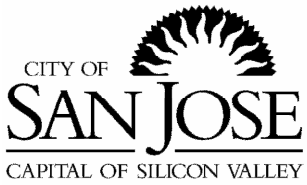

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA **TUESDAY, JANUARY 12, 2010**

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: Redevelopment Agency Executive Director; Name: Harry Mavrogenes. (B) to confer with Legal Counsel pursuant to Government Code subsection (a) of Section 54956.9 with respect to existing litigation: (1) San José Silicon Valley Chamber of Commerce Political Action Committee, et al. v. City of San José; Names of Parties Involved: San José Silicon Valley Chamber of Commerce Political Action Committee, Compac Issues Fund, Sponsored by the San José Silicon Valley Chamber of Commerce, City of San José , San José Elections Commission and Does 1-10; Court: Superior Court of California, County of Santa Clara; Case No: 1-09-CV-146667; Amount of Money or Other Relief Sought: Challenge to SJMC 12.06.310; (2) 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 through 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; (3) In re Roxas; Amount of Money or Other Relief Sought: Administrative Appeal; (C) to confer with Legal Counsel pursuant to Government Code subsection (b) of Section 54956.9 with respect to anticipated litigation (Claim Not Filed) in one (1) matter. (D) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) International Association of Firefighters, Local 230; Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (2) Association of Legal Professionals of San José (ALP); 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

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.

CLOSED SESSION (Cont'd.)

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; (11) San José Police Officers' Association (SJPOA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. How to obtain a copy of existing contract or MOA: web: **http://www.sanjoseca.gov/employee relations/moa.asp**; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 11:01 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

Father John Asimacopoulos, Saint Nicholas Greek Orthodox Church presented the Invocation. (District 1)

PLEDGE OF ALLEGIANCE

Mayor Reed 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 4.6 was deferred to January 26, 2010. (11-0.)

CLOSED SESSION REPORT

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

A. Authority to Pursue Appellate Review in a Litigation Case:

Case Name:	San José Silicon Valley Chamber of Commerce Political Action Committee, et al. v. City of San José, et al.
Adverse Party or Parties:	San José Silicon Valley Chamber of Commerce Political Action Committee; Compac Issues Fund, Sponsored by the San José Silicon Valley Chamber of Commerce.
Substance of Litigation:	An action for violation of civil rights and temporary, preliminary and permanent injunctive relief enjoining Defendants from enforcing San José Municipal Code 12.06.310 and challenge to decision of Elections Commission.
Council Vote: Ayes:	Campos, Chirco, Chu, Constant, Herrera, Kalra, Liccardo, Nguyen, Oliverio, Pyle; Reed.
Noes:	None.
Disqualified:	None.
Absent:	None.
Vacant:	None.

CEREMONIAL ITEMS

1.1 Presentation of commendations recognizing City Departments achieving highest levels of giving in various categories during the Combined Giving Campaign. (Environmental Services)

Action: Mayor Reed, City Manager Debra Figone and Director of Environmental Services John Stufflebean recognized and commended the City Departments which achieved the highest levels in various categories during the Combined Giving Campaign.

1.2 Presentation of a proclamation declaring the month of January 2010 as "National Blood Donor Month" in the City of San José. (Mayor)

Action: Mayor Reed recognized the month of January 2010 as "National Blood Donor Month" in the City of San José.

1.3 Presentation of a proclamation declaring the month of January 2010 as "Poverty Awareness Month" in the City of San José. (Pyle/Kalra/Liccardo) (Rules in Lieu referral 12/22/09)

Action: Mayor Reed and Council Members Pyle, Kalra and Liccardo recognized the month of January 2010 as "Poverty Awareness Month" in the City of San José.

1.4 Presentation of a proclamation recognizing the bicentennial of Mexican Independence. (Mayor)

Action: Mayor Reed recognized the bicentennial of Mexican Independence.

CONSENT CALENDAR

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

2.2 Final adoption of ordinances.

(a) ORD. NO. 28686 – Amending Section 20.100.500 of Chapter 20.100 of Title 20 of the San José Municipal Code to allow for an additional extension of development permit terms or a reactivation of certain expired development permits for a temporary period of time in the North San José Development Policy Area.

Documents Filed: Proof of Publication of the Title of Ordinance No. 28686 executed on December 18, 2009, submitted by the City Clerk.

Action: Ordinance No. 28686 was adopted. (11-0.)

(b) ORD. NO. 28687 – Granting a Commercial Solid Waste and Recyclables Franchise to Lam Hauling.

Documents Filed: Proof of Publication of the Title of Ordinance No. 28687 executed on December 18, 2009, submitted by the City Clerk.

Action: Ordinance No. 28687 was adopted. (11-0.)

2.4 Approve travel for City Manager Debra Figone to Dallas, Texas on January 28-30, 2010 to attend the Large Cities Executive Forum. Source of Funds: City Manager's Non Personal Appropriation. (City Manager's Office)

Documents Filed: Memorandum from City Manager Debra Figone, dated December 17, 2009, requesting approval of travel.

