

## MINUTES OF THE CITY COUNCIL

**SAN JOSE, CALIFORNIA**

**TUESDAY, NOVEMBER 17, 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, Chirco, Chu, Constant, Herrera, Kalra, Liccardo, Nguyen, Oliverio, Pyle; Reed.

Absent: Council Members - None.

Upon motion unanimously adopted, Council recessed at 9:01 a.m. to a Closed Session in Room W133, to confer with Legal Counsel pursuant to (A) Public Employee Performance Evaluation Pursuant to Government Code Section 54957: Title: City Clerk: Lee Price. (B) to confer with Legal Council pursuant Government Code subsection (a) of Section 54956.9 with respect to existing litigation: (1) City, et al. v. Wet Investments, et al; Names of Parties Involved: People of the State of California, ex rel., City Attorney of the City of San José, City of San José, Wet Investments, Inc., Michael Hamod, Does 1-25; Court: Superior Court of California, County of Santa Clara; Case No: 1-09-CV-155931; Amount of Money or Other Relief Sought: Injunctive relief and penalties according to proof; (2) Wet Investments, et al. v. City, et al.; Names of Parties Involved: Wet Investments, Inc., Michael Hamod, Jesus and Virginia Fernandez doing business as Tony's Pool Hall, City of San José, Does 1-25; Court: United States District Court, Northern District of California; Case No: C09-04631-JW; Amount of Money or Other Relief Sought: Injunctive relief and penalties according to proof; (3) City v. PG&E; Names of Parties Involved: City Attorney of the City of San José, the People of the State of California, Pacific Gas and Electric Company, Does 1-10; Court: Court of Appeal of the State of California, Sixth Appellate District; Case No: H031705; Amount of Money or Other Relief Sought: Damages according to proof; (4) In re Oiseth; Amount of Money or Other Relief Sought: Administrative Appeal. (C) to confer with Legal Counsel pursuant to Government Code subsection (c) of Section 54956.9 with respect to anticipation and initiation of litigation in two (2) matters. (D) to confer with Legal Counsel pursuant to Government Code subsection (b) of Section 54956.9 with respect to anticipation (Claim Not Filed) and initiation of litigation in one (1) matter. (E) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) International

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

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, 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. How to obtain a copy of existing contract or MOA: web: [http://www.sanjoseca.gov/employee\\_relations/moa.asp](http://www.sanjoseca.gov/employee_relations/moa.asp); Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 11:00 a.m. and reconvened to Regular Session at 1:32 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**

Pastor Jeff Wenke, Journey Church, provided the Invocation. (District 10)

## **PLEDGE OF ALLEGIANCE**

Mayor Reed and students from Discovery Charter School (District 1) led the Pledge of Allegiance.

## **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 2.3(a) was dropped; to be renoticed, Items 3.2 and 6.1 were deferred to December 1, 2009 and Item 4.10 was heard concurrently with the Joint/San José Financing Authority Meeting Items 2 and 3. (11-0.)

## **CEREMONIAL ITEMS**

### **1.1 Presentation of a commendation to Sue McAllister in recognition of her exemplary work with West Coast Aquatics and for her service and dedication to the community. (Chu)**

Action: Mayor Reed and Council Member Chu recognized and commended Sue McAllister in recognition of her exemplary work with West Coast Aquatics and for her service and dedication to the community.

### **1.3 Presentation of a proclamation declaring the month of November 2009 as “National Caregivers Month” in the City of San José. (Constant)**

Action: Mayor Reed and Council Member Constant declared the month of November 2009 as “National Caregivers Month” in the City of San José.

### **1.2 Presentation of a commendation to Anderson Elementary School for its academic achievement in gaining the highest API score improvement in Santa Clara County. (Constant)**

Action: Mayor Reed and Council Member Constant recognized and commended Anderson Elementary School for its academic achievement in gaining the highest API score improvement in Santa Clara County.

## **CONSENT CALENDAR**

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

- 2.2 (a) **ORD. NO. 28662 – Amending Ordinance No. 28154, which ordinance approved a Development Agreement with Novellus Systems, Inc. relative to the development of real property in North San José, to allow extension of certain deadlines contained in the original Development Agreement and to authorize the City Clerk to execute a First Amendment to the original Development Agreement.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28662 executed on November 13, 2009, submitted by the City Clerk.

Action: [Ordinance No. 28662](#) was adopted. (11-0.)

- 2.3 (a) **Request for an excused absence for Council Member Campos from the Regular Meeting of the Transportation and Environment Committee on November 2, 2009 due to Authorized City Business: meeting with John Arriaga, Executive Director of the League of CA Cities Latino Caucus to discuss the Emerald City Program and Green Economy jobs in preparation for trip to Washington, D.C. on November 19-21, 2009. (Campos)**

Documents Filed: Memorandum from Council Member Campos, dated October 30, 2009, requesting an excused absence due to authorized City business.

Action: Item 2.3(a) was dropped; to be renoticed per Orders of the Day.

- (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 Nguyen from the Joint Redevelopment Agency/City Council Proposed FY2009-2010 Operating and Capital Budget and FY 2010-2015 Five-Year Capital Improvement Program Study Session on November 9, 2009 and the Regular City Council Meeting on November 10, 2009 due to Authorized City Business: City of San José Representative and participant at Changing the Odds: Learning from the Harlem Children’s Zone Model Conference in New York City, NY on November 9-10, 2009. (Nguyen)**  
**(Rules Committee referral 11/04/09)**

Documents Filed: (1) Memorandum from Vice Mayor Chirco, dated October 5, 2009, requesting an excused absence due to illness. (2) Memorandum from Council Member Nguyen, dated November 5, 2009, requesting an excused absence due to authorized City business.

Action: The absences for Vice Mayor Chirco and Council Member Nguyen were excused. (11-0.)

- 2.4 As recommended by the Elections Commission, adopt 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 from 11/10/09 – Item 2.5)**

Action: Item 2.4 was renumbered to Item 3.8.

- 2.5 (a) Adopt a resolution revising the airline fee-waiver incentive program to support the development of new air service at the Norman Y. Mineta San José International Airport by revising the calculation of qualifying incentive periods, limiting incentives for new flights to underserved cities only to new flights, and requiring reimbursement of waived fees for service cancelled prior to the end of a qualifying incentive period and repealing Resolution No. 74877.**
- (b) Adopt a resolution establishing a Focus City Promotional Fee Waiver Incentive Program to support the development of new air service at the Airport and authorizing the City Manager to negotiate and execute Focus City Agreements with passenger airlines at the Airport to implement the terms and conditions of the Focus City Program.**

**CEQA: Resolution Nos. 67380 and 71451, File No. PP 09-192. (Airport)**

Action: Deferred to December 1, 2009 per Administration.

