



# **CITY COUNCIL AGENDA**

**FEBRUARY 9, 2010**

## **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](http://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, 2<sup>nd</sup> 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](mailto: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: None.  
  
1:30 p.m. - Regular Session, Council Chambers, City Hall  
Absent Council Members: None.
- **Invocation (District 2)**  
Pastor Anne Carlson from New Creation Lutheran Church presented the Invocation.
- **Pledge of Allegiance**  
Mayor Reed led the Pledge of Allegiance accompanied by third-grade students from Country Lane Elementary School (District 1).
- **Orders of the Day**  
The Orders of the Day and the Amended Agenda were approved, with Items 2.3(b) and 3.6 deferred to 2/23/10, and the adjournment honor of Juanita Serrato-Lopez deferred to a future Council meeting.

- **Closed Session Report**  
City Attorney Doyle disclosed the following Closed Session actions of January 12, 2010:

**A. Pending Litigation – Settlement Authorized:**

**Case Name:** City v. PG&E

**Substance of Settlement:** Approval of settlement of lawsuit. PG&E to pay \$6M, 25% (approximately \$1.5M) will go special energy/clean energy fund, 75% (\$4.5M) to General Fund. PG&E also agreed to franchise fee increase to 2.3% (from 2.0%). PG&E waives streetlight audit amount (\$1.08M). The settlement is subject to PUC approval of the Franchise Fee Amendment.

**Council Vote: Ayes:** Campos, Chirco, Chu, Constant, Herrera, Kalra, Liccardo, Nguyen, Oliverio, Pyle; Reed.

**Noes:** None.  
**Disqualified:** None.  
**Absent:** None.  
**Vacant:** None.

## **1. CEREMONIAL ITEMS**

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- 1.1** Presentation of a proclamation declaring the Month of February 2010 as “American Heart Month” in the City of San José. (Kalra/Campos)  
**Mayor Reed and Council Members Kalra and Campos recognized the Month of February 2010 as “American Heart Month” in the City of San José.**
- 1.2** Presentation of a proclamation declaring the Month of February 2010 as “African American History Month” in the City of San José. (Kalra/Nguyen)  
(Rules Committee referral 2/3/10)  
**Mayor Reed and Council Members Kalra and Nguyen recognized the Month of February 2010 as “African American History Month” in the City of San José.**
- 1.3** Presentation of a proclamation recognizing February 7 – 13, 2010 as Future Business Leaders of America – Phi Beta Lambda Week. (Mayor)  
(Rules Committee referral 2/3/10)  
**Mayor Reed recognized February 7 – 13, 2010 as Future Business Leaders of America – Phi Beta Lambda Week.**

## 2. CONSENT CALENDAR

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### 2.1 Approval of Minutes.

**Recommendation:** Approval of minutes.

- (a) Regular Minutes of December 1, 2009
- (b) Special Minutes of December 3, 2009
- (c) Regular Minutes of December 8, 2009
- (d) Joint Council/San José Financing Authority Minutes of December 8, 2009
- (e) Regular Minutes of December 15, 2009

**Approved.**

### 2.2 Final adoption of ordinances.

**Recommendation:** Final adoption of ordinances.

- (a) ORD. NO. 28695 – Rezoning certain real property situated on the southeast corner of Lincoln Avenue and Willow Street (1098 Lincoln Avenue), from CP Commercial Pedestrian to CP(PD) Planned Development Zoning District. PDC09-016

**Ordinance No. 28695 adopted.**

- (b) ORD. NO. 28696 – Rezoning certain real property situated on the east side of Monterey Road, approximately 700 feet north of Tully Road (2112 Monterey Road), from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District. PDC09-015

**Ordinance No. 28696 adopted.**

- (c) ORD. NO. 28697 – Rezoning certain real property situated on the east side of Almaden Expressway, approximately 300 feet north of Redmond Avenue (16430 Almaden Road) from R-1-1 Single-Family Residence Zoning District to A(PD) Planned Development Zoning District. PDC08-051

**Ordinance No. 28697 adopted.**

### 2.3 Approval of Council Committee Reports.

**Recommendation:** Approval of Council Committee Reports.

- (a) Rules and Open Government Committee Report of January 20, 2010. (Mayor)
- (b) Rules and Open Government Committee Report of January 13, 2010. (Mayor) [Deferred from 2/2/10 – Item 2.3(a)]
- (c) Transportation and Environment Committee Report of January 11, 2010. (Liccardo) [Deferred from 1/26/10 – Item 6.1 and 2/2/10 – Item 2.3(d)]

**Item 2.3(b) deferred to 2/23/10 per Orders of the Day. Items 2.3(a) and (c)**

**Approved.**

## 2. CONSENT CALENDAR

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### 2.4 Mayor and Council Excused Absence Requests.