Action: The travel request for City Manager Debra Figone was approved. (11-0.)

2.5 (a) Adopt a resolution authorizing the City Manager to:

(1) Sign the application of the Cal-EMA Anti-Human Trafficking Task Force Recovery Act Grant Program.

(2) Accept the grant if it is awarded and authorize any future amendments and all related documents without further Council action other than appropriation of funds.

(3) Negotiate and execute any documents necessary to effectuate the grant, in an amount not to exceed a total of $375,000 for the City of San José.

(b) Direct staff to return to Council during the Mid-year Budget process to appropriate funds for this grant in an amount not to exceed $375,000 if it is awarded.

CEQA: Not a Project. (Police)

Documents Filed: Memorandum from Chief of Police Robert Davis, dated December 9, 2009, recommending adoption of a resolution and direction to staff.

Action: Resolution No. 75244, entitled: "A Resolution of the Council of the City of San José for Actions Related to the California Emergency Management Agency (CAL EMA) Request for Application (RFA) for the Anti-Human Trafficking Task Force Recovery Act Grant Program", was adopted. Staff was directed to return to Council during the Mid-Year Budget process to appropriate funds for this grant in an amount not to exceed $375,000 if it is awarded. (11-0.)

2.6 Approve travel by Council Member Campos to Los Angeles, CA on January 8-10, 2010 to attend the League of California Cities Latino Caucus Retreat. Source of Funds: Travel Costs (lodging and incidentals) paid by Mayor/Council Travel Fund, Airfare to be paid by Non-City funds. (Campos)
(Rules in Lieu referral 12/22/09)

Documents Filed: Memorandum from Council Member Campos, dated December 11, 2009, requesting approval of travel.

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

2.7 Adopt a resolution authorizing the City Manager to submit a grant proposal to the California Energy Commission, Alternative and Renewable Fuel and Vehicle Technology Program, for up to $10,000,000 for the development of a biomethane transportation fuel production facility on Water Pollution Control Plant lands, subject to the concurrence of the Treatment Plant Advisory Committee. CEQA: Not a Project. (Environmental Services)
(Rules Committee referral 1/6/10)

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated January 5, 2010, recommending adoption of a resolution. (2) Letter from Chairperson Chuck Reed, the Treatment Plant Advisory Committee, dated January 12, 2010, stating concurrence with the Staff recommendation.

Public Comments: David Wall spoke in opposition to the alternative and renewable fuel and vehicle technology program.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Pyle and carried unanimously, Resolution No. 75245, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Submit a Grant Proposal to the California Energy Commission, Alternative and Renewable Fuel and Vehicle Technology Program, For Up to $10,000,000 for the Development of a Biomethane Transportation Fuel Production Facility on Water Pollution Control Plant Lands, Subject to the Concurrence of the Treatment Plant Advisory Committee", was adopted. (11-0.)

2.8 As recommended by the Rules and Open Government Committee on January 6, 2010, adopt a support position for AB 222 (Adams), Energy: Biofuels. (Environmental Services)
[Rules Committee referral 1/6/10 – Item D(1)(a)]

Documents Filed: Memorandum from City Clerk Lee Price, dated January 6, 2010, transmitting the recommendations of the Rules and Open Government Committee.

Public Comments: David Wall opposed AB 222 because it will lower quality standards.

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

Council Member Liccardo requested a deferral of two weeks in order to allow more time to review the legislation to make renewable energy and diversion credit accessible to facilities to convert waste to energy or biofuels. Director of Intergovernmental Relations Betsy Shotwell explained that the item was time sensitive.

Council Member Liccardo expressed opposition to the motion; he noted that organizations are opposed and that there should be more opportunity to review the issues.

Action: On a call for the question, the motion carried, a support position for AB 222 (Adams), Energy: Biofuels, was adopted. (10-1. Noes: Liccardo.)

2.9 As recommended by the Rules and Open Government Committee on January 6, 2010:

(a) Approve the appointment of Erin Wright, District Hiring Manager for Safeway, San José to serve as a private sector representative on the Silicon Valley Workforce Investment Network Board of Directors. (Mayor)

(b) Approve the appointments of Carol Garcia to the Deferred Compensation Advisory Committee as the representative nominated by the American Federation of State, County and Municipal Employees, AFSCME Local 101, the Municipal Employees Federation and the Confidential Employees Organization and Donna Busse as the representative nominated by that group of employees designated as "Management Employees" under City Council Resolution No. 39367 Association of Engineers and Architects, Association of Maintenance Supervisory Personnel, City Association of Management Personnel, Association of Legal Professional and Executive Management, Unit 99, for four-year terms ending March 1, 2014. (Human Resources)

Documents Filed: Memorandum from City Clerk Lee Price, MMC, dated January 6, 2010, transmitting the recommendations of the Rules and Open Government Committee.