**2.6 Adopt a resolution:**

- (a) Authorizing the City Manager to complete and submit the application for an Innovation Hub (iHub) designation for 5 years and take any other actions necessary to submit the iHub application to the California Business, Transportation and Housing Agency.**
- (b) Authorizing the City Manager to negotiate, execute and modify from time to time a Memorandum of Understanding between the City and iHub partners defining the roles, responsibilities, and contributions that each party will make to the iHub.**
- (c) Authorizing the City Manager to negotiate, execute and modify from time to time a Memorandum of Understanding between the City, any participating jurisdictions and the State of California defining the goals and commitments made in the application and their measurement and evaluation.**

**CEQA: Not a Project. (Economic Development)**

Documents Filed: Memorandum from Chief Development Officer Paul Krutko, dated November 13, 2009, recommending adoption of a resolution.

## 2.6 (Cont'd.)

Action: [Resolution No. 75157](#), entitled: "A Resolution of the Council of the City of San José (A) Authorizing the City Manager To Complete and Submit the Application for an Innovation iHub Designation for Five Years and Take Any Other Actions Necessary to Submit the Innovation Hub Application to the California Business, Transportation and Housing Agency; (B) Authorizing the City Manager to Negotiate, Execute and Modify from Time to Time a Memorandum of Understanding Between the City and Innovation Hub Partners Defining the Roles, Responsibilities and Contributions that Each Party Will Make to the iHUB; and (C) Authorizing the City Manager to Negotiate, Execute and Modify from Time to Time a Memorandum of Understanding Between the City, Any Participating Jurisdictions and the State of California Defining the Goals and Commitments Made in the Application and Their Measurement and Evaluation", was adopted. (11-0.)

- 2.7 (a) **Accept the invitation of the European Association of Development Agencies and the Agencia de Desenvolvimento da Regiao Autonoma da Madeira (ADERAM) to make a presentation at the Third World Forum on Regional Economic Development in Funchal, Madiera, Portugal, November 23 and 24, 2009. ADERAM will pay for travel and accommodation costs.**
- (b) **Approve Paul Krutko's travel to Portugal as the City's official representative to make the presentation.**

**CEQA: Not a Project. (Economic Development)**

Documents Filed: Memorandum from City Manager Debra Figone, dated October 26, 2009, recommending acceptance of the invitation and approval of Chief Development Officer Paul Krutko's travel.

Public Comments: David Wall expressed opposition to sending a Director in lieu of a Council Member to this meeting.

Chief Deputy City Manager Edward K. Shikada and Chief Development Officer Paul Krutko responded to Council questions about the purpose of the trip.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, the invitation of the European Association of Development Agencies and the Agencia de Desenvolvimento da Regiao Autonoma da Madeira (ADERAM) to make a presentation at the Third World Forum on Regional Economic Development in Funchal, Madiera, Portugal, November 23 and 24, 2009 was accepted and the travel request for Chief Development Officer Paul Krutko was approved. (11-0.)

**2.8 Award the purchase of office furniture to Western Contract Interiors for a total amount not to exceed \$298,477, including delivery, assembly, installation and all applicable sales taxes, based upon a previously awarded bid that contained additional quantity pricing, and authorize the Director of Finance to:**

- (a) Execute purchase orders as required to meet the Environmental Services Department Water Pollution Control Plant's timeline for staff relocation to the Environmental Services Building located at 4245 Zanker Road.**
- (b) Approve a contingency in the amount of \$29,848 for any unforeseen changes or requirements.**

**CEQA: Not a Project. (Finance)**

Documents Filed: (1) Memorandum from Director of Finance Scott Johnson, dated October 26, 2009, recommending approval of the purchase of office furniture and authorization for the Director of Finance to execute purchase orders and approval of a contingency. (2) Letter from the Treatment Plant Advisory Committee Chair Chuck Reed, dated November 17, 2009, stating concurrence with the Staff recommendations.

Action: The purchase of office furniture to Western Contract Interiors for a total amount not to exceed \$298,477, including delivery, assembly, installation and all applicable sales taxes, based upon a previously awarded bid that contained additional quantity pricing was approved; the Director of Finance was authorized to execute purchase orders as required to meet the Environmental Services Department Water Pollution Control Plant's timeline for staff relocation to the Environmental Services Building located at 4245 Zanker Road and a contingency in the amount of \$29,848 for any unforeseen changes or requirements was approved. (11-0.)

**2.9 Adopt a resolution authorizing the Director of Finance to:**

- (a) Execute the first amendment to the existing Live Online Homework Help Services Agreement with Tutor.com to extend the term for an additional year from December 1, 2009 to November 30, 2010, and increase the total compensation by \$131,250 to a revised not to exceed amount of \$256,250.**
- (b) Execute five additional 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 Johnson, dated October 26, 2009, recommending adoption of a resolution.

Council Member Oliverio pulled Item 2.9 from the Consent Calendar for clarification.

Director of Library Department Jane Light responded to Council questions.

Council Member Oliverio noted although this was a valuable service, expressed objection to the use of money for this type of funding, which instead could be used to retain library employees.

**2.9 (Cont'd.)**

Action: Upon motion by Vice Mayor Chirco, seconded by Council Member Pyle and carried, [Resolution No. 75158](#), entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Finance to Execute a First Amendment to the Agreement with Tutor.com for Live Online Homework Help Services”, was adopted. (10-1. Noes: Oliverio.)

**2.10 Adopt a resolution to:**

- (a) **Submit an application to the FIRST 5 Santa Clara County’s Learning Together School Readiness Initiative for a total of \$1,725,000 covering a period of 3.5 years, starting January 1, 2010 and ending on June 30, 2013, to support the efforts of early childhood recreation;**
- (b) **Negotiate and execute a grant agreement accepting the grant and any collateral documents; and**
- (c) **Negotiate and execute amendments to the grant agreement to extend or modify the grant term or to accept additional grant funds under the same grant terms in an aggregate amount up to twice the original grant amount originally awarded to the City, as further described in the Council memorandum.**

**CEQA: Not a Project. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated October 26, 2009, recommending adoption of a resolution.

Action: [Resolution No. 75159](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Submit an Application to First 5 Santa Clara County’s Learning Together School Readiness Initiative for a Grant to Support the Efforts of Early Childhood Recreation in a Total Amount of \$1,725,000 for the Period of January 1, 2010 through June 30, 2013”, was adopted. (11-0.)

**2.11 Adopt a resolution authorizing the City Manager, or designee, to do each of the following:**

- (a) **Submit a grant application in the amount not to exceed \$1,825,000 to the State of California Resources Agency, Department of Parks and Recreation, under the Recreational Trails Program for the Coyote Creek (Hwy 280 to Story Rd) Trail project (“Project”) and to make certain other assurances required by the State; and**
- (b) **Negotiate and execute all necessary documents related to any grant funding from the State to the City for the Project.**

**CEQA: Mitigated Negative Declaration, File No. PP08-014. Council District 7. (Parks, Recreation and Neighborhood Services)**

## 2.11 (Cont'd.)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated October 26, 2009, recommending adoption of a resolution.

