



## MINUTES OF THE CITY COUNCIL

**SAN JOSE, CALIFORNIA**

**TUESDAY, FEBRUARY 23, 2010**

The Council of the City of San José convened in regular session at 9:30 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 9:30 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code subsection (b) of Section 54956.9 with respect to anticipated litigation of significant exposure (Claim Not Filed) in two (2) matters. (B) to confer with Legal Counsel pursuant to Government Code subsection (a) of Section 54956.9 with respect to existing litigation: (1) Sky Chefs, Inc. v. City of San José; Names of Parties Involved: Sky Chefs, Inc., City of San José; Court: United States District Court, Northern District of California; Case No: C09-037535 RS; Amount of Money or Other Relief Sought: Declaratory and injunctive relief. (2) City v. Luu, et. al; Names of Parties Involved: People of the State of California, ex rel., City Attorney of the City of San José and the City of San José, Provident Holdings and Investments, LLC, a California limited liability company, Michael Luu, aka Michael H. Luu, an individual, John Luu, aka John T. Luu, an individual, Diane Bui, an individual, dba Mondrian Banquet Hall, aka Mondrian Banquet Rental, aka Mondrian Wedding Planning and Does 1 through 25; Court: Superior Court of California, County of Santa; Case No: 109CV159055; Amount of Money or Other Relief Sought: Injunctive relief. (C) 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 (IAFF); 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 Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (4) International

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

Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; 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](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 11:10 a.m. and reconvened to Regular Session at 1:31 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**

Imam Allaedin Ezzedin, Blossom Valley Muslim Community Center, presented the Invocation. (District 2)

## **PLEDGE OF ALLEGIANCE**

Mayor Reed and the Third Graders from Country Lane Elementary School in District 1 led the Pledge of Allegiance.

## ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Vice Mayor Chirco and carried unanimously, the Orders of the Day and the Amended Agenda were approved, Items 2.3(d) and (e) were deferred to March 2, 2010 and Item 9.3 was deferred to March 9, 2010. (11-0.)

## CEREMONIAL ITEMS

### 1.1 **Presentation of a commendation to Stormgears for their contributions to improve Evergreen's transportation system and accomplishments at the Northern California Lego Robotics. (Herrera)**

Action: Mayor Reed and Council Member Herrera recognized and commended Stormgears for their contributions to improve Evergreen's transportation system and for accomplishments at the Northern California Lego Robotics.

### 1.4 **Presentation of a commendation to the NAACP for being the nation's most significant civil rights organization that continues to advocate for civil rights issues of all people of color. (Kalra/Nguyen) (Rules Committee referral 2/17/10)**

Action: Mayor Reed and Council Members Kalra and Nguyen recognized and commended the NAACP for being the nation's most significant civil rights organization that continues to advocate for civil rights issues of all people of color.

## CONSENT CALENDAR

Upon motion by Council Member Pyle, seconded by Vice Mayor Chirco 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. 28719 – Amending Ordinance No. 15879 as amended by Ordinance No. 21676 and Ordinance No. 26913 which granted a Franchise for the transmission and distribution of gas within the City of San José to Pacific Gas and Electric Company 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.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28719 executed on February 16, 2010, submitted by the City Clerk.

Action: Ordinance No. 28719 was adopted. (11-0.)

- 2.2 (b) **ORD. NO. 28720 – Amending Ordinance No. 15880 as amended by Ordinance No. 21677 and Ordinance No. 26914 which granted a Franchise for the transmission and distribution of electricity within the City of San José to Pacific Gas and Electric Company 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.**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28720 executed on February 16, 2010, submitted by the City Clerk.

Action: Ordinance No. 28720 was adopted. (11-0.)

- (c) **ORD. NO. 28721 – Rezoning certain real property situated on the west side of Cadwallader Avenue, approximately 500 feet south of Prunetree Lane, from R-1-5 Single-Family Residence and A(PD) Planned Development Zoning Districts to A(PD) Planned Development Zoning District. PDC09-010**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28721 executed on February 16, 2010, submitted by the City Clerk.

