

CITY COUNCIL AGENDA

MARCH 2, 2010

AMENDED AGENDA

PETE CONSTANT
ASH KALRA
SAM LICCARDO
KANSEN CHU
NORA CAMPOS

DISTRICT 1
DISTRICT 2
DISTRICT 3
DISTRICT 4
DISTRICT 5

CHUCK REED MAYOR

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

DISTRICT 6
DISTRICT 7
DISTRICT 8
DISTRICT 9
DISTRICT 10

Welcome to the San José City Council meeting!

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

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

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

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

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

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

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

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

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

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

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

- **Call to Order and Roll Call**
- * 9:00 a.m. - Closed Session, Call to Order in Council Chambers
Adjourn to Closed Session in Council Chambers Conference Room, W133
[See Separate Agenda](#) [See RDA Agenda](#)
- 1:30 p.m. - Regular Session, Council Chambers, City Hall

- **Invocation (District 3)**
- **Pledge of Allegiance**
- **Orders of the Day**

* Items marked with an asterisk denote changes or additions to the previously published Agenda for this meeting.

Items recommended to be added, dropped, or deferred are usually approved under Orders of the Day unless the Council directs otherwise.

- **Closed Session Report**

1. CEREMONIAL ITEMS

1.1 Presentation of a commendation recognizing Mi Pueblo Foods for raising \$100,000 for Haiti Relief Efforts. (Campos)
(Rules Committee referral 2/17/10)

1.2 Presentation of a proclamation declaring the month of March 2010 as “Nutrition Month” in the City of San José. (Kalra)

* (Rules Committee referral 2/24/10)

1. CEREMONIAL ITEMS

- 1.3 Presentation of a proclamation declaring the week of March 1 – 7, 2010 as “Peace Corps Week” in the City of San José. (Mayor)
* (Rules Committee referral 2/24/10)
- 1.4 Presentation of a proclamation declaring the first week of March 2010 as “Irish Week” in the City of San José to welcome Dublin’s Lord Mayor, Councilor Emer Costello and the Dublin delegation and thank the San José-Dublin Sister City Committee for organizing the Irish Week events. (Pyle)
* (Rules Committee referral 2/24/10)

2. CONSENT CALENDAR

Notice to the public: There will be no separate discussion of Consent Calendar items as they are considered to be routine by the City Council and will be adopted by one motion. If a member of the City Council, staff, or public requests discussion on a particular item, that item will be removed from the Consent Calendar and considered separately.

- 2.1 **Approval of Minutes.**
- 2.2 **Final adoption of ordinances.**
- 2.3 **Approval of Council Committee Reports.**

Recommendation: Approval of Council Committee Reports.

- (a) [Rules and Open Government Committee Report of February 10, 2010.](#) (Mayor)
- (b) [Public Safety, Finance and Strategic Support Committee Report of February 18, 2010.](#) (Nguyen)
- * **SEE ITEM 3.6 FOR COUNCIL ACTION TO BE TAKEN**
- (c) [Rules and Open Government Committee Report of February 3, 2010.](#) (Mayor)
[Deferred from 2/23/10 – Item 2.3(d)]
- (d) Neighborhood Services and Education Committee Report of February 11, 2010.
(Campos)
[Deferred from 2/23/10 – Item 2.3(e)]

- 2.4 **Mayor and Council Excused Absence Requests.**

Recommendation:

- (a) [Request for excused absences for Councilmember Campos from the Regular Meeting of the Transportation and Environment Committee on March 1, 2010 due to Authorized City Business: Trip to Sacramento to meet with State Legislators and Assembly Speaker John A. Pérez.](#) (Campos)
* (Rules Committee referral 2/24/10)

2. CONSENT CALENDAR

2.5 City Council Travel Reports.

Recommendation:

- (a) Verbal Report from Councilmember Pyle on February 10, 2010 trip to Sacramento, CA to meet with the City's Legislative Delegation regarding the impacts of the State's Budget on San José's overall City/Agency Budget. (Pyle)

2.6 [Actions on Filter Rehabilitation, FY 2009-2010 Project.](#) [Supplemental – Letter from the Water Pollution Control Plant](#)

Recommendation:

- (a) Reject all bids for the San José/Santa Clara Water Pollution Control Plant, Filter Rehabilitation, FY 2009/2010 project.
- (b) Adopt a [resolution](#) authorizing the City Manager or her designee to:
 - (1) Award the contract for the San José/Santa Clara Water Pollution Control Plant, Filter Rehabilitation, FY 2009/2010 project to the lowest responsive and responsible bidder in an amount not to exceed \$300,000 and approval of a 10% construction contingency; and
 - (2) Decide any timely bid protest(s), make the City's final determination as to the lowest responsive and responsible bidder, or to reject all bids and re-bid the project.