Action: [Resolution No. 75160](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager or Designee to Execute and Submit an Application to the State of California Resources Agency, Department of Parks and Recreation for a Grant Under the Recreational Trails Program for the Coyote Creek (Highway 280 to Story Road) Trail Project in an Amount Not To Exceed \$1,825,000, To Accept the Grant if Awarded, and to Execute All Related Documents", was adopted. (11-0.)

## 2.12 **Adopt a resolution of intention to vacate a portion of an existing 10-foot wide Public Utility Easement while reserving a Wire Clearance Easement over the area to be vacated, located at the rear of Lot 22 of Tract 1593 (1542 Larkspur Drive), and setting a public hearing on December 15, 2009 at 1:30 p.m. CEQA: Not a Project. Council District 9. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated October 26, 2009, recommending adoption of a resolution.

Action: [Resolution No. 75161](#), entitled: "A Resolution of the Council of the City of San José Setting a Public Hearing to Consider Whether a Portion of a Public Utility Easement Over the Area to be Vacated Located at the Rear of Lot 22 Tract 1593 (1542 Larkspur Drive)", was adopted. (11-0.)

- 2.13 (a) **Approve the first amendment to the Master Agreement for consultant services with Group 4 Architecture Research + Planning, Inc., for the San José Environmental Innovation Center Phase II Project, increasing compensation by \$500,000 for a total agreement amount not to exceed \$2,000,000, clarifying limits on the scope of services, and extending the term of the agreement from March 30, 2010 to November 30, 2010.**
- (b) **Adopt the following Appropriation Ordinance amendments in the Integrated Waste Management Fund (Fund 423) necessary to fund the Group 4 Contract:**
- (1) **Increase the Household Hazardous Waste Las Plumas Facility appropriation by \$800,000; and**
  - (2) **Decrease the Ending Fund Balance by \$800,000.**
- CEQA: Not a Project. (Public Works/City Manager's Office)**

Documents Filed: Memorandum from Director of Public Works Katy Allen and Budget Director Jennifer Maguire, dated October 26, 2009, recommending approval of the first amendment and adoption of appropriation ordinance amendments.

## 2.13 (Cont'd.)

Action: The first amendment to the Master Agreement for consultant services with Group 4 Architecture Research + Planning, Inc., for the San José Environmental Innovation Center Phase II Project, increasing compensation by \$500,000 for a total agreement amount not to exceed \$2,000,000, clarifying limits on the scope of services, and extending the term of the agreement from March 30, 2010 to November 30, 2010 was approved and [Ordinance No. 28663](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the Integrated Waste Management Fund for the Household Hazardous Waste Las Plumas Facility; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption” was adopted. (11-0.)

### END OF CONSENT CALENDAR

## STRATEGIC SUPPORT SERVICES

### 3.2 Report of the Rules and Open Government Committee – October 28, 2009 Mayor Reed, Chair

Action: Deferred to December 1, 2009 per City Clerk and Orders of the Day.

### 3.4 Accept Team San José performance measures for 2009-2010. CEQA: Not a Project. (Economic Development) (Deferred from 10/20/09 – Item 3.5 and 11/3/09 – Item 3.4)

Documents Filed: (1) Memorandum from Chief Development Officer Paul Krutko, dated September 28, 2009, recommending acceptance of the Team San José performance measures for 2009-2010. (2) Supplemental memorandum from Chief Development Officer Paul Krutko, dated October 21, 2009, transmitting the actual information in lieu of historical information, and correcting an error in the return on investment and gross operating profit 2009-2010 performance goals. (3) Staff presentation outlining the Team San José Performance Measures for 2009-2010 dated November 17, 2009.

Chief Development Officer Paul Krutko provided the Team San José Performance Measures for 2009-2010.

City Attorney Richard Doyle, Chief Development Officer Paul Krutko and Daniel Fenton, Team San José responded to Council questions and comments.

Discussion ensued.

### 3.4 (Cont'd.)

Public Comments: Steve Smith, Silicon Valley International Auto Show, expressed concern about the agreement; he may need to look at a different venue in 2012, but would like to remain in San José. Bob Blanchet and Michelle Franco, Teamsters Local 287, spoke in support to working with Team San José. Ross Signorino also provided comments.

City Attorney Richard Doyle noted that his office is not looking into the enforceability of this agreement and was only aware of one complaint.

Motion: Council Member Kalra moved for acceptance of the Team San José performance measures for 2009-2010. Council Member Campos seconded the motion.

Mayor Reed requested to amend the motion to direct Staff to return to Council on December 8, 2009 to further refine the new 80% client satisfaction goal (facility issues versus services issues identified), including a report on the status of what has happened in the industry (i.e. Trade Press). The amendment was accepted by Council Members Kalra and Campos.

Council Member Liccardo requested to amend the motion to direct Team San José to provide rationale for failure to disclose records requested October 8, 2009, including the marking plan, agendas and minutes of Team San José Board Meetings and the agreement with Local 287. The amendment was accepted by Council Members Kalra and Campos.

Action: On a call for the question, the motion carried unanimously, the Team San José performance measures for 2009-2010 were accepted, with the following direction: (1) Staff to return to Council on December 8, 2009 to further refine the new 80% client satisfaction goal (facility issues versus services issues identified), including a report on the status of what has happened in the industry (i.e. Trade Press). (2) Team San José to provide rationale for failure to disclose records requested October 8, 2009, including the marking plan, agendas and minutes of Team San José Board Meetings and the agreement with Local 287. (11-0.)

- 3.6 (a) **Accept the project update related to the Automated Field Reporting and Records Management System (AFR/RMS) project.**
- (b) **Adopt a resolution authorizing the City Manager and the Chief of Police to accept award of the 2009 COPS Technology Program Grant in the amount of \$695,000 and authorize the City Manager and the Chief of Police to negotiate and execute additional amendments to the grant agreement and all related documents for the 2009 COPS Technology Program Grant without further Council action.**

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

### 3.6 (Cont'd.)

Documents Filed: (1) Memorandum from Police Chief Robert Davis and Chief Information Officer Stephen Ferguson, dated November 6, 2009, recommending acceptance of the project update and adoption of a resolution. (2) Staff presentation summarizing the San José Police Department Automated Field Reporting and Records Management System Project dated November 17, 2009.

Assistant Chief of Police Daniel Katz, Chief Information Officer Stephen Ferguson and Operations Support Services Division Manager Tamara Becker provided the Staff report about the Automated Field Reporting and Records Management System Project Update and responded to Council questions and comments.

Public Comments: Ross Signorino provided comments on the Automated Field Reporting and Records Management System Project.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried unanimously, the Automated Field Reporting and Records Management System Project update was accepted and [Resolution No. 75172](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager and the Chief of Police to Accept Award of the 2009 COPS Technology Program Grant in the Amount of \$695,000 and Authorizing the City Manager and the Chief of Police to Negotiate and Execute Additional Amendments to the Grant Agreement and All Related Documents for the 2009 COPS Technology Program Grant Without Further Council Action”, was adopted. (11-0.)