**Recommendation:**

- (a) Request for an excused absence for Vice Mayor Chirco from the Regular Meeting of the Rules and Open Government Committee on February 10, 2010 due to Authorized City Business: Trip to Sacramento, CA to meet with State Legislators regarding budget issues. (Chirco)  
(Rules Committee referral 2/3/10)
- (b) Request for an excused absence for Council Member Chu from the Regular Meeting of the Neighborhood Services & Education Committee on February 11, 2010 due to Authorized City Business: League of California Cities Board Meeting in Sacramento, CA. (Chu)  
(Rules Committee referral 2/3/10)
- (c) Request for an excused absence for Council Member Constant from the Regular Meeting of the Rules and Open Government Committee on February 10, 2010 due to Authorized City Business: Trip to Sacramento, CA to meet with State Legislators regarding budget issues. (Constant)  
(Rules Committee referral 2/3/10)
- (d) Request for an excused absence for Council Member Pyle from the Regular Meeting of the Rules and Open Government Committee on February 10, 2010 due to Authorized City Business: Trip to Sacramento, CA to meet with State Legislators regarding budget issues. (Pyle)  
(Rules Committee referral 2/3/10)

**Excused.**

### 2.5 Grant Application for Lower Guadalupe River Trail - Tasman Drive Under-Crossing Project.

**Recommendation:** Adopt a resolution authorizing the City Manager, or designee, to:

- (a) Submit a grant application in the amount not to exceed \$660,000 to the Metropolitan Transportation Commission (MTC) under the Community Design and Transportation (CDT) Capital Grant program for the Lower Guadalupe River Trail: Tasman Drive Under-Crossing project (“Project”); and
- (b) Accept any grant funds awarded to the City and negotiate and execute all necessary documents related to any grant funding from MTC to the City for the Project.

CEQA: Mitigated Negative Declaration, File No. PP04-323. Council District 4. (Parks, Recreation and Neighborhood Services)

**Resolution No. 75271 adopted.**

## 2. CONSENT CALENDAR

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### 2.6 Amendments to Pacific Gas and Electric Company (PG&E) Franchise Fee Ordinances.

**Recommendation:**

- (a) Approve an ordinance amending the franchise with PG&E for the sale of gas within the City (Ordinance No. 15879 as amended by Ordinance Nos. 21676 and 26913) to add a franchise fee surcharge of 0.3% resulting in a total franchise fee remitted to the City of 2.3% of gross receipts and to provide for the waiver of certain negotiation and arbitration rights under the franchise.

**Ordinance No. 28719 passed for publication.**

- (b) Approve an ordinance amending the franchise with PG&E for the sale of electricity within the City (Ordinance No. 15880 as amended by Ordinance Nos. 21677 and 26914) to add a franchise fee surcharge of 0.3% resulting in a total franchise fee remitted to the City of 2.3% of gross receipts and to provide for the waiver of certain negotiation and arbitration rights under the franchise.

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

(To Be Deferred from 2/2/10 – Item 2.6)

**Ordinance No. 28720 passed for publication.**

### 2.7 Santa Clara Valley Water District FY 2011 – Joint Advocacy Federal Projects.

**Recommendation:** As recommended by the Rules and Open Government Committee on January 27, 2010, accept the Santa Clara Valley Water District's (SCVWD) FY 2011 – Joint advocacy Federal projects in the City of San José's jurisdiction. (City Manager's Office/Environmental Services)

[Rules Committee referral 1/27/10 – Item D(2)]

**Accepted, with Staff directed to provide an information memo outlining how Staff intends to incorporate trail projects into pending SCVWD federal appropriations requests.**

### 2.8 District 6 “No Impact Man” Movie Event.

**Recommendation:** As recommended by the Rules and Open Government Committee on January 27, 2010, approve the designation of the District 6 “No Impact Man” Movie Event as a City Council Sponsored Special Event to expend City Funds and Services for the event. CEQA: Not a Project. (City Clerk)

[Rules Committee referral 1/27/10 – Item H(4)]

**Approved.**

## 2. CONSENT CALENDAR

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### 2.9 Westfield Oakridge Winter Walk (WOWW) and Resource Fair for Seniors.

**Recommendation:** As recommended by the Rules and Open Government Committee on January 27, 2010:

- (a) Approve the designation of the Westfield Oakridge Winter Walk (WOWW) and Resource Fair for Seniors as a City Council Sponsored Special Event; and
- (b) Approve and accept in-kind donations from business to support the event.

