDAR

2.1 Approval of Minutes.

Recommendation: Approval of minutes:

- (a) Regular Minutes of September 1, 2009.
- (b) Greenprint 2009 Update Study Session Minutes of September 8, 2009.
- (c) Regular Minutes of September 15, 2009
- (d) Regular Minutes of September 22, 2009
- (e) Regular Minutes of September 29, 2009
- (f) Joint City/RDA/County Minutes of September 30, 2009

Approved.

2. CONSENT CALENDAR

2.2 Final adoption of ordinances.

There were none.

2.3 Mayor and Council Excused Absence Requests.

Recommendation:

- (a) Request for an excused absence for Vice Mayor Chirco from the Closed Session Meeting of the City Council on October 27, 2009 due to illness – medical appointment. (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)

(Rules Committee referral 10/28/09)

Excused.

2.4 Proposed Revisions to Title 12 of the San José Municipal Code relating to Advice from the City Attorney.

Recommendation: As recommended by the Elections Commission, approve an ordinance amending Chapters 12.05 and 12.12 of Title 12 of the San José Municipal Code permitting persons subject to elections, campaign and lobbying provisions to request written advice from the City Attorney. (City Attorney's Office/City Clerk)

Ordinance No. 28660 passed for publication.

2.5 Proposed Revisions to Resolution 72547, Regulations and Procedures for the San José Elections Commission Investigations and Hearings.

Recommendation: As recommended by the Elections Commission, approve a resolution making various revisions to City Council Resolution No. 72547 which sets forth the regulations and procedures for the Commission's investigations and hearings. (City Attorney's Office/City Clerk)

Deferred to 11/17/09 per City Attorney's Office.

2.6 Agreement with RTKL Associates for Wireless Reinforcement Design Project.

Recommendation: Approve the second amendment to the consultant agreement with RTKL Associates, Inc. for engineering design services for the New City Hall In-Building Wireless Reinforcement Design Project extending the term of the agreement from December 31, 2009 to December 31, 2010, at no cost to the City. CEQA: Not a Project. (Public Works/Information Technology)

Approved.

2. CONSENT CALENDAR

2.7 Downtown San José Property-Based Business Improvement District Financial Report for FY 2008-09.

Recommendation: Accept the Downtown San José Property-Based Business Improvement District Financial Report for FY 2008-09. CEQA: Exempt: File No. PP08-095. Council District 3. (Public Works/Transportation)
Accepted.

3. STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone reported on the City's response to gang related violence on Halloween night, including the deployment of the Mayor's Gang Prevention Task Force resources immediately to the neighborhood where the tragedy occurred and explained that the Alum Rock and Mayfair Community Centers stayed open extended hours the past weekend. She added that Staff will assess the need for further late night programming at these sites and other sites throughout the City of San José.

3.2 Report of the Rules and Open Government Committee – October 21, 2009 Mayor Reed, Chair **Accepted.**

3.3 Report of the Public Safety, Finance and Strategic Support Committee Council Member Nguyen, Chair **No Report.**

3.4 Proposed Revisions to the San José Municipal Code relating to conflicts of interest in the Office of Independent Police Auditor.

Recommendation: Approve an ordinance amending Chapter 8.04 of Title 8 of the San José Municipal Code to add a new Section 8.04.030 allowing and granting the Independent Police Auditor (IPA) the limited contract authority to appoint an alternate IPA to assume the IPA's duties and responsibilities related to the auditing of Internal Affairs investigations of complaints when the IPA has a conflict of interest warranting disqualification of the IPA's Office. (City Attorney's Office)

Ordinance No. 28661 passed for publication, with the IPA requested to add a clause in the policy that provides that the City Council will be notified of any potential conflict, if such an event occurs, and appraised of the estimated cost of contracting with an outside auditor.

3. STRATEGIC SUPPORT SERVICES

3.5 Independent Police Auditor Recruitment.

Recommendation:

- (a) Accept the draft profile of the Independent Police Auditor position, and approve the draft conflict of interest form and timeline for the recruitment.
- (b) Direct staff and Consultant on next steps for posting the position and beginning to accept applicants.