Action: The appointment of Erin Wright, District Hiring Manager for Safeway, San José to serve as a private sector representative on the Silicon Valley Workforce Investment Network Board of Directors; and the appointments of Carol Garcia to the Deferred Compensation Advisory Committee as the representative nominated by the American Federation of State, County and Municipal Employees, AFSCME Local 101, the Municipal Employees Federation and the Confidential Employees Organization and Donna Busse as the representative nominated by that group of employees designated as "Management Employees" under City Council Resolution No. 39367 Association of Engineers and Architects, Association of Maintenance Supervisory Personnel, City Association of Management Personnel, Association of Legal Professionals and Executive Management, for four-year terms ending March 1, 2014, were approved. (11-0.)

2.10 As recommended by the Rules and Open Government Committee on January 6, 2010, adopt a resolution amending the Rules for the Conduct of Meetings. (City Clerk)

Documents Filed: Memorandum from City Clerk Lee Price, MMC, dated January 6, 2010, transmitting the recommendations of the Rules and Open Government Committee.

City Attorney Richard Doyle clarified the changes to the resolution.

Action: Upon motion by Council Member Pyle, seconded by Vice Mayor Chirco and carried unanimously, Resolution No. 75246, entitled: "A Resolution of the Council of the City of San José Amending the Rules for the Conduct of Its Meetings, Superseding Resolution No. 74574", was adopted, as amended (minor, technical modifications to Rule 6.5(e) as recommended by the City Attorney).

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

3.2 Report of the Rules and Open Government Committee – December 2, 2009
Mayor Reed, Chair

Documents Filed: The Rules and Open Government Committee Report dated December 2, 2009.

Action: Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, the Report of the Rules and Open Government Committee and the actions of December 2, 2009, were accepted. (11-0.)

3.3 Report of the Rules and Open Government Committee – December 9, 2009
Mayor Reed, Chair

Action: Deferred to January 26, 2010 per City Clerk.

3.4 Report of the Public Safety, Finance and Strategic Support Committee
December 17, 2009
Council Member Nguyen, Chair

Documents Filed: The Public Safety, Finance and Strategic Support Committee Report dated December 17, 2009.

Public Comments: David Wall provided comments about the monthly financial report, debt service and bankruptcy proceedings.

Action: Upon motion by Council Member Nguyen, seconded by Vice Mayor Chirco and carried unanimously, the Report of the Public Safety, Finance and Strategic Support Committee and the actions of December 17, 2009, were accepted. (11-0.)

3.5 (a) Approve a settlement with the San José Conservation Corps and authorize the City Attorney to execute a Settlement Agreement and Mutual Release relating to the City Auditor's audit report dated May, 2009 regarding certain agreements with the San José Conservation Corps, in exchange for $160,000 in additional services, as considered by the City Council in Closed Session on December 15, 2009.
(b) Accept the report on the status of the City's Master Agreement with the San José Conservation Corps.
CEQA: Not a Project. (City Attorney's Office/City Manager's Office)

Documents Filed: (1) Memorandum from City Attorney Richard Doyle, dated December 17, 2009, recommending approval of the settlement. (2) Memorandum from Chief Deputy City Manager Edward K. Shikada, dated December 16, 2009, recommending acceptance of the report.

Public Comments: Bob Hennessy, San José Conservation Corps, spoke in favor to the Staff recommendations. David Wall spoke in opposition to the settlement agreement.

3.5 (Cont'd.)

Council Member Pyle provided meeting disclosures.

Motion: Council Member Kalra moved approval of the Staff recommendations. Council Member Pyle seconded the motion.

City Attorney Richard Doyle responded to Council questions.

Action: On a call for the question, the motion carried unanimously, a settlement with the San José Conservation Corps was approved; the City Attorney was authorized to execute a Settlement Agreement and Mutual Release relating to the City Auditor's audit report dated May, 2009 regarding certain agreements with the San José Conservation Corps, in exchange for $160,000 in additional services, as considered by the City Council in Closed Session on December 15, 2009 and the report on the status of the City's Master Agreement with the San José Conservation Corps, was accepted. (11-0.)

3.6 Accept the verbal status report related to Team San José per Council direction on December 8, 2009. (Economic Development)

Documents Filed: Staff presentation dated January 12, 2010 summarizing the Team San José Status Report.

Chief Development Officer Paul Krutko presented the status report on Team San José and responded to Council questions.

Mayor Reed provided meeting disclosures and requested that Staff return to Council with a status update on the Teamsters issue on February 23, 2010.

Motion: Council Member Constant moved approval of the status report on Team San José, with Staff to return with a status update on the Teamsters issue on February 23, 2010. Council Member Campos seconded the motion.

Council Member Campos provided meeting disclosures.

Action: On a call for the question, the motion carried unanimously, the status report on Team San José was accepted, and Staff was directed to return to Council with a status update on the Teamsters issue on February 23, 2010, or sooner via information memorandum. (11-0.)

3.7 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)

Action: Deferred to January 26, 2010 per Administration.

3.8 As recommended by the Public Safety, Finance and Strategic Support Committee on December 17, 2009, accept the Audit of Pensionable Earnings and Time Reporting and the recommendations of the City Attorney's Office related to implementation of the audit recommendations. (City Auditor)
[Public Safety, Finance and Strategic Support Committee referral 12/17/09 – Item D(4)]

Documents Filed: Memorandum from City Clerk Lee Price, MMC, dated January 6, 2010, transmitting the recommendations of the Public Safety, Finance and Strategic Support Committee.