### 3.7 **Accept the Mayor's Biennial Review of the Ethics Ordinances and provide direction to staff as outlined in the Mayor's Memo. (Mayor)** **(Rules Committee referral 11/4/09)**

Action: Deferred to December 8, 2009 per Mayor.

### 3.8 **As recommended by the Elections Commission, adopt 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 from 11/10/09 – Item 2.5)**

*Note: Item 3.8 was renumbered from Item 2.4.*

Documents Filed: (1) Replacement memorandum from City Attorney Richard Doyle and City Clerk Lee Price, dated November 9, 2009, recommending the proposed revisions to Resolution No. 72547. (2) Staff presentation summarizing Proposed Revisions to Resolution No. 72547 – Recommendations from Elections Commission dated November 17, 2009.

### 3.8 (Cont'd.)

Senior Deputy City Attorney Lisa Herrick presented the Proposed Revisions to Resolution No. 72547 – Regulations and Procedures for the San José Elections Commission Investigations and Hearings.

Motion: Vice Mayor Chirco moved approval of the Staff recommendations with “Modifications to the Procedures for Anonymous Complaints” deferred to December 8, 2009 to be heard with the Mayor's 2009 Biennial Review of Ethics Ordinances. Council Member Pyle seconded the motion.

City Attorney Richard Doyle, City Clerk Lee Price, Senior Deputy City Attorney Lisa Herrick and Fred de Funiak, Chair, Elections Commission responded to Council questions and comments.

Public Comments: Ross Signorino provided comments on the proposed revisions to Resolution No. 72547 as put forward by the Elections Commission.

Action: On a call for the question, the motion carried unanimously, [Resolution No. 75173](#), entitled: “A Resolution of the Council of the City of San José Amending Regulations and Procedures for the San José Elections Commission Investigations and Hearings and Superseding Resolution No. 74547”, was adopted, with Modifications to the Procedures for Anonymous Complaints deferred to December 8, 2009 to be heard with the Mayor's 2009 Biennial Review of Ethics Ordinances. (11-0.)

## COMMUNITY & ECONOMIC DEVELOPMENT

### 4.2 Approve an ordinance amending Title 5 of the San José Municipal Code to add a new Chapter 5.08 adopting a Citywide Inclusionary Housing Program. CEQA: Resolution No. 65459, File No. PP08-258. (Housing)

Action: Deferred to December 1, 2009 per Administration.

### 4.3 (a) Adopt the following 2009-2010 Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:

- (1) Decrease the Licenses and Permits (Building Fee Program) estimate by \$1,811,262;
- (2) Decrease the Licenses and Permits (Fire Fee Program) estimate by \$363,000;
- (3) Decrease the Departmental Charges (Planning Fee Program) estimate by \$722,323;
- (4) Decrease the Departmental Charges (Public Works Fee Program) estimate by \$1,001,335;
- (5) Decrease the Planning, Building and Code Enforcement Personal Services appropriation by \$1,872,242;

4.3

- (6) Decrease the Planning, Building and Code Enforcement Non-Personal/Equipment appropriation by \$171,000;
  - (7) Decrease the Information Technology Personal Services appropriation by \$307,824;
  - (8) Decrease the Information Technology Non-Personal/Equipment appropriation by \$153,800;
  - (9) Decrease the Public Works Personal Services appropriation by \$937,611;
  - (10) Decrease the Fire Personal Services appropriation by \$217,983;
  - (11) Decrease the Fire Development Fee Program Earmarked Reserve by \$80,273;
  - (12) Decrease the Public Works Development Fee Program Earmarked Reserve by \$31,528;
  - (13) Decrease the Planning Development Fee Program Earmarked Reserve by \$81,692;
  - (14) Decrease the Building Development Fee Program Earmarked Reserve by \$37,091; and
  - (15) Decrease the Salary and Benefit Earmarked Reserve by \$6,876.
- (b) Adopt the following 2009-2010 Appropriation Ordinance amendments in the Integrated Waste Management Fund:
- (1) Increase the Information Technology Personal Services appropriation by \$12,654; and
  - (2) Decrease the Ending Fund Balance by \$12,654.
- (c) Adopt the following 2009-2010 Appropriation Ordinance amendments in the Storm Sewer Operating Fund:
- (1) Increase the Information Technology Personal Services appropriation by \$12,654; and
  - (2) Decrease the Ending Fund Balance by \$12,654.
- (d) Adopt the following 2009-2010 Appropriation Ordinance amendments in the Water Utility Fund:
- (1) Increase the Information Technology Personal Services appropriation by \$8,436;
  - (2) Decrease the Ending Fund Balance by \$8,436;
- (e) Adopt the following 2009-2010 Appropriation Ordinance amendments in the Sewer Service and Use Charge Fund:
- (1) Increase the Information Technology Personal Services appropriation by \$8,436; and
  - (2) Decrease the Ending Fund Balance by \$8,436;
- (f) Eliminate 43.5 positions in Planning, Building and Code Enforcement (29.0), Public Works (11.5) and Information Technology (3.0) Departments included in Attachment A of the Council memorandum.

**CEQA: Not a Project. (Planning, Building and Code Enforcement/Public Works/Fire/ City Manager's Office)**

### 4.3 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, Director of Public Works Katy Allen, Fire Chief Darryl Von Raesfeld and Budget Director Jennifer Maguire, dated October 26, 2009, recommending adoption of appropriation ordinance and funding sources resolution amendments. (2) Staff presentation summarizing the Development Services Budget dated November 17, 2009. (3) Reductions in Economic Recovery, Neighborhood Vitality and Public Safety dated November 17, 2009 from a City of San José Planner. (4) Letter from Robert Hencken, Senior Vice President, SummerHill Homes, dated November 17, 2009, expressing concerns about the proposed budget cuts. (5) Email from Terri Balandra, Fiesta Lanes Action Group, dated November 16, 2009, requesting that the Council look at employee furloughs in lieu of salary cuts or layoffs.

Director of Planning, Building and Code Enforcement Joseph Horwedel provided the Staff Report on the Development Services Budget. Director of Human Resources Mark Danaj provided the summary of Employee Impact, Aggregate Impact and Outcomes and Affected Employee Resources.

Chief Deputy City Manager Edward K. Shikada and Director of Planning, Building and Code Enforcement Joseph Horwedel responded to Council questions and comments.

Public Comments: Debbie McDermott complained about customer service and the long four hour wait she experienced with a scheduled express appointment. Ruth Cavagnara, Shasta Hanchett Park Neighborhood Association, stated that quality to customer and clients should be considered.