CEQA: Not a Project. (Human Resources)

Deferred to 11/17/09 per Administration.

3.6 Report of the Rules and Open Government Committee – October 14, 2009

Mayor Reed, Chair

Accepted.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Report of the Community & Economic Development Committee – October 26, 2009

Council Member Pyle, Chair

Accepted.

4.2 First Amendment to the Development Agreement with Novellus Systems, Inc.

Recommendation: Consider an ordinance to approve 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. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2).

DA - Novellus – District 4

(Continued from 10/20/09 – Item 11.3 and 11/3/09 – Item 4.2)

Ordinance No. 28662 passed for publication.

4.3 Actions related to the Multi-Family Housing at Belovida at Newbury Park.

Recommendation: Adopt a resolution:

- (a) Authorizing the issuance of tax-exempt multifamily housing revenue bonds designated as “City of San José Multifamily Housing Revenue Bonds (Belovida at Newbury Park Senior Apartments), Series 2009A” in an aggregate principal amount not to exceed \$26,200,000 (the “Bonds”);

(Continued on the next page)

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.3 Actions related to the Multi-Family Housing at Belovida at Newbury Park (Cont'd.)

- (b) Approving a loan of Bond proceeds to Belovida at Newbury Park, L.P., a California limited partnership created by CORE Affordable Housing, LLC and EAH, Inc., to finance the construction of the Belovida at Newbury Park Senior Apartments located at 1777 Newbury Park Drive in San José;
- (c) Approving in substantially final form the Bonds, Trust Indenture, Loan Agreement, and Regulatory Agreement and Declaration of Restrictive Covenants;
- (d) Authorizing the City Manager, Director of Finance, Assistant Director of Finance, Treasury Division Manager, Debt Administrator, and Director of Housing, or their designees, to execute and, as appropriate, to negotiate, execute and deliver these Bond documents and other related Bond documents as necessary; and
- (e) Approving a change in the project's income restrictions, related to units restricted to extremely low-income and very low-income households, to 48 units restricted to households at or below 30% of Area Median Income ("AMI"), 136 units restricted to households at or below 50% of AMI, and one unrestricted manager's unit.

CEQA: Mitigated Negative Declaration, File No. PDC07-015. Council District 3.
(Housing/Finance)

(Deferred from 10/27/09 – Item 4.2 and 11/3/09 – Item 4.3)

Action deferred to 11/17/09.

4.4 Report on RFP for Multi-Family Loan Portfolio Management System.

Recommendation:

- (a) Accept report on Request for Proposal for the purchase of a Multi-Family Loan Portfolio Management System and adoption of a resolution authorizing the Director of Finance to:
 - (1) Execute an agreement with MK Partners, Inc. (Encino, CA) for the implementation of the Multi-Family Loan Portfolio Management System in an amount not to exceed \$246,700 including all professional and technical support services required to implement the system as well as hosting services that will be provided by Salesforce.com Inc. (San Francisco, CA) under a separate subscription agreement.
 - (2) Execute change orders not to exceed a contingency amount of \$40,000 to cover any unanticipated changes in the system design and implementation.
 - (3) Execute ten one-year options to renew the agreements for continued technical support and hosting services subject to annual appropriation of funding.
- (b) Adopt the following Appropriation Ordinance amendments in the Low and Moderate Income Housing Fund (Fund 443) for 2009-2010:
 - (1) Decrease the Ending Fund Balance by \$286,700; and
 - (2) Increase the Housing Department's Non-Personal/Equipment Appropriation in the amount of \$286,700.

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

(Deferred from 11/3/09 – Item 2.5)

Deferred to 11/17/09 per Administration.