City Auditor Sharon W. Erickson summarized the Audit of Pensionable Earnings and Time Reporting and responded to Council questions.

Action: Upon motion by Council Member Herrera, seconded by Council Member Nguyen and carried unanimously, the Audit of Pensionable Earnings and Time Reporting was accepted. (11-0.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Report of the Community & Economic Development Committee – December 14, 2009
Council Member Pyle, Chair

Documents Filed: The Community and Economic Development Committee Report dated December 14, 2009.

Public Comments: David Wall spoke in opposition to lowering special event fees.

Action: Upon motion by Council Member Pyle, seconded by Council Member Liccardo and carried unanimously, the Report of the Community and Economic Development Committee and the actions of December 14, 2009, were accepted. (11-0.)

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: Exempt. (Housing)
(Deferred from 11/17/09 – Item 4.2 and 12/1/09 – Item 4.2)

Documents Filed: (1) Memorandum from Council Member Pyle, dated January 11, 2010, recommending removing the proposed change to the Inclusionary Ordinance Subsection 5.08.320 G, Item 5 (Communication Hill). (2) Replacement memorandum from Director of Housing Leslye Krutko, dated December 7, 2009, recommending approval of the Citywide Inclusionary Housing Ordinance. (3) Statement and Declaration of Conflict of Interest Form from Council Member Nguyen, dated January 12, 2010, stating that she owns property within 500 feet of the subject area. (4) Staff presentation dated January 12, 2010 outlining the Inclusionary Housing Ordinance. (5) Letter from Joan R. Gallo, Hopkins and Carley, dated January 6, 2010, requesting modifications to the ordinance.

4.2 (Cont'd.)

Documents Filed: (6) Letter from James Zahradka, Law Foundation of Silicon Valley, dated January 12, 2010, expressing support to the ordinance. (7) Letter from Bonnie Mace, Chair, Housing and Community Development Advisory Commission, dated January 11, 2010, expressing support to the ordinance. (8) Letter from David Lanferman, Sheppard, Mullin, Richter & Hampton, dated January 11, 2010, expressing concern and opposition to the ordinance. (9) Letter from Myron Crawford, Berg & Berg Developers, Inc., dated December 12, 2009, expressing opposition to the ordinance.

Council Member Nguyen requested the bifurcation of the Citywide Inclusionary Housing Program. Mayor Reed acknowledged that the vote will be taken in two parts.

Director of Housing Leslye Krutko presented a report on the Inclusionary Housing Ordinance and responded to Council questions and comments.

Senior Deputy City Attorney Vera Todorov outlined the amendments and clarifications on the ordinance.

Mayor Reed and Council Member Liccardo provided meeting disclosures.

Motion: Council Member Liccardo moved approval of the Staff recommendations, as amended, minus Communication Hill. Council Member Nguyen seconded the motion. (9-2. Noes: Constant, Oliverio.)

Public Comments: Speaking in support to the Citywide Inclusionary Housing Ordinance were Kerri Hamilton, Citizens for Environmental and Economic Justice (CEEJ), James Zahradka, Law Foundation of Silicon Valley and Tamon Norimoto, Housing and Community Development.

Speaking in opposition to the Citywide Inclusionary Housing Ordinance were David Wall, Crisand Giles, Homebuilders of Northern California, Charles McKeag, Citation Homes, Anil Babbar, Santa Clara County Association of Realtors, David Lanferman, Sheppard, Mullin, Richter & Hampton, and Pat Sausedo, San José Silicon Valley Chamber of Commerce.

City Attorney Richard Doyle clarified legal issues and responded to Council questions.

Council Members Constant agreed with several of the speakers that spoke in objection and restated his continued opposition to the policy.

Council Member Oliverio reiterated opposition to a Citywide Inclusionary Housing Ordinance, especially at this time.

Council Member Nguyen stepped out of the meeting at 3:50 p.m. Council Member Nguyen owns property within 500 feet of the subject area and was disqualified from participating in the discussion of the Communications Hill Planning Area Exemption.

4.2 (Cont'd.)

Director of Housing Leslye Krutko provided the Policy Components, Exemptions and clarified minor changes to the ordinance.

Council Member Constant objected to the policy but expressed support to the exemption for Communication Hill.

Council Member Pyle explained her memorandum dated January 11, 2010, which outlined the exemption for Communication Hill.

Public Comments: Speaking in support to memorandum from Council Member Pyle were, Joan Gallo, Hopkins & Carley and Pat Sausedo, San José Silicon Valley Chamber of Commerce. David Wall expressed opposition.

Motion: Council Member Pyle moved approval of her memorandum dated January 11, 2010, recommending removing the proposed change in the Inclusionary Ordinance Subsection 5.08.320 G, Section 5: "As of the Operative Date, there has been no construction of residential units in one of more remaining phases of the Residential Development within the Specific Plan area and within forty (40) months of the Operative Date the Developer has obtained City approval of at least one building permit in any such remaining construction phase". Staff to analyze other specific plans and return to Council; including the Staff recommended clarification and changes. Council Member Constant seconded the motion. (9-1-0-1. Noes: Oliverio. Disqualified: Nguyen.)