Speaking in support to a monthly furlough program for planners were Susan Walsh, Hadasa Lev, Andres Crabtree, Avril Baty, Jodie Clark, Lesley Xavier, Sally Zarnowitz, Mike Enderby, Juan Borrelli, Warren Krause, ABMEI, and John Wolfram.

Michelle Beasley, Greenbelt Alliance and Erik Hayden, Republic Urban Properties, spoke in support to the Planning Staff.

Discussion followed.

Action: Upon motion by Vice Mayor Chirco, seconded by Council Member Liccardo and carried unanimously, [Ordinance No. 28664](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the General Fund for the Planning, Building and Code Enforcement Personal Services, For the Planning, Building and Code Enforcement Non-Personal/Equipment, For the Information Technology Personal Services, For the Information Technology Non-Personal/Equipment Services, For the Public Works Personal Services, For the Fire Personal Services, For the Fire Development Fee Program Earmarked Reserve, For the Public Works Development Fee

#### 4.3 (Cont'd.)

Program Earmarked Reserve, For the Planning Development Fee Program Earmarked Reserve and For the Building Development Fee Program Earmarked Reserve; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”; [Resolution No. 75174](#), 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”; [Ordinance No. 28665](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the Integrated Waste Management Fund for the Information Technology Personal Services; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”; [Ordinance No. 28666](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the Storm Sewer Operating Fund for the Information Technology Personal Services; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”; [Ordinance No. 28667](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the Water Utility Fund for the Information Technology Personal Services; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption” and [Ordinance No. 28668](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the Sewer Service and Use Charge Fund for the Information Technology Personal Services; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption” were adopted and 43.5 positions in Planning, Building and Code Enforcement (29.0), Public Works (11.5) and Information Technology (3.0) Departments included in Attachment A of the Council memorandum were eliminated. (11-0.)

#### 4.8 **Accept the report and direct staff to prepare an ordinance to revise Title 23 of the San José Municipal Code (the Sign Ordinance) consistent with the proposed draft signage strategy and conduct additional related community outreach. CEQA: Not a Project. (Planning, Building and Code Enforcement)**

Action: Deferred to December 1, 2009 per Administration.

#### 4.9 (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.**

- 4.9 (b) (3) **Execute ten one-year options to renew the agreements for continued technical support and hosting services subject to annual appropriation of funding.**

**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 and 11/10/09 – Item 4.4)**

Action: Deferred to December 1, 2009 per Administration.

- 4.11 **Consideration of an ordinance amending Sections 20.100.290 and 20.100.300 of Chapter 100 of Title 20 of the San José Municipal Code relating to recordation of Land Use Permits, and Section 20.120.150 of Chapter 120 of Title 20 of the San José Municipal Code relating to alternative means of compliance with General Development Plans. CEQA: Not a Project. Citywide.**

Action: Item 4.11 was continued to December 1, 2009 in the afternoon per Administration. *Note: Item 4.11 was renumbered from Item 11.4.*

## **NEIGHBORHOOD SERVICES**

- 5.2 **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 and 11/10/09 – Item 5.2)**

## 5.2 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated October 13, 2009, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated October 26, 2009, noting the corrected name for the legal entity as Urban Park Concessionaires. (3) Staff presentation summarizing the Happy Hollow Park and Zoo Contract for Retail Services dated November 17, 2009.

Director of Parks, Recreation and Neighborhood Services Albert Balagso stated in lieu of the recommendation, which read that the term of the agreement was for five years from date of execution by the City Manager, he clarified that the term of the agreement should be five years from the date of commencement of services.

A short discussion followed.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Pyle and carried unanimously, [Resolution No. 75175](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with Urban Park Concessionaires for Retail Concessions for the Happy Hollow Park and Zoo", was adopted, as amended, with clarification that the term of the agreement would be five years from the date of commencement of services. (10-0-1. Absent: Constant.)

## TRANSPORTATION & AVIATION SERVICES

### 6.1 Report of the Transportation and Environment Committee – November 2, 2009 Council Member Liccardo, Chair

Action: Deferred to December 1, 2009 per Orders of the Day.

### 6.2 As referred by the Transportation and Environment Committee on November 2, 2009, adopt the "San José Bike Plan 2020" and schedule a follow up report for the Transportation and Environment Committee in Spring 2010 to review bike plan implementation priorities. CEQA: Resolution No. 65459, File No. PP09-189. [Transportation and Environment Committee referral 11/2/09 – Item 6.1(d)(2)]

Documents Filed: (1) Memorandum from City Clerk Lee Price, dated November 4, 2009, transmitting the recommendations of the Transportation and Environment Committee. Supplemental memorandum from Acting Director of Transportation Hans Larsen, dated November 13, 2009, providing additional public comments, minor modifications to the San José Bike Plan 2020 and transmitting the revised bike plan.

## 6.2 (Cont'd.)

Acting Director of Transportation Hans Larsen provided a presentation on the San José Bike Plan 2020.

Public Comments: Speaking in support to the San José Bike Plan 2020 were Michele Beasley, Greenbelt Alliance and Carlos Babcock, Silicon Valley Bicycle Coalition. Ross Signorino argued that bike lanes in the streets are too dangerous for people to use.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the San José Bike Plan 2020 was approved and a follow up report on the bike plan implementation priorities will be scheduled in Spring 2010 for the Transportation and Environment Committee to review. (10-0-1. Absent: Campos.)

## ENVIRONMENTAL & UTILITY SERVICES

- 7.1 (a) **Adopt a resolution authorizing the City Manager to negotiate and execute the Sixth Amendment to the construction service agreement with City of Santa Clara for the South Bay Water Recycling Program, revising the approved project list, increasing the maximum amount payable by \$3,000,000 to a total maximum amount not to exceed \$30,600,000 and extending the term of the agreement by eighteen months to December 31, 2011.**
- (b) **Adopt the following Appropriation Ordinance amendments in the San José-Santa Clara Treatment Plant Capital Fund:**
- (1) **Increase the appropriation to the Environmental Services Department for the Revised South Bay Action Plan – SBWR Extension by \$3,410,000; and**
  - (2) **Decrease the Ending Fund Balance by \$3,410,000.**

**CEQA: Resolution No. 64667 (PP#91-04-090) and Addenda thereto scheduled for action by City of Santa Clara prior to action by San José City Council under the following reference numbers: Santa Clara Central Park: PLN 2009-07751, CEQ 2009-01085; Santa Clara Industrial 1: PLN 2009-07749, CEQ 2009-01083; Santa Clara Industrial 2: PLN 2009-07616, CEQ 2009-01080. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean and Budget Director Jennifer Maguire, dated October 26, 2009, recommending adoption of a resolution and appropriation ordinance amendments. (2) Letter from the Treatment Plant Advisory Committee Chair Chuck Reed, dated November 10, 2009, stating concurrence with the Staff recommendations.