Action: Ordinance No. 28721 was adopted. (11-0.)

### 2.3 Approval of Council Committee Reports:

- (a) **Rules and Open Government Committee Report of January 13, 2010. (Mayor)**  
(b) **Rules and Open Government Committee Report of January 27, 2010.**  
(c) **Transportation and Environment Committee Report of February 1, 2010.**

Documents Filed: (1) The Rules and Open Government Committee Reports dated January 13, 2010 and January 27, 2010. (2) The Transportation and Environment Committee Report dated February 1, 2010.

The Environmental Staff presented the Monthly Energy Report on City Facilities Energy Projects.

Action: Upon motion by Council Member Pyle, seconded by Vice Mayor Chirco and carried unanimously, the Reports of the Rules and Open Government Committee, the actions of January 13, 2010 and January 27, 2010, the Report of the Transportation and Environment Committee and the actions of February 1, 2010, were approved. (11-0.)

- (d) **Rules and Open Government Committee Report of February 3, 2010.**  
(e) **Neighborhood Services and Education Committee Report of February 11, 2010.**

Action: Deferred to March 9, 2010 per Orders of the Day.

- 2.4 (a) **Request for excused absences for Council Member Constant from the Closed Session, Regular and Evening Session of the City Council on March 16, 2010 and the Regular Meeting of the Rules and Open Government Committee on March 17, 2010 due to Authorized City Business: 2010 National League of Cities Congressional City Conference in Washington, D.C. (Constant)**
- (b) **Request for excused absences for Council Member Constant from the Regular Meetings of the Rules and Open Government Committee on February 3, April 21, June 2, August 4, October 20, and December 15, 2010 due to Authorized City Business: Santa Clara County LAFCO Meetings at the Santa Clara County Office. (Constant)**
- (Rules Committee referral 2/10/10)**

Documents Filed: Memoranda from Council Member Constant, both dated February 9, 2010, requesting excused absences due to authorized City business.

Action: The absences for Council Member Constant were excused. (11-0.)

- 2.5 **Approve a first amendment to the Master Agreement for Consultant Services between the City of San José and Barnestorming Advertising and Marketing Communications to:**
- (a) **Add marketing services to be paid in full using marketing funds collected by the City from the food and beverage and retail concessions at the Airport pursuant to the terms of the Airport food and beverage and retail concession agreements.**
- (b) **Increase the compensation by an amount not to exceed \$45,000 of concessionaire-paid marketing funds for the initial term of the Agreement, for a total amount not to exceed \$415,000.**
- (c) **Increase the compensation by an amount not to exceed \$45,000 of concessionaire-paid marketing funds for the first one-year Option Period of the Agreement, for a total amount not to exceed \$230,000, and a total maximum contract amount not to exceed \$830,000.**
- CEQA: Resolutions No. 67380 and 71451, File No. PP09-216. (Airport)**

Documents Filed: Memorandum from Director of Aviation William Sherry, dated February 1, 2010, recommending approval of a first amendment to the master agreement.

Action: A first amendment to the Master Agreement for Consultant Services between the City of San José and Barnestorming Advertising and Marketing Communications to add marketing services to be paid in full using marketing funds collected by the City from the food and beverage and retail concessions at the Airport pursuant to the terms of the Airport food and beverage and retail concession agreements was approved. (11-0.)

- 2.6 **Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the General Fund:**
- (a) **Increase the estimate for Revenue from the Federal Government by \$142,000.**
- (b) **Increase the Weed and Seed – East San José appropriation to the Police Department in City-Wide Public Safety in the amount of \$71,000.**

- 2.6 (c) Increase the Weed and Seed – East San José appropriation to the City Manager’s Office in City-Wide Neighborhood Services in the amount of \$71,000.**

**CEQA: Not a Project. Council Districts 5 and 8. SNI: Valley/680 Communities and K.O.N.A. (City Manager’s Office/Police Department)**

Documents Filed: Memorandum from Deputy City Manager Norberto Dueñas, Chief of Police Robert Davis and Budget Director Jennifer Maguire, dated February 1, 2010, recommending adoption of appropriation ordinance and funding sources resolution amendments.