CEQA: Exempt, File No. PP09-185. (Environmental Services)

2.7 2010 – 2011 Clean Tech Legislative Agenda.

Recommendation: As recommended by the Rules and Open Government Committee on February 17, 2010, approve the 2010-2011 Clean Tech Legislative Agenda. (Mayor)
[Rules Committee referral 2/17/10 – Item A(2)(a)]

RECOMMEND DEFERRAL TO 3/9/10 PER MAYOR

2.8 [AB 510 \(Skinner\) – Net Energy Metering.](#)

- * **Recommendation:** As recommended by the Rules and Open Government Committee on February 24, 2010, adopt a support position for AB 510 (Skinner) – Net Energy Metering which was supported by the City in 2009 as AB 560 (Skinner). CEQA: Not a Project. (Environmental Services)

[Rules Committee referral 2/24/10 – Item D(1)]

2.9 [Project Diversity Screening Committee Reappointment.](#)

Recommendation: As recommended by the Rules and Open Government Committee on February 24, 2010, reappoint Jeannie LoFranco to a second term on the Project Diversity Screening Committee for a term ending December 31, 2011. (City Clerk)

- * [Rules Committee referral 2/24/10 – Item G(1)]

3. STRATEGIC SUPPORT SERVICES

3.1 **Report of the City Manager, Debra Figone (Verbal Report)**
[Presentation](#)

3.2 **[Report on the Open Government Initiatives.](#)**
[Presentation](#)

Recommendation: Accept the report on the implementation of the City's Open Government initiatives. (City Manager's Office)

3.3 **Actions Related to Sunshine Reform Recommendations on Non-Profit Strategic Engagement Committee and Statistical Reports Prepared by the Independent Police Auditor.**

Recommendation: Adopt a resolution:

- (a) [Approving Rules and Open Government Committee recommendation for "Non-Governmental Body"](#) to be consistent with the work of the Non-profit Strategic Engagement Committee. [Resolution](#) [Presentation](#)
- (b) [Adopting the recommendations from the Rules and Open Government Committee related to Statistical Reports Prepared by the Independent Police Auditor.](#)
[Resolution](#) (City Manager's Office) Attachment – [Report from the Independent Police Auditor](#) [Presentation](#)

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

3.4 **[Actions Related to Communications by the Mayor and City Council.](#)**
[Presentation](#)

Recommendation: As recommended by the Rules and Open Government Committee, adopt a [resolution](#):

- (a) Revising Council Policy 0-32 – Disclosure and Sharing of Material Facts to include disclosure by the Mayor and members of the City Council of any communication received and read during a Council meeting, either directly or indirectly, that is relevant to a matter under consideration by the City Council.
- (b) Modifying Council Policy 0-33 – Public Records Policy and Protocol to include communications concerning official business sent and received by the Mayor, Councilmembers or their staff via non-City-owned devices for purposes of a one-year pilot program.

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

3.5 **[Actions Related to Cardroom Ballot Measures.](#)**
[Supplemental – Memo from the Office of the City Manager](#)
[Presentation](#)

Recommendation:

- (a) Council discussion and consideration of a ballot measure for the June 8, 2010 election to submit to the electors of the City of San José a proposed measure regarding the City's cardrooms.
- (b) Direct the City Attorney to draft a resolution of the City Council calling and giving notice of, on its own motion, a Special Municipal Election to be held on June 8, 2010, to submit to the electors of the City of San José a proposed measure regarding the City's Cardrooms, for Council consideration on March 9, 2010.

(Item continued on the next page)

3. STRATEGIC SUPPORT SERVICES

3.5 Actions Related to Cardroom Ballot Measures. (Cont'd.)

Recommendation:

(c) Council discussion and input on a community outreach strategy to provide information to the public regarding a ballot measure concerning cardrooms.

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

3.6 [Audit of Decentralized Cash Handling.](#)

* **Recommendation:** As recommended by the Public Safety, Finance and Strategic Support Committee on February 18, 2010:

(a) Accept the Audit of Decentralized Cash Handling; and

(b) Direct the City Attorney's Office to draft an ordinance repealing provisions in the San Jose Municipal Code regarding bicycle licensing requirements.