## 7.1 (Cont'd.)

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, [Resolution No. 75176](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute the Sixth Amendment to the Construction Service Agreement with the City of Santa Clara for the South Bay Water Recycling Program, Revising the Approved Project List, Increasing the Maximum Amount Payable by Three Million Dollars (\$3,000,000) to a Total Maximum Amount Not To Exceed Thirty Million Six Hundred Thousand Dollars (30,600,000)” and [Ordinance No. 28669](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the San José-Santa Clara Treatment Plant Capital Fund for the Revised South Bay Action Plan - South Bay Water Recycling Extension Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption” were adopted. (10-0-1. Absent: Campos.)

## 7.2 As referred by the Transportation and Environment Committee on November 2, 2009, consider adoption of a resolution to:

- (a) Rescind Council Policy 4-4 on Source Reduction and Recycling Procurement; and
- (b) Amend Council Policy 4-6 on Environmentally Preferable Procurement to incorporate Council Policy 4-4, and to encourage extended producer responsibility.

(Finance)

[Transportation and Environment Committee referral 11/2/09 – Item 6.1(d)(5)]

Documents Filed: Memorandum from City Clerk Lee Price, dated November 4, 2009, transmitting the recommendations of the Transportation and Environment Committee.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, [Resolution No. 75177](#), entitled: “A Resolution of the Council of the City of San José Rescinding City Council Policy 4-4, and Approving Revisions to City Council Policy 4-6, Environmentally Preferable Procurement Policy to Incorporate Council Policy 4-4 and to Expand the Scope of the Policy to Encourage Extended Producer Responsibility”, was adopted. (10-0-1. Absent: Campos.)

## COMMUNITY AND ECONOMIC DEVELOPMENT

### 4.10 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”);

- 4.10 (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, 11/3/09 – Item 4.3 and 11/10/09 – Item 4.3)**

Documents Filed: (1) Memorandum from Director of Housing Leslye Krutko and Assistant Director of Finance Julia Harper Cooper, dated October 5, 2009, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Housing Leslye Krutko and Assistant Director of Finance Julia Harper Cooper, dated November 2, 2009, to transit and recommend approval of a subordination agreement.

As previously noted, Council Member Oliverio stated for the record that his no vote was consistently based upon no park fees, no ongoing property tax and no building and construction taxes.

Public Comments: David Wall spoke in opposition to the Staff recommendations with regard to incurring tremendous debt to the City.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, [Resolution No. 75180](#), entitled: "A Resolution of the Council of the City of San José Authorizing the Issuance, Sale and Delivery of Multi Family Housing Revenue Bonds and the Loan of the Proceeds Thereof for the Financing of the Belovida at Newbury Park Senior Apartments; The Change in the City's Regulatory Restrictions and Approving Other Related Documents and Actions", was adopted. (10-1. Noes: Oliverio.)

## **OPEN FORUM**

Ross Signorino expressed support for the City's efforts to provide affordable housing.

## RECESS/RECONVENE

The City Council recessed at 6:12 p.m. from the afternoon Council Session and reconvened at 7:02 p.m. in the Council Chambers, City Hall.

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

Absent: Council Members - Campos, Constant. (Excused)

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. (9-0-2. Absent: Campos, Constant.)

## ORDERS OF THE EVENING

Upon motion by Vice Mayor Chirco, seconded by Council Member Pyle and carried unanimously, Ceremonial Item 1.7 was added to the agenda, Item 1.6 was heard in the evening and Item 1.5 was deferred. (7-0-4. Absent: Campos, Constant, Herrera, Oliverio.)

## CEREMONIAL ITEMS

- 1.4 Administer Oath of Office to Citywide Youth Commissioner Miriam Khan. (City Clerk)  
(Rules Committee referral 11/9/09)**

Action: Assistant City Clerk Dennis Hawkins administered the Oath of Office to the new Citywide Youth Commissioner Miriam Khan.

- 1.5 Presentation of a commendation to Girl Scout Service Unit 622 for their enthusiastic participation in the 2009 Great American Litter Pick Up. (Campos/Parks, Recreation and Neighborhood Services)  
(Orders of the Day)**

Action: Deferred per Orders of the Evening.

- 1.7 Presentation of a commendation recognizing the week of November 29, 2009 to December 6, 2009 as “Family Week” in the City of San José. (Kalra)  
(Orders of the Evening)**

Action: Mayor Reed and Council Member Kalra recognized the week of November 29, 2009 to December 6, 2009 as “Family Week” in the City of San José. Mayor Reed presented a plaque to Alliance for Children and Families.

**1.6 Presentation of a commendation to Roxanne Koopman for taking the leadership role in organizing the inaugural Sakamoto SLUG Run. (Kalra) (Orders of the Evening)**

Action: Mayor Reed and Council Member Kalra recognized and commended Roxanne Koopman for taking the leadership role in organizing the inaugural Sakamoto SLUG Run.

**STRATEGIC SUPPORT SERVICES**

- 3.5 (a) Accept the draft profile of the Independent Police Auditor position, approve the timeline for the recruitment and provide feedback and direction on the draft conflict of interest form.**
- (b) Direct staff and Consultant on next steps for posting the position as noted in the staff report, and beginning to accept applicants.**

**CEQA: Not a Project. (Human Resources)**

Documents Filed: Memorandum from Director of Human Resources Mark Danaj, dated October 26, 2009, recommending acceptance of the Independent Auditor position, timeline, provide feedback and direction on the draft conflict of interest form; and direction to staff and consultant.

Director of Human Resources Mark Danaj, Deputy Director of Human Resources Heather Ruiz and Paul Kimura, Avery and Associates, responded to Council questions and comments.

Public Comments: The following speakers provided comments about the Independent Police Auditor recruitment: that more community input is needed, there should be a strong relationship between the Police Department and the Independent Police Auditor, engage a diverse people, the need for more police accountability and transparency, the Independent Police Auditor needs to be able to understand the diversity of San José, and concerns about excessive force complaints. The speakers were Socorro McCord, Anne Im, Asian Americans for Community Involvement (AACI), Raj Javadev, Silicon Valley De-BUG, Ross Signorino, Ellen Lin, San José State University, Van Le, VACNORCAL, Leon Kimura, San José Japanese American Citizens League, Aaron Resendez, Tamon Norimoto, South Bay First Thursday, Sam Ho and Quyen Vuong, International Children Assistance Network.

Council discussion ensued.

Mayor Reed recommended changing the language in the profile of The Ideal Candidate as follows: “A solid record of community engagement, working with a diverse community and cooperative interaction with a wide array of community representatives will be key”; and at the end of the paragraph: “A Master’s Degree and/or JD and experience in civilian oversight are desirable”.

### 3.5 (Cont'd.)

Motion: Council Member Nguyen moved approval of the draft profile of the Independent Police Auditor with the recommendations provided by Mayor Reed. Council Member Liccardo seconded the motion.