Brief discussion followed.

Action: On a call for the question, the motions carried, Ordinance No. 28689, entitled: "An Ordinance of the City of San José Amending Title 5 of the San José Municipal Code to Add a New Chapter 5.08 Adopting a Citywide Inclusionary Housing Program", was passed for publication, as amended, to include: (1) Changes to the Staff recommendations read into the record by the City Attorney regarding Sections 5.08.520.B.2.a.(2) - In-Lieu Fees and 5.08.560 - HUD Restricted Units; (2) Modifications proposed by Council Member Pyle in her memorandum dated January 11, 2010, and by Joan Gallo in her letter dated January 6, 2010 regarding the Communications Hill Planning Area Exemption (Section 5.08.320.G). Staff was directed to analyze other specific plans and return to Council. (8-2-0-1. Noes: Constant, Oliverio. Disqualified: Nguyen.) [Note: Due to a potential conflict of interest, Council Member Nguyen was disqualified, and did therefore abstain from participating in the discussion of the Communication Hill Planning Area Exemption (Sections 5.08.320.F and G portion of the draft ordinance).]

4.4 As recommended by the Community and Economic Development Committee on November 30, 2009, accept the progress report of the investment activities of the Economic Development Catalyst Fund. (Economic Development)
[Community and Economic Development Committee referral 11/30/09 – Item D(9)]
(Deferred from 12/15/09 – Item 4.6)

4.4 (Cont'd.)

Documents Filed: (1) Memorandum from Council Member Herrera, dated January 12, 2010, recommending acceptance of the progress report and further direction to the City Manager regarding the Catalyst Fund. (2) Memorandum from City Clerk Lee Price, MMC, dated December 3, 2009, transmitting the recommendations of the Community & Economic Development Committee.

Motion: Council Member Herrera moved to accept the progress report and approval of her memorandum, Item (2) only, including additional direction, as depicted in "Action". Council Member Liccardo seconded the motion.

Vice Mayor Chirco requested to amend the motion to add one more question: What economic tools does Economic Development have in its toolbox to offer as incentives? The amendment was accepted by Council Members Herrera and Liccardo.

Public Comments: David Wall spoke in opposition to the Catalyst Program.

Action: On a call for the question, the motion carried unanimously, the progress report of the investment activities of the Economic Development Catalyst Fund was accepted, as amended, the City Manager directed, before the Mid-Year Budget discussion at the February 9, 2010 City Council meeting, to provide to the Mayor and City Council in writing answers to the following questions: (1) What is the contract language that allows for the City to cancel the contract with Pacific Community Management and exit the contracts with both companies? (2) How many jobs and correlating salaries have been created per un-leveraged dollar invested in each company? (3) What is the pure financial return and over what period of time generated by the Program? (4) What are the fees to date and over the life of the contract does the City pay to Pacific Community Management? (5) Provide three alternative economic development uses for these funds as permitted under Fund 439. (6) What economic tools does Economic Development have in its toolbox to offer as incentives? (11-0.)

4.5 (a) Adopt an urgency ordinance amending Chapter 6.60 of Title 6 of the San José Municipal Code to amend the definition of Public Entertainment to limit the application of the ordinance to venues with occupancy greater than 100, limit the discretion of the Chief of Police in approving applications for permits and licenses, limit the discretion of the Chief of Police in setting conditions on permits and licenses, specify time lines by when an application for a permit or license must be acted upon, clarify various provisions to ensure consistency throughout the Code, and setting forth the facts constituting such urgency.

(b) Adopt an urgency ordinance amending Chapters 20.40, 20.70 and 20.200 of Title 20 of the San José Municipal Code to eliminate the regulation of entertainment establishments in the Zoning Code and setting forth the facts constituting the urgency.

4.5 (c) Adopt a resolution initiating amendments to Chapter 20.40, 20.70 and 20.200 of Title 20 of the San José Municipal Code to eliminate the regulation of entertainment establishments in the Zoning Code, referring said ordinance to the Planning Commission for its report and recommendation, and setting a public hearing on the ordinance.

(d) Direct the City Manager and City Attorney to continue their work to seek further input of stakeholders on the structure of the entertainment permit system and other alternatives which would serve the goals of providing a safe environment for patrons and residents while promoting a vibrant nightlife environment for the City.

(City Attorney's Office/City Manager's Office)

Action: Deferred to January 26, 2010 per City Attorney's Office.

4.6 (a) Adopt a resolution approving a City Council policy for wayfinding banners in the public right-of-way.

(b) Adopt a resolution amending Resolution No. 72737 to:

(1) Establish a Wayfinding Banner Application charge of $535, plus $89 per hour after 6 hours in Economic Development/Cultural Affairs for costs associated with the application review and coordination of wayfinding banners in the public right-of-way.