CEQA: Not a Project. City Auditor)

[Public Safety, Finance and Strategic Support Committee referral 2/18/10 – Item D(8)]

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.1 [Sign Code Ordinance Update.](#)

[Attachment 1 – Freeway Signs](#)

[Attachment 2 – Electronic Digital Signs](#)

[Attachment 3 – Large Banner Signs/Supergraphics](#)

[Attachment 4 – Billboards on Private Property & Off-Site Advertising on City Property](#)

[Attachment 5 – Public Correspondence](#)

[Supplemental – Memo from the Director of PBCE](#)

Recommendation: 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)

(Continued from 1/12/10 – Item 4.3, 2/2/10 – Item 4.1, and 2/23/10 – Item 4.1)

TO BE HEARD LAST

5. NEIGHBORHOOD SERVICES

5.1 [Consolidation of Contingency Funding for Happy Hollow Park and Zoo Renovations and Improvements Project.](#)

Recommendation: Approve the consolidation of contingency funding into one contingency fund up to \$1,033,999 for the three construction contracts constituting the Parks and Recreation Bond funded project Happy Hollow Park and Zoo Renovations and Improvements Project. CEQA: Mitigated Negative Declaration, File No. PP05-142, dated April, 2007 and Amended Mitigated Negative Declaration, File No. PP09-023, dated February 6, 2009. (Public Works/Parks, Recreation and Neighborhood Services)

5. NEIGHBORHOOD SERVICES

5.2 [Family Camp Permit and Status Report.](#)

Recommendation:

- (a) Adopt a [Resolution](#) authorizing the City Manager to execute Special Use Authorization Amendment Number 4 with the United States Forest Service (USFS) to extend the current permit for operation of San José Family Camp to December 31, 2010 and to extend the amendment up to two additional years, through December 31, 2012, if additional time is deemed necessary to complete negotiations for a 20-year permit renewal with the USFS.
- (b) Accept this report which recommends the closure of Family Camp for the 2010 season as a result of significant structural weakness identified in the Camp's sixty (60) year old dining hall building and direct staff to investigate options to re-open Family Camp for the 2011 season.

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

6. TRANSPORTATION & AVIATION SERVICES

6.1 [Grant Application for San Carlos Multimodal Streetscape Improvements.](#)

Recommendation:

- (a) Adopt a [resolution](#) authorizing the City Manager, or designee to submit a grant application to the Metropolitan Transportation Commission (MTC) for the 2010 Regional Transportation Improvement Program (RTIP) grant, in the amount of \$1,369,000, with a local match of \$343,000; and negotiate and execute all documents necessary to effectuate the grant.
- (b) Adopt the following Appropriation Ordinance amendments in the Construction Excise Tax Fund:
 - (1) Establish an appropriation to the Department of Transportation for the San Carlos Multimodal Streetscape Improvements project by \$343,000; and
 - (2) Decrease the Ending Fund Balance by \$343,000.

CEQA: Re-use of the Downtown Strategy SEIR, Resolution No. 68839, File No. PP03-254. Council District 3. SNI: University. (Transportation)

7. ENVIRONMENTAL & UTILITY SERVICES

7.1 **2009 Green Vision Annual Report and Approve the Proposed 2010 Work Plan.**

Recommendation: Accept the 2009 Green Vision Annual Report and approve the proposed 2010 Work Plan. CEQA: Not a Project. (City Manager's Office)

RECOMMEND DEFERRAL TO 3/9/10 PER ADMINISTRATION

7. ENVIRONMENTAL & UTILITY SERVICES

7.2 [Various Agreements with the Santa Clara Valley Water District for Advanced Water Treatment Facility.](#)

[Supplemental – Letter from the Water Pollution Control Plant](#)

Recommendation:

- (a) Adopt a [resolution](#) approving the Santa Clara Valley Water District “Mitigated Negative Declaration for Advanced Water Treatment Facility (AWTF)” and direction to City staff to implement the mitigation measures identified in the Mitigated Negative Declaration as applicable to City activities related to the AWTF.
- (b) Adopt a [resolution](#) authorizing the City Manager or designee to:
 - (1) Award the “Contract for AWTF Early Earthworks” to the lowest responsive and responsible bidder and to establish a ten percent (10%) construction contingency, in an amount, including the contract award plus contingency, not to exceed \$2 million; and
 - (2) Decide any timely protest(s), make the City’s final determinations to the lowest responsive and responsible bidder, or to reject all bids and rebid the project.
- (c) Approve “[Agreement](#) Between the City of San José and the Santa Clara Valley Water District for Integration of Facilities and Programs for the Use of Recycled Water in Santa Clara County” to promote cooperation between City and District related to the management and operation of their respective recycled water facilities for a term of forty years at an initial cost to the City not to exceed \$11 million (including the cost of the AWTF Earthwork contract) and an ongoing net cost to City of not to exceed \$2 million per year.
- (d) Approve “Ground Lease and Property Use [Agreement](#) By and Between the City of San José and the Santa Clara Valley Water District for Advanced Water Treatment Facility” for a term of forty years to allow the District to construct and operate an AWTF on approximately five (5) acres of property located at the San José/Santa Clara Water Pollution Control Plant and to use other Plant property to connect the AWTF to the Plant.