City Attorney Richard Doyle requested to amend the motion to add language for the draft Conflict of Interest Form shall include disclosure of past or present relationships. The amendment was accepted by Council Members Nguyen and Liccardo.

Council Member Chu expressed concern about outreach and requested to amend the motion to extend the outreach period to January 22, 2010 (closing date) with additional community outreach and community meetings in different languages, i.e. Vietnamese and Spanish; Amend recruitment timeline and post on the web. The amendment was accepted by Council Members Nguyen and Liccardo.

Action: On a call for the question, the motion carried unanimously, the draft Independent Police Auditor profile was accepted, as amended: (1) Change language in the profile of The Ideal Candidate as follows: "A solid record of community engagement, working with a diverse community and cooperative interaction with a wide array of community representatives will be key". At the end of the paragraph: "A Master's Degree and/or JD and experience in civilian oversight are desirable". (2) Language for the draft Conflict of Interest Form shall include disclosure of past or present relationships. (3) Extend outreach period to January 22, 2010 (closing date) with additional community outreach and community meetings in different languages, i.e. Vietnamese and Spanish; Amend recruitment timeline and post on the web. (9-0-2. Absent: Campos, Constant.)

## COMMUNITY AND ECONOMIC DEVELOPMENT

- 4.4 Conduct a public hearing and adopt a resolution ordering the reorganization/annexation of the territory designated as Franklin No. 54, which involves the annexation to the City of San José of approximately 39 gross acres of land generally bounded by Lewis Road to the north, Monterey Road to the west, Singleton Road to the south and Sunburst Drive to the east, and the detachment of the same from the appropriate special districts including Central Fire Protection, County Lighting, County Sanitation District No. 2-3, and Area No. 01 (Library Services) County Service. CEQA: Resolution No. 65459. Council District 7. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated October 26, 2009, recommending adoption of a resolution.

Mayor Reed opened the public hearing.

#### 4.4 (Cont'd.)

Public Comments: Clyde Archie Ross expressed concern about the impacts on his property with regard to drainage and objected to the annexation. John Serrano objected to paying for sidewalks.

Mayor Reed closed the public hearing.

Mayor Reed requested that Planning Staff explain about the sidewalks, the infrastructure and why the City of San José is annexing the County pockets into the City.

Director of Planning, Building and Code Enforcement Joseph Horwedel explained that the annexations do not trigger the City to install sidewalks; the City would be the provider of police and fire service, library and parks, garage, recycling and code issues. He added that this is an effort from years of discussion between the City and the County of Santa Clara and that the County has impelled the City to annex the County pockets into the City of San José. City Attorney Richard Doyle also clarified issues that have discussed between the City and the County since 1993.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Herrera and carried unanimously, [Resolution No. 75181](#), entitled: “A Resolution of the Council of the City of San José Making Determinations and Ordering the Reorganization of Certain Inhabited, Unincorporated Island Territory Designated as Franklin No. 54, Subject to Liability for General Indebtedness of the City”, was adopted. (9-0-2. Absent: Campos, Constant.)

#### 4.5 **Conduct a public hearing and adopt a resolution ordering the reorganization/annexation of the territory designated as Franklin No. 55, which involves the annexation to the City of San José of approximately 73 gross acres of land generally located west of East Capitol Expressway, east of Monterey Road, south of Southside Drive and north of Rancho Drive, and the detachment of the same from the appropriate special districts including Central Fire Protection, County Lighting, County Sanitation District No. 2-3, and Area No. 01 (Library Services) County Service. CEQA: Resolution No. 65459. Council District 7. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated October 26, 2009, recommending adoption of a resolution.

Mayor Reed opened the public hearing.

Public Comment: David Garcia spoke briefly about the annexation of the territory designated as Franklin No. 55.

Mayor Reed closed the public hearing.

4.5 (Cont'd.)

Action: Upon motion by Council Member Nguyen, seconded by Council Member Herrera and carried unanimously, [Resolution No. 75182](#), entitled: “A Resolution of the Council of the City of San José Making Determinations and Ordering the Reorganization of Certain Inhabited, Unincorporated Island Territory Designated as Franklin No. 55, Subject to Liability for General Indebtedness of the City”, was adopted. (9-0-2. Absent: Campos, Constant.)

**4.6 Conduct a public hearing and adopt a resolution ordering the reorganization/annexation of the territory designated as Parker No. 27, which involves the annexation to the City of San José of approximately 78 gross acres of land generally bounded by Samaritan Drive to the north, Union Avenue to the east, Wilma Way to the west and Rosswood Drive to the south, and the detachment of the same from the appropriate special districts including Central Fire Protection, County Lighting, West Valley Sanitation, and Area No. 01 (Library Services) County Service. CEQA: Resolution No. 65459. Council District 9. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated October 26, 2009, recommending adoption of a resolution.

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

Action: Upon motion by Vice Mayor Chirco, seconded by Council Member Herrera and carried unanimously, [Resolution No. 75183](#), entitled: “A Resolution of the Council of the City of San José Making Determinations and Ordering the Reorganization of Certain Inhabited, Unincorporated Island Territory Designated as Parker No. 27, Subject to Liability for General Indebtedness of the City”, was adopted. (9-0-2. Absent: Campos, Constant.)

**4.7 Conduct a public hearing and adopt a resolution ordering the reorganization/annexation of the territory designated as Sunol No. 82, which involves the annexation to the City of San José of approximately 42 gross acres consisting of 282 parcels located in an area generally bounded by the south side of Park Avenue, west side of McEvoy Street, north and south sides of West San Carlos Street, and the east side of Meridian Avenue, and the detachment of the same from Central Fire Protection, County Lighting, Santa Clara Valley Zone C-1 County Water, Sunol Sanitary, and Area No. 01 (Library Services) County Service Districts. CEQA: Resolution No. 65459. Council District 6. (Planning, Building and Code Enforcement)**

#### 4.7 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated October 26, 2009, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated November 3, 2009, transmitting a letter from Sunol Sanitary District in support of the proposed annexation; providing additional information about the importance of proceeding as scheduled and noting that City Staff recently became aware that the street improvements planned for this annexation pocket have not been completed by the County and would potentially result in the City incurring additional unbudgeted street maintenance costs. (3) Email from Terri Balandra dated November 13, 2009, noting the support for the annexation.

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

Mayor Reed opened the public hearing.

Public Comment: Speaking in support to the annexation of the territory designated as Sunol No. 82 were Mary Craggs, Mary Fortune, Chet Lockwood, Fiesta Lanes Action Group, Sam Blackford and Terri Balandra, District 6 Neighborhood Planning and Land Use.

Mayor Reed closed the public hearing.

Action: On a call for the question, the motion carried unanimously, [Resolution No. 75184](#), entitled: “A Resolution of the Council of the City of San José Making Determinations and Ordering the Reorganization of Certain Inhabited, Unincorporated Island Territory Designated as Sunol No. 82, Subject to Liability for General Indebtedness of the City”, was adopted. (9-0-2. Absent: Campos, Constant.)