(2) Establish a Double Banner Installation charge of $66 in the Department of Transportation Miscellaneous Charges for costs associated with the installation of one dual set of wayfinding banners on a single street pole with existing banner hardware.

(3) Establish a New Double Banner Installation charge of $86 plus cost of materials in the Department of Transportation Miscellaneous Charges for costs associated with the installation of one dual set of wayfinding banners on a single street pole without existing banner hardware.

CEQA: Exempt, File No. PP09-075. (City Manager's Office)

Action: Deferred to January 26, 2010 per Orders of the Day.

4.7 Conduct a Public Hearing and approve an ordinance to disestablish the Willow Glen Business Improvement District pursuant to the Parking and Business Improvement Area Law and eliminate the levy of assessments. CEQA: Exempt, File No. PP08-048. Council District 6. (Economic Development).

Documents Filed: (1) Memorandum from Chief Development Officer Paul Krutko, dated December 18, 2009, recommending approval of an ordinance. (2) Proof of Publication of Notice of Public Hearing, executed on December 18, 2009, submitted by the City Clerk.

Mayor Reed opened the public hearing.

Public Comments: Speaking in favor to the disestablishment of the Willow Glen Business Improvement District were Norma Ruiz and Kevin Swanson, Willow Glen Business Association.

4.7 (Cont'd.)

Stacy Scott and Dan Scott, Treehouse in the Glen, and Karen Stevens, Adira Dance and Costume spoke in opposition and expressed concern to the lack of public awareness of the disestablishment.

Mayor Reed closed the public hearing.

City Attorney Richard Doyle responded to Council questions and comments.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Herrera and carried unanimously, Ordinance No. 28690, entitled: "An Ordinance of the City of San José To Disestablish the Willow Glen Business Improvement District Pursuant to Section 36550 of the California Parking and Business Improvement Area Law", was passed for publication. (11-0.)

4.8 As recommended by the Historic Landmarks Commission, conduct a public hearing and adopt a resolution designating the Ken Ying Low Restaurant (City Landmark No. HL09-180), located on a 0.09 acre site on the west side of North Sixth Street, approximately 140 feet north of Jackson Street (625 North Sixth Street), as a landmark of special historic, architectural, cultural, aesthetic or engineering interest or value of an historic nature (Natalia T. Davidenko, Trustee, Owner). CEQA: Not a Project. The Historic Landmarks Commission (HLC) recommends (5-0-1; Peak absent) that the City Council adopt a resolution designating the Ken Ying Low Restaurant Site/Structure at 625 N. Sixth Street as Historic Landmark No. 180. (Planning, Building and Code Enforcement)

Documents Filed: (1) Memorandum for Historic Landmarks Commission Secretary Joseph Horwedel, dated December 9, 2009, transmitting the recommendations of the Historic Landmarks Commission. (2) Proof of Publication of Notice of Public Hearing, executed on November 17, 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 Liccardo, seconded by Council Member Pyle and carried unanimously, Resolution No. 75247, entitled: "A Resolution of the Council of the City of San José Designating, Pursuant to the Provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, the Ken Ying Low Restaurant Site/Structure Located at 625 North Sixth Street as a City Landmark of Special Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of an Historic Nature", was adopted. (11-0.)

4.9 Conduct a Public Hearing and adopt a resolution:

(a) Overruling any and all objections to the 2009-2010 Hazardous Vegetation Commencement Report.

(b) Directing the Santa Clara County Department of Agriculture and Resource Management to abate the seasonal and/or recurrent public nuisances on those properties identified in the Report pursuant to Chapter 9.12 of Title 9 of the San José Municipal Code and the Weed Abatement Agreement between the City of San José and the County of Santa Clara.

CEQA: Exempt, File No. PP06-196. (Planning, Building and Code Enforcement)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated December 9, 2009, recommending adoption of a resolution.

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 Vice Mayor Chirco, seconded by Council Member Constant and carried unanimously, Resolution No. 75248, entitled: "A Resolution of the Council of the City of San José Overruling Objections to the 2009-2010 Hazardous Vegetation Commencement Report and Directing the Santa Clara County Department of Agriculture and Resource Management to Abate the Seasonal and/or Recurrent Public Nuisances on Those Properties Identified in the Report Pursuant to Chapter 9.12 of Title 9 of the San José Municipal Code and Weed Abatement Agreement Between the City of San José and the County of Santa Clara", was adopted. (11-0.)

NEIGHBORHOOD SERVICES

5.1 Report of the Neighborhood Services and Education Committee – December 10, 2009 Council Member Campos, Chair

Documents Filed: The Neighborhood Services and Education Committee Report dated December 10, 2009.

Public Comments: David Wall provided comments about garbage bills.

Action: Upon motion by Council Member Campos, seconded by Vice Mayor Chirco and carried unanimously, the Report of the Neighborhood Services and Education Committee and the actions of December 10, 2009 were accepted, with one minor correction to the minutes to note that Council Member Chu was present at the Committee meeting. (11-0.)