Public Comments: Jerry Mungai expressed comments about the Weed and Seed program.

Action: Upon motion by Vice Mayor Chirco, seconded by Council Member Herrera and carried unanimously, Ordinance No. 28722, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the General Fund for the Weed and Seed - East San José Project; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption” and Resolution No. 75275, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 74956 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2009-2010 to Adjust Revenues in the General Fund”, were adopted. (11-0.)

- 2.7 Approve the award of open purchase orders for supplies, materials, equipment and services for FY 2009-2010 #6 and authorize the Director of Finance to execute the purchase orders. CEQA: See attachment for CEQA determinations. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated February 1, 2010, recommending award of the open purchase orders and authorization of the Director of Finance to execute the purchase orders.

Action: The award of open purchase orders for supplies, materials, equipment and services for FY 2009-2010 #6 was approved and the Director of Finance was authorized to execute the purchase orders. (11-0.)

- 2.8 Adopt a resolution authorizing the Director of Finance to execute the second amendment to the agreement between the City of San José and Penske Truck Leasing Co., L.P. to extend the agreement term for an additional five months through July 31, 2010 for the lease and maintenance of airport shuttle buses. CEQA: Resolutions No. 67380 and 71451, File No. PP09-214. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated February 1, 2010, recommending adoption of a resolution.

Action: Resolution No. 75276, entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Finance to Execute a Second Amendment to the Agreement with Penske Truck Leasing Company, L.P. for the Lease and Maintenance of Airport Shuttle Bases”, was adopted. (11-0.)

**2.9 Adopt a resolution:**

- (a) **Authorizing the Housing Department to accept a Federal Emergency Management Agency grant of \$150,000 from the California Emergency Management Agency to assist with the creation of a mobilehome seismic grant Phase One inventory list.**
- (b) **Authorizing the Director of Housing to negotiate and execute all documents necessary for the acceptance and completion of the grant.**
- (c) **Making findings that the use of Low- and Moderate-Income Housing Funds to provide matching grant funds for seismic inventories and rehabilitation outside a redevelopment project area benefits the Agency's redevelopment project areas.**

**CEQA: Not a Project. Council Districts 2, 7 and 10. SNI: Edenvale/Great Oaks. (Housing)**

Documents Filed: Memorandum from Director of Housing Leslye Krutko, dated February 1, 2010, recommending adoption of a resolution.

Director of Housing Leslye Krutko responded to Council questions.

Public Comments: Jerry Mungai expressed comments about the Federal Emergency Management Agency Grant.

Action: Upon motion by Council Member Chu, seconded by Council Member Pyle and carried unanimously, Resolution No. 75277, entitled: "A Resolution of the Council of the City of San José Authorizing the Housing Department to Accept Federal Emergency Management Agency Funds to Provide an Inventory List of Mobilehomes Eligible to Receive Seismic Retrofit Upgrades", was adopted. (11-0.)

**2.10 Adopt a resolution approving the Relocation Impact Statement and Last Resort Housing Plan for Unity Care's properties at 109 and 115 Roundtable Drive. CEQA: Exempt, File No. PP06-199. Council District 2. SNI: Edenvale/Great Oaks. (Housing)**

Documents Filed: Memorandum from Director of Housing Leslye Krutko, dated February 1, 2010, recommending adoption of a resolution.

Action: Resolution No. 75278, entitled: "A Resolution of the Council of the City of San José Approving the Relocation Impact Statement and Last Resort Housing Plan for Unity Care's Properties Located at 109 and 115 Roundtable Drive", was adopted. (11-0.)