## PUBLIC HEARINGS ON CONSENT CALENDAR

- 11.1 (a) **Consideration of a Director-Initiated Planned Development rezoning to establish development standards to facilitate site and architectural upgrades for 58 existing residential apartment buildings (236 individual apartment units) on a 11.75 gross acre site located in the area generally bounded by both side of Underwood Drive, Temple Drive, Barker Drive, and Keltner Avenue north of Williams Road. SNI: Blackford. CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2).  
PDC09-017 – District 1**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC09-017, dated October 28, 2009, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 5, 2009, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing, executed on October 9, 2009, submitted by the City Clerk.

Mayor Reed opened the public hearing.

Public Comments: Gordon Marshall expressed concern about the reduction of parking.

Mayor Reed closed the public hearing.

Action: Upon motion by Vice Mayor Chirco, seconded by Council Member Constant and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, [Ordinance No. 28670](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated in the Area Generally Bounded by Both Sides of Underwood Drive, Temple Drive, Barker Drive, Keltner Avenue, North of Williams Road, From R-M Multiple Residence District to R-M (PD) Planned Development Zoning District”, was passed for publication. (9-0-2. Absent: Campos, Constant.)

- (b) **Consideration of an ordinance rezoning the real property located at the northeast corner between Willow Street and Delmas Avenue (661 Willow Street) from the CP Commercial Pedestrian Zoning District to the CN Commercial Neighborhood Zoning District on a 0.22 gross acre site (Bernardo De La O, Owner). SNI: Greater Gardner. CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.  
C08-044 – District 6**

**11.1 (b) (Cont'd.)**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C08-044, dated October 26, 2009, recommending approval. (2) Proof of Publication of Notice of Public Hearing, executed on October 27, 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 Oliverio, seconded by Council Member Pyle and carried unanimously, the recommendation of the Planning Director was approved, [Ordinance No. 28671](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Northeast Corner between Willow Street and Delmas Avenue to CN Commercial Neighborhood Zoning District", was passed for publication. (9-0-2. Absent: Campos, Constant.)

**END OF PUBLIC HEARINGS ON CONSENT CALENDAR**

## PUBLIC HEARINGS

- 11.2 Consideration of an ordinance rezoning the real property located at/on the west side of North 10<sup>th</sup> Street, between Vestal Street and East Mission Street (825 N 10<sup>th</sup> Street) from LI Light Industrial Zoning District to A(PD) Planned Development Zoning District to allow up to 166 single-family attached residences on a 3.28 gross acre site (825 N. Tenth Street, LLC Don Kvingedal, Owner; Hudson Industrial Equities, Inc, Developer). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2).  
PDC06-069 – District 3**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC06-069, dated October 27, 2009, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 4, 2009, transmitting the Planning Commission recommendation of approval. (3) Proof of Publication of Notice of Public Hearing, executed on October 9, 2009, submitted by the City Clerk.

Mayor Reed opened the public hearing.

Public Comments: Erik Schoennauer, representing Hudson Industrial Equities, was available for questions.

Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and [Ordinance No. 28672](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated at the West Side of North Tenth Street Between East Mission and Vestal Streets (825 North Tenth Street) from LI Light Industrial to A(PD) Planned Development Zoning District”, was passed for publication. (9-0-2. Absent: Campos, Constant.)

- 11.3 Consideration of an ordinance rezoning the real property located on the north side of Ford Road, approximately 550 feet easterly of Monterey Road from R-1-1 Residence Zoning District to A(PD) Planned Development Zoning District to allow up to 95 affordable multi-family attached residences on a 3.06 gross acre site (Owner, State of California; Developer, Eden Housing). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2).  
PDC09-022 – District 2**

### 11.3 (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC09-022, dated October 27, 2009, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated November 5 2009, transmitting the Planning Commission recommendation of approval. (3) Proof of Publication of Notice of Public Hearing, executed on October 23, 2009, submitted by the City Clerk.

Director of Planning, Building and Code Enforcement Joseph Horwedel provided clarifications about the preservation of employment lands and read into the record that rezonings that are consistent with existing General Plan land use designation are not employment land conversions and are not governed by the framework; small, isolated remnant parcels that are degrading neighborhoods and no longer suitable for commercial uses may be considered for conversion for affordable housing projects which include Extremely Low Income; he stated with regard to retaining Citywide job capacity, that there is no net loss of total job capacity within the City and there is an extraordinary economic benefit provided by the conversion of the site to non employment uses.

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

As previously noted, Council Member Oliverio reiterated for the record that his no vote was based upon no park fees, no ongoing property tax and no building and construction taxes.

Motion: Council Member Kalra moved approval of the Staff recommendations and the clarifications as read into the record by Director Horwedel. Council Member Nguyen seconded the motion.

Mayor Reed opened the public hearing.

Public Comments: Expressing support to the rezoning to allow up to 95 affordable multi-family attached residences were Debra Berthold, Cheryl Hewitt, Shiloh Ballard, Misty Merskh, Greenbelt Alliance, Frank Ybarra, Silver Leaf Coalition and Linda Mandolin, Eden Housing, Inc.

Mayor Reed closed the public hearing.

Council Member Liccardo requested to amend the motion to direct Staff to issue a supplemental memorandum to include accounts for any employment land acreage and/or job credits that may offset future employment land conversions, (b) explain how those credits are distributed to pending housing projects involving an employment land conversion, and (c) clarify how Ford Road project conforms to the Employment Lands Framework. The amendment was accepted by Council Members Kalra and Nguyen.

### 11.3 (Cont'd.)

Action: On a call for the question, the motion carried, the recommendation of the Planning Commission and the Planning Director was approved, and [Ordinance No. 28673](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the North Side of Ford Road, Approximately 550 Feet Easterly of Monterey Road, From R-1-1 Single Family Residence District to A(PD) Planned Development Zoning District", was passed for publication, with Planning Staff directed to issue a memorandum which (a) accounts for any employment land acreage and/or job credits that may offset future employment land conversions, (b) explains how those credits are distributed to pending housing projects involving an employment land conversion, and (c) clarifies how Ford Road project conforms to the Employment Lands Framework. (8-1-2. Noes: Oliverio. Absent: Campos, Constant.)

### 11.4 Consideration of an ordinance amending Sections 20.100.290 and 20.100.300 of Chapter 100 of Title 20 of the San José Municipal Code relating to recordation of Land Use Permits, and Section 20.120.150 of Chapter 120 of Title 20 of the San José Municipal Code relating to alternative means of compliance with General Development Plans. CEQA: Not a Project. Citywide

Action: Continued to December 1, 2009 in the afternoon per Administration. *Note: Item 11.4 was renumbered to Item 4.11.*

## ADJOURNMENT

The Council of the City of San José was adjourned at 8:46 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC  
City Clerk

smd/11-17-09 MIN

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.