5.2 As recommended by the Neighborhood Services and Education Committee on December 10, 2009, accept the status report of the City's Anti-Graffiti and Litter Program. (Parks, Recreation and Neighborhood Services)
[Neighborhood Services and Education Committee referral 12/10/09 – Item D(1)]

Documents Filed: (1) Memorandum from City Clerk Lee Price, MMC, dated December 16, 2009, transmitting the recommendations of the Neighborhood Services and Education Committee. (2) Supplemental memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated January 7, 2010, providing additional details on the status of the graffiti issues relating to utility boxes based upon input received from the Neighborhood Services and Education Committee on December 10, 2009.

Action: Upon motion by Council Member Campos, seconded by Council Member Oliverio and carried unanimously, the status report of the City's Anti-Graffiti and Litter Program was accepted, as amended, by the supplemental memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated January 7, 2010. (11-0.)

TRANSPORTATION & AVIATION SERVICES

6.1 Report of the Transportation and Environment Committee – December 7, 2009
Council Member Liccardo, Chair

Documents Filed: The Transportation and Environment Committee Report dated December 7, 2009.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and carried unanimously, the Report of the Transportation and Environment Committee and the actions of December 7, 2009 were accepted. (11-0.)

ENVIRONMENTAL & UTILITY SERVICES

7.1 As recommended by the Transportation and Environment Committee on December 7, 2009, accept the staff report highlighting activities since March 2009 on the Master Plan for the San José/Santa Clara Water Pollution Control Plant. (Environmental Services)
[Transportation and Environment Committee referral 12/7/09 – Item D(2)]

Action: Deferred to January 26, 2010 per Rules Committee.

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Council/Redevelopment Agency portion of the meeting convened at 4:50 p.m. to Consider Item 9.1 in a joint session.

9.1 Take the following actions related to the deferment of parkland in-lieu fees for high-rise multi-family residential projects located in the Downtown Core Area:

(a) Adopt a resolution by City Council to amend Council Resolution No. 73587 authorizing the City Manager to negotiate and execute an amendment to agreements with developers of high-rise multi-family residential projects located in the Downtown Core Area who previously executed a deferment agreement with City pursuant to Resolution No. 74382 to provide up to an additional thirteen (13) months for payment of parkland in-lieu fees and accrued interest owed to City.

(b) Subject to City Council approval of Recommendation (a) above, adoption of resolutions by City Council and Redevelopment Agency Board authorizing the City Manager and Executive Director the authority to negotiate and execute an amendment to the Cooperation Agreement between the City and Redevelopment Agency executed on January 27, 2009 for the City to reimburse the Agency the total amount of $3,297,000 previously provided by the Agency to City for Watson Park.

(c) Adopt the following Appropriation Ordinance amendments in the Subdivision Parks Trust Fund:

(1) Establish a Transfer to the Redevelopment Agency for Watson Park Repayment in the amount of $2,750,000.

(2) Decrease the Martin Park Expansion appropriation to the Parks, Recreation, and Neighborhood Services Department by $2,750,000.

(d) Adopt the following Appropriation Ordinance amendments in the General Fund:

(1) Establish a Transfer to the Redevelopment Agency for Watson Park Repayment in the amount of $547,000.

(2) Decrease the Watson Site Clean-up and Restoration appropriation to the Public Works Department by $547,000.

CEQA: Mitigated Negative Declaration, File No. PP07-130. Council District 3. (City Manager's Office/Redevelopment Agency)

Documents Filed: (1) Memorandum from Council Member Liccardo, dated January 11, 2010, recommending approval of the Staff recommendations, with one condition as described in "Action". (2) Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes and City Manager Debra Figone, dated December 17, 2009, recommending adoption of resolutions, and appropriation ordinance amendments.

Motion: Council Member Liccardo moved approval of the Staff recommendations and his memorandum dated January 11, 2010, with a condition as described in "Action". Council Member Herrera seconded the motion.

Public Comments: David Wall expressed opposition to the deferred parkland in-lieu fees for the highrise.

9.1 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, Resolution No. 75250, entitled: "A Resolution of the Council of the City of San José Amending Exhibit B of Resolution No. 73587, as Amended by Resolution No. 74382, To Provide an Additional Extension of Up to Thirteen (13) Months for Deferral of the Payment of Parkland In-Lieu Fees Charged Pursuant to Chapters 14.25 and 19.38 of the San José Municipal Code for Highrise Multifamily Residential Projects Located in the Downtown Core Area"; Resolution No. 75249, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Amended and Restated Cooperation Agreement with the Redevelopment Agency of the City of San José for the City to Reimburse the Agency the Total Amount of $3,297,000 Previously Provided by the Agency to City for Watson Park"; Redevelopment Agency Board Resolution No. 5941, entitled: "A Resolution of the Board of Directors of the Redevelopment Agency of the City of San José Authorizing the Executive Director to Negotiate and Execute an Amended and Restated Cooperation Agreement with the City of San José for the City to Reimburse the Agency the Total Amount of $3,297,000 Previously Provided by the Agency to City for Watson Park"; Ordinance No. 28691, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the Subdivision Park Trust Fund for the Transfer to the Redevelopment Agency for Watson Park Repayment; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption", as amended, with the explicit condition that the funds shifted from the planned Martin Park project will return in whole for the full build-out of that project upon their recovery from the developer or surety, and Ordinance No. 28692, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the General Fund for the Transfer to the Redevelopment Agency for Watson Park Repayment; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption", were adopted. (11-0.)