5. NEIGHBORHOOD SERVICES

- 5.1 **Report of the Neighborhood Services and Education Committee
Council Member Campos, Chair
No Report.**

- 5.2 **Report on RFP for Retail Concessions for Happy Hollow Park and Zoo.**

Recommendation: Accept report on Request for Proposal for the outsourcing of Happy Hollow Park and Zoo Retail Concessions and adopt a resolution authorizing the City Manager to:

- (a) Negotiate and execute a Retail Concession Agreement with Urban Park Concessionaires to provide retail services at Happy Hollow Park and Zoo inside the newly constructed “Explore & More Store,” effective from the date of execution by the City Manager through five (5) years, with fifteen percent (15%) of gross sales from the Retail Store to be paid to the City, with a Minimum Annual Guarantee of \$6,300 per month.
- (b) Execute two additional one-year options to extend the agreement after the initial term of the Retail Concession Agreement.

CEQA: Mitigated Negative Declaration, File No. PP05-142, dated April, 2007. (Parks, Recreation and Neighborhood Services)

(Deferred from 11/3/09 – Item 5.2)

Deferred to 11/17/09 per Administration.

6. TRANSPORTATION & AVIATION SERVICES

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

7. ENVIRONMENTAL & UTILITY SERVICES

- 7.1 **2009 Special Event and Venue Recycling Report.**

Recommendation: 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 *Polystyrene food packing* 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

7. ENVIRONMENTAL & UTILITY SERVICES

7.1 2009 Special Event and Venue Recycling Report (Cont'd.)

- (b) Effective May 1, 2010, require special events with over 1,000 attendees, as a condition of their Event Authorization to do the following (Cont'd.)
 - (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)]

(Deferred from 10/20/09 – Item 6.3)

Accepted, with one correction: change “Styrofoam™” to “polystyrene food packing”.

8. PUBLIC SAFETY SERVICES

9. JOINT COUNCIL/REDEVELOPMENT AGENCY

- Notice of City Engineer’s Pending Decision on Final Maps
None.
- Notice of City Engineer’s Award of Construction Projects
None.
- Open Forum
 - (1) David Wall spoke in honor of Veterans’ Day and the sacrifices made by members of the armed forces.
 - (2) Ross Signorino commented about a news item he heard on KGO radio regarding health benefits for domestic partners of City of San José employees.
- Adjournment
The Council of the City of San José adjourned the afternoon session at 4:01 p.m.

**JOINT CITY OF SAN JOSÉ
CITY COUNCIL/FINANCING AUTHORITY
AGENDA**

1:30 P.M.

TUESDAY, NOVEMBER 10, 2009

CHAMBERS

1. Call to Order

The meeting was convened at 1:52 p.m.

Absent Council Members: Chu, Constant, Nguyen. (Excused)

2. Actions Related to the Brookwood Family Apartments.

Recommendation:

(a) Adopt a resolution of the City Council:

- (1) Authorizing the issuance of tax-exempt multifamily housing revenue bonds designated as "City of San José Multifamily Housing Revenue Bonds (Brookwood Terrace Family Apartments), Series 2009B" in the principal amount not to exceed \$13,600,000 (the "Bonds");
- (2) Approving a loan of Bond proceeds to Brookwood Terrace Family Apartments, L.P., a California limited partnership, for financing a portion of the costs of constructing the Brookwood Terrace Family Apartments (the "Project") located at 1338-1350 E. San Antonio Street in San José;
- (3) Approving in substantially final form the Bonds, Trust Indenture, Financing Agreement, Regulatory Agreement, Declaration of Restrictive Covenants, the Intercreditor Agreement, Bond Purchase Agreement and Official Statement;
- (4) Authorizing the City Manager, Assistant Finance Director, Director of Housing or their designees to execute and, as appropriate, to negotiate, execute and deliver these bond documents and other related bond documents as necessary.
- (5) Authorizing the Director of Housing, to negotiate and execute an agreement with The City of San José Financing Authority related to the Ground Lease revenues of the Project and ultimate disposition of the Project Improvements and the Site.