CEQA: Not a Project. (City Clerk)

[Rules Committee referral 1/27/10 – Item H(5)]

**Approved.**

## 3. STRATEGIC SUPPORT SERVICES

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### 3.1 Report of the City Manager, Debra Figone No Report.

### 3.2 Actions Related to the Board Governance for the Federated City Employees' Retirement System and Police & Fire Department Retirement Board.

**Recommendation:**

- (a) Approve the following revisions to the governance structure of the City's retirement plans and direct the City Attorney to draft an ordinance with the necessary revisions to the San José Municipal Code:
  - (a) (1) For the Federated City Employees' Retirement System, replace the two City Council Board members and Civil Service Commission Board member with three public members in addition to the one existing public board member.
  - (2) For the Police and Fire Department Retirement Board, replace the two City Council Board members, the Civil Service Commission Board member and City Administration Board member with four public board members.
  - (3) Establish qualification criteria, term, stipend, appointment process, selection process, and removal process for the public board members for both retirement plans.
- (b) Direct the City Administration to continue to evaluate the other retirement board governance recommendations prepared by the consultant and return to the City Council with recommendations. CEQA: Not a Project. (City Manager's Office)

(Deferred from 1/26/10 – Item 3.6)

**Approved, as amended by the changes outlined in the joint memorandum dated 2/4/10 from Mayor Reed and Council Members Constant, Kalra, Liccardo and Herrera, as revised (provide quarterly reports on Retirement Board Investments to the Public Safety, Finance & Strategic Support Committee).**

### 3. STRATEGIC SUPPORT SERVICES

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#### 3.3 Service Efforts and Accomplishments Report 2008-09.

**Recommendation:** Accept the report on City Government Performance. CEQA: Not a Project. (City Auditor's Office)

**Accepted.**

#### 3.4 Approval of the 2009-2010 Mid-Year Budget Actions.

**Recommendation:**

(a) Approve the 2009-2010 Mid-Year Budget Review Report.

**Approved.**

(b) Adopt related Appropriation Ordinance and Funding Sources Resolution amendments in various funds as detailed in Section III (Recommended Budget Adjustments and Clean-Up Actions) in the 2009-2010 Mid-Year Budget Review.

**Ordinance No. 28698 adopted.**

**Resolution No. 75266 adopted.**

(c) Approve the elimination of 9.0 positions as detailed in Section III of the 2009-2010 Mid-Year Budget Review Report; comprised of 6.0 positions in the Police Department, of which 5.0 are related to Airport Services and 1.0 to the implementation of 2009-2010 Adopted Budget actions; 2.0 Civil Service positions in the Redevelopment Agency of the City of San José (SJRA) as part of the SJRA budget rebalancing actions; and 1.0 position in the Public Works Department related to Airport Services.

**Approved.**

(d) Adopt a resolution making certain determinations regarding the expenditure of Redevelopment Agency funds included in the Agency's Adopted Budget, under the City Public Improvements line item on the following public improvements: Revenue Control Upgrades, Convention Center Deck Upgrade, Minor Parking Facility Improvements, Security Improvements, Arena Parking Meters, Parking Technology Improvements, Happy Hollow furniture, fixtures, and equipment, Anti-Graffiti Program, Watson Park Clean-Up and Restoration, and the Police Substation furniture, fixtures, and equipment. These projects are specifically described in the memorandum from the Redevelopment Agency of the City of San José dated August 18, 2009, included in the Appendix section of this report. As approved in the City's 2009-2010 Adopted Operating Budget, these Redevelopment Agency funds pay for eligible capital projects which would otherwise be funded from City sources, thereby freeing-up City funds to support the San José BEST program and pay the cost of eight Police Officers.

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

**Resolution No. 75272 adopted.**

### 3. STRATEGIC SUPPORT SERVICES

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#### 3.5 Mayor's Budget Prioritization Survey Results.

**Recommendation:** Accept the Mayor's Budget Prioritization Survey Results. (Mayor) Accepted.

#### 3.6 FY 2009-10 First Quarter Revenue Collection Strategic Plan Report.

**Recommendation:** As recommended by the Public Safety, Finance and Strategic Support Committee on December 17, 2009:

(a) Accept the FY 2009-10 First Quarter Revenue Collection Strategic Plan Report;

(b) Adopt a resolution authorizing the Director of Finance to write off 126 uncollectible accounts in an amount totaling \$1,702,757.42. (Finance)

[Public Safety, Finance and Strategic Support Committee referral 12/17/09 – Item D(3)]

(Deferred from 1/12/10 – Item 3.7, 1/26/10 – Item 3.5 and 2/2/10 – Item 3.4)

**Deferred to 2/23/10 per Orders of the Day.**

### 4. COMMUNITY & ECONOMIC DEVELOPMENT

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#### 4.1 Rezoning real property located on the west side of Cadwallader Avenue.