CEQA: Use, as a Responsible Agency under CEQA, of the lead agency’s (Santa Clara Valley Water District’s) *Mitigated Negative Declaration for Advanced Water Treatment Facility. (Environmental Services) – *Due to file size, the declaration is linked in 3 parts: [Declaration Part 1](#) [Declaration Part 2](#) [Declaration Part 3](#)

8. PUBLIC SAFETY SERVICES

9. JOINT COUNCIL/REDEVELOPMENT AGENCY

- Notice of City Engineer's Pending Decision on Final Maps
- Notice of City Engineer's Award of Construction Projects
- **Open Forum**
Members of the Public are invited to speak on any item that does not appear on today's Agenda and that is within the subject matter jurisdiction of the City Council or Redevelopment Agency Board.
- **Adjournment**

CITY OF SAN JOSE CODE OF CONDUCT FOR PUBLIC MEETINGS IN THE COUNCIL CHAMBERS AND COMMITTEE ROOMS

The Code of Conduct is intended to promote open meetings that welcome debate of public policy issues being discussed by the City Council, Redevelopment Agency Board, their Committees, and City Boards and Commissions in an atmosphere of fairness, courtesy, and respect for differing points of view.

1. Public Meeting Decorum:

- a) Persons in the audience will refrain from behavior which will disrupt the public meeting. This will include making loud noises, clapping, shouting, booing, hissing or engaging in any other activity in a manner that disturbs, disrupts or impedes the orderly conduct of the meeting.
- b) Persons in the audience will refrain from creating, provoking or participating in any type of disturbance involving unwelcome physical contact.
- c) Persons in the audience will refrain from using cellular phones and/or pagers while the meeting is in session.
- d) Appropriate attire, including shoes and shirts are required in the Council Chambers and Committee Rooms at all times.
- e) Persons in the audience will not place their feet on the seats in front of them.
- f) No food, drink (other than bottled water with a cap), or chewing gum will be allowed in the Council Chambers and Committee Rooms, except as otherwise pre-approved by City staff.
- g) All persons entering the Council Chambers and Committee Rooms, including their bags, purses, briefcases and similar belongings, may be subject to search for weapons and other dangerous materials.

2. Signs, Objects or Symbolic Material:

- a) Objects and symbolic materials, such as signs or banners, will be allowed in the Council Chambers and Committee Rooms, with the following restrictions:
 - No objects will be larger than 2 feet by 3 feet.
 - No sticks, posts, poles or other such items will be attached to the signs or other symbolic materials.
 - The items cannot create a building maintenance problem or a fire or safety hazard.
- b) Persons with objects and symbolic materials such as signs must remain seated when displaying them and must not raise the items above shoulder level, obstruct the view or passage of other attendees, or otherwise disturb the business of the meeting.
- c) Objects that are deemed a threat to persons at the meeting or the facility infrastructure are not allowed. City staff is authorized to remove items and/or individuals from the Council Chambers and Committee Rooms if a threat exists or is perceived to exist. Prohibited items include, but are not limited to: firearms (including replicas and antiques), toy guns, explosive material, and ammunition; knives and other edged weapons; illegal drugs and drug paraphernalia; laser pointers, scissors, razors, scalpels, box cutting knives, and other cutting tools; letter openers, corkscrews, can openers with points, knitting needles, and hooks; hairspray, pepper spray, and aerosol containers; tools; glass containers; and large backpacks and suitcases that contain items unrelated to the meeting.

**CITY OF SAN JOSE CODE OF CONDUCT FOR PUBLIC MEETINGS IN
THE COUNCIL CHAMBERS AND COMMITTEE ROOMS (CONT'D.)**

3. Addressing the Council, Redevelopment Agency Board, Committee, Board or Commission:
- a) Persons wishing to speak on an agenda item or during open forum are requested to complete a speaker card and submit the card to the City Clerk or other administrative staff at the meeting.
 - b) Meeting attendees are usually given two (2) minutes to speak on any agenda item and/or during open forum; the time limit is in the discretion of the Chair of the meeting and may be limited when appropriate. Applicants and appellants in land use matters are usually given more time to speak.
 - c) Speakers should discuss topics related to City business on the agenda.
 - d) Speakers' comments should be addressed to the full body. Requests to engage the Mayor, Council Members, Board Members, Commissioners or Staff in conversation will not be honored. Abusive language is inappropriate.
 - e) Speakers will not bring to the podium any items other than a prepared written statement, writing materials, or objects that have been inspected by security staff.
 - f) If an individual wishes to submit written information, he or she may give it to the City Clerk or other administrative staff at the meeting.
 - g) Speakers and any other members of the public will not approach the dais at any time without prior consent from the Chair of the meeting.

Failure to comply with this Code of Conduct which will disturb, disrupt or impede the orderly conduct of the meeting may result in removal from the meeting and/or possible arrest.