(Continued on the next page)

JOINT COUNCIL/SAN JOSÉ FINANCING AUTHORITY (Cont'd.)

2. Actions Related to the Brookwood Family Apartments (Cont'd.)

- (b) Adopt a resolution of the City of San José Financing Authority Board:
 - (1) Authorizing the Executive Director of The City of San José Financing Authority, or designee, to acquire the Project site (the "Site") from the Borrower and negotiate and execute a Ground Lease of the Site back to the Borrower for a term of up to 75 years with an annual rent of \$1.00 for the first 55 years, to be increased at the time of repayment of the City's construction/permanent loan.
 - (2) Authorizing the Executive Director of The City of San José Financing Authority to negotiate and execute an agreement with the City of San José related to the Ground Lease revenues from the Project and the ultimate disposition of the Project Improvements and the Site.

CEQA: Mitigated Negative Declaration, File No. PDC08-038. Council District 3. SNI: Five Wounds/Brookwood Terrace. (Finance/Housing)

Action deferred to 11/17/09.

3. Actions Related to the Orvieto Family Apartments.

Recommendation:

- (a) Adopt a resolution of the City Council:
 - (1) Authorizing the issuance of tax-exempt multifamily housing revenue bonds designated as "City of San José Multifamily Housing Revenue Bonds (Orvieto Family Apartments), Series 2009C" in the principal amount not to exceed \$14,200,000 (the "Bonds");
 - (2) Approving a loan of Bond proceeds to Orvieto Family Apartments, L.P., a California limited partnership, for financing a portion of the costs of constructing the Orvieto Family Apartments (the "Project") located at 80 Montecito Vista Drive in San José;
 - (3) Approving in substantially final form the Bonds, Trust Indenture, Financing Agreement, Regulatory Agreement, Declaration of Restrictive Covenants, the Intercreditor Agreement, Bond Purchase Agreement, and Official Statement; and
 - (4) Authorizing the City Manager, Assistant Finance Director, Director of Housing or their designees to execute and, as appropriate, to negotiate, execute and deliver these bond documents and other related bond documents as necessary.
 - (5) Authorizing the Director of Housing, to negotiate and execute an agreement with The City of San José Financing Authority related to the Ground Lease revenues of the Project and ultimate disposition of the Project Improvements and the Site.

(Continued on the next page)

JOINT COUNCIL/SAN JOSÉ FINANCING AUTHORITY (Cont'd.)

3. Actions Related to the Orvieto Family Apartments (Cont'd.)

- (b) Adopt a resolution of the City of San José Financing Authority Board:
 - (1) Authorizing the Executive Director of The City of San José Financing Authority, or designee, to acquire the Project site (the "Site") from the Borrower and negotiate and execute a Ground Lease of the Site back to the Borrower for a term of up to 75 years with an annual rent of \$1.00 for the first 55 years, to be increased at the time of repayment of the City's construction/permanent loan.
 - (2) Authorizing the Executive Director of The City of San José Financing Authority to negotiate and execute an agreement with the City of San José related to the Ground Lease revenues from the Project and the ultimate disposition of the Project Improvements and the Site.

CEQA: Exempt. Council District 7. (Finance/Housing)

Action deferred to 11/17/09.

4. Adjourn the San José Financing Authority. The meeting was adjourned at 2:05 p.m.

8. JOINT REDEVELOPMENT AGENCY ITEMS

The Joint Redevelopment Agency Board convened at 2:41 p.m. to consider Item 8.1 in a Joint Session and recessed at 3:57 p.m.; reconvened at 7:06 p.m.

8.1 Public Hearing on the Agency's FY 2009-10 Revised Capital and Operating Budgets and the 2010-2015 CIP.

Recommendation: Joint Public Hearing on the Redevelopment Agency's Proposed FY 2009-2010 Revised Capital Budget and Revised Operating Budget and the 2010-2015 Capital Improvement Program (CIP).

Public comments received.

The Council of the City of San José and Redevelopment Agency Board was adjourned at 8:22 p.m.