**Recommendation:** Consider an ordinance rezoning the real property located on the west side of Cadwallader Avenue, approximately 500 feet southerly of Prunetree Lane (4093 Cadwallader Avenue) to allow up to 38 single-family detached residential units on an 18.5 gross acre site (Larios Cheryl Trustee & Et Al, Tedro Living Trust Marion L. Tedro, Tedro Living Trust Robert S. Tedro, James E. Bertlett, Margret H. Oxsen, Michael & Laura Pianka, Vinh Tran, Owner; Asc Properties, LLC Tony Arreola, Developer).

CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-2-0).

PDC09-010 – District 8

(Deferred from 1/26/10 – Item 11.6)

**Ordinance No. 28721 passed for publication.**

## 5. NEIGHBORHOOD SERVICES

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### 5.1 Parks, Recreation and Neighborhood Services Capital Project Schedules.

**Recommendation:**

- (a) Accept the recommendation of the Director of Parks, Recreation and Neighborhood Services (Director) to place a hold through Fiscal Year 2010-2011 on the design and construction of new parks and recreation facilities which do not fit within the near term strategies outlined in the City Council approved Greenprint 2009 Update;
- (b) Request that the Director report back to the Mayor and City Council on an annual basis as part of the annual budget process to recommend either continuing the temporary hold or to begin design and construction; and
- (c) Request that the Director facilitate a process with community stakeholders to brainstorm alternative funding mechanisms for facility operations and maintenance.

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

**Accepted.**

## 5. NEIGHBORHOOD SERVICES

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### 5.2 Grant Application for Proposition 84 – Statewide Park Program.

**Recommendation:** Adopt a resolution authorizing the City Manager or designee to:

- (a) Submit grant applications for the twenty-one (21) projects identified in Table 1 of this memorandum in the total amount not to exceed \$55,000,000 under the Statewide Park Development and Community Revitalization Program of 2008 (Statewide Park Program) administered by the Office of Grants and Local Services (OGALS) within the California State Department of Parks and Recreation (DPR);
- (b) For projects with appropriate CEQA clearance, accept any grant funds awarded to the City and to negotiate and execute all necessary documents to implement the grant awards;
- (c) For projects that have not obtained appropriate CEQA clearance, accept any grants funds awarded to the City for the limited purpose of completing CEQA, and negotiate and execute all necessary documents to implement the grant awards for CEQA clearance; and
- (e) For projects that have not obtained appropriate CEQA clearance, return to Council at a future date for authorization to negotiate and execute all necessary documents to implement the grant awards.

CEQA: See Administration's memo to Council for specific CEQA clearance determinations on each recommended action. (Parks, Recreation and Neighborhood Services)

**Resolution No. 75273 adopted.**

## **6. TRANSPORTATION & AVIATION SERVICES**

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## **7. ENVIRONMENTAL & UTILITY SERVICES**

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### **7.1 Actions Related to Countywide Nondisposal Facility Element.**

**Recommendation:** Conduct a public hearing and adoption of a resolution approving and adopting the Eighth Amendment to the Countywide Nondisposal Facility Element to identify the following nondisposal facilities: the GreenTeam of San José Material Recovery Facility and Transfer Station, 575 Charles Street, San José; and the proposed GreenWaste Material Processing and Transfer Station, 2765 Lafayette Street, Santa Clara. CEQA: Exempt. (Environmental Services)

**Public hearing held.**

**Resolution No. 75274 adopted.**

## **8. PUBLIC SAFETY SERVICES**

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## **9. JOINT COUNCIL/REDEVELOPMENT AGENCY**

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- **Open Forum**

(1) David Wall made observations regarding shopping cart theft.

(2) Geoffrey Mangers commented on a lawsuit he filed against the County and asked that the City join him in litigation.

- **Adjournment**

The Council of the City of San José was adjourned at 5:28 p.m. in memory of Juan Manuel Flores, longtime resident of the Northside, 1954 graduate of Bellarmine College Prep, proud owner of the Guadalajara Market #2 for over 40 years, active member of Holy Cross Church, and loving husband, father, uncle, and grandfather. (Liccardo)