The Joint/Redevelopment Agency Board portion of the meeting was adjourned at 4:53 p.m.

COMMUNITY & ECONOMIC DEVELOPMENT

4.3 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)
(Deferred from 11/17/09 – Item 4.8 and 12/1/09 – Item 4.3)

Documents Filed: (1) Staff presentation dated January 12, 2010 outlining the Proposed Preferred Strategy for the Sign Code Update and Billboards on Private Property. (2) Staff presentation dated January 12, 2010 summarizing Freeway Signs for Large Shopping Centers.

Director of Planning, Building and Code Enforcement Joseph Horwedel summarized the Billboards on Private Property and responded to Council questions.

4.3 (Cont'd.)

Extensive Council discussion followed.

Motion: Council Member Liccardo moved approval to maintain the cap (ban) on the number of billboards in the City, with direction to Staff to explore moving billboards from residential to a commercial area. Council Member Constant seconded the motion. (11-0.)

Council Member Constant requested that Staff provide incentives to encourage property owners to upgrade their signs.

Council Member Campos requested that Staff bring the Draft Signage Strategy back to the appropriate Committee before returning to the full Council for consideration. Director of Planning, Building and Code Enforcement Joseph Horwedel replied that Staff will return to either the Community & Economic Development Committee or the Neighborhood Services and Education Committee before coming back to Council.

Public Comments: Providing comments about the billboards on private property were, Joel Slayton, ZERO1, Pat Sausedo, San José Silicon Valley Chamber of Commerce, Scot Valle, Westfield, Gary Gaumann, TD Communications, Erika Justis, 1st Act Silicon Valley, Bob Kieve, Scott Soper and David Wall.

Director of Planning, Building and Code Enforcement Joseph Horwedel presented an overview on Freeway Signs for Large Shopping Centers.

City Attorney Richard Doyle and Director of Planning, Building and Code Enforcement Joseph Horwedel responded to Council questions and comments.

Council Member Liccardo requested that Staff explore and report back on alternatives for allowing signs higher than 60 feet.

Motion: Council Member Constant moved approval of Staff Option 1. Council Member Campos seconded the motion. (11-0.)

Motion: Council Member Constant moved approval of Staff Option 2 with the acreage reduced from 25 acres to 15 acres. Council Member Campos seconded the motion. (10-1. Noes: Chirco.)

Mayor Reed requested that Staff return to Council on February 2, 2010 for discussion and direction of the remainder of the policy questions.

Public Comments: Gary Gaumann, TD Communications, suggested that Staff look at Target, Home Depot and other large companies that want to promote signs to their site. Scot Valle, Westfield, suggested that Staff consider the height of the freeway in relation to the signs.

4.3 (Cont'd.)

Action: On a call for the question, the motions carried, and due to time constraints, Council provided direction on two (2) out of eight (8) policy questions, as outlined in the supplemental memorandum, as follows: (1) Billboards on Private Property – (a) Council approved Option 1: Maintain the cap (ban) on the number of billboards in the City. (b) Staff was directed to explore opportunities to "cap and trade" (move existing billboards in residential areas to commercial areas), and further, to encourage property owners to upgrade billboards. (11-0.) (2) Freeway Signs – (a) Council approved Option 1: Allow freeway signs for shopping centers 25+ acres in size; (11-0.) (b) Council approved Option 2: Allow freeway signs for smaller shopping centers (15+ acres) (10-1. Noes: Chirco.) (c) Staff requested to explore and report back on alternatives for allowing signs higher than 60 feet. Item 4.3 was continued to February 2, 2010. (11-0.)

OPEN FORUM

Documents Filed: Open Forum comments submitted by Shane Patrick Connolly, dated January 12, 2010.

(1) Shane Patrick Connolly commented on pension costs and encouraged the Council to restructure the Police and Fire Retirement Boards, allow more public scrutiny on labor negotiations and to negotiate anew and sustainable pension plan.
(2) Forrest Williams, Santa Clara Valley Science and Engineering Association, issued an invitation to the Science and Technology Fair on March 16 and 17, 2010 at the San José Convention Center.
(3) Tina Morrill, Friends of Ryland Pool, presented photos of the restoration of Ryland Pool.
(4) David Wall criticized the Mercury News' coverage of the San José Police Department and offered solutions for sustainable agriculture to help stimulate the economy.

ADJOURNMENT

The Council of the City of San José was adjourned at 6:45 p.m. in memory of Rita Megrath, who served the City for over 23 years. Rita also supported the Office of Mayor Tom McEnery and then directly supported four City Managers as Executive Assistant; and she was unparalleled in her work ethic and her commitment to professionalism.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk
smd/01-12-10 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.