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

- (a) **Submit a grant application in the amount not to exceed \$300,000 to the Santa Clara Valley Water District (Water District) under the 2010 Trail and Open Space Grant program for the Penitencia Creek Reach 1 (Dorel Drive to Noble Drive) Trail project ("Project").**

- 2.11 (b) **Accept any grant funds awarded to the City and negotiate and execute all necessary documents related to any grant funding from the District to the City for the Project.**

**CEQA: Mitigated Negative Declaration, File No. PP06-111. Council District 4. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated February 1, 2010, recommending adoption of a resolution.

Action: Resolution No. 75279, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager, or Designee, To Execute and Submit an Application for Grant Funds to the Santa Clara Valley Water District in an Amount Not To Exceed \$300,000 for the Trails and Open Space Grant Program Under the Clean, Safe Creeks and Natural Flood Protection Program of 2000 for the Penitencia Creek Reach 1 (Dorel Drive to Noble Drive) Trail Project and Negotiate and Execute All Necessary Documents to Accept the Grant”, were adopted. (11-0.)

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

- (a) **Submit a grant application in an amount not to exceed \$250,000 to the State of California under the Community Based Transportation Planning grant program for the feasibility study of Edenvale Trail (“Project”).**
- (b) **Accept any grant funds awarded to the City and negotiate and execute all necessary documents related to any grant funding from State of California for the Project.**

**CEQA: Not a Project. Council District 2. SNI: Edenvale/Great Oaks. (Parks, Recreation, and Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated February 1, 2010, recommending adoption of a resolution.

Action: Resolution No. 75280, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager or Designee to Execute and Submit an Application to the State of California Under the Community Based Transportation Planning Grant Program for the Feasibility Study of Edenvale Trail in an Amount Not To Exceed \$250,000, To Accept the Grant if Awarded, and To Negotiate and Execute All Related Documents”, was adopted. (11-0.)

- 2.13 **Adopt a resolution approving Revised City Council Policy 8-14: Post-Construction Hydromodification Management to bring the Policy into conformance with the new Hydromodification Management requirements of the San Francisco Bay Regional Water Quality Control Board (RWQCB) Municipal Regional Stormwater National Pollutant Discharge Elimination System (NPDES) Permit (Permit Number CAS612008), which was adopted on October 14, 2009 by:**

- 2.13 (a) **Reducing the size of projects that are required to design, build, and maintain project-related hydromodification management controls (HMCs) for projects that create and/or replace one acre or more of impervious surface in subwatersheds and catchment areas that are identified in the RWQCB's Hydromodification Management (HM) Applicability Map for Santa Clara County.**
- (b) **Reducing the area of the City that is subject to such requirements in accordance with the RWQCB's HM Applicability Map for Santa Clara County.**
- (c) **Clarifying the types of projects that are exempt from HM requirements.**
- (d) **Adopting detailed descriptions of acceptable HMCs.**
- (e) **Delineating additional performance criteria for demonstrating that post-project stormwater runoff does not exceed estimated pre-project runoff rates and durations.**
- (f) **Including additional criteria beyond cost for determining when HMCs are impractical.**

**CEQA: Exempt. (Planning, Building and Code Enforcement)**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated February 3, 2010, recommending adoption of a resolution. (2) Email from Berg & Berg Developers, Inc. dated February 19, 2009, regarding the Revised Policy 8-14 and Hydromodification Management Applicability Map.

Action: Resolution No. 75281, entitled: "A Resolution of the Council of the City of San José Approving the Revised City Council Policy 8-14, "Post-Construction Hydromodification Management", was adopted. (11-0.)

- 2.14 **Approve the first amendment to the agreement for with Krong Design, Inc., extending the term of the agreement from February 28, 2011 to December 31, 2011, and increasing the amount of compensation by \$85,000, for a total amount not to exceed \$943,000. CEQA: Mitigated Negative Declaration, File No. PP08-023. Council District 1. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated February 1, 2010, recommending approval of the first amendment to the agreement.

Council Member Constant pulled Item 2.14 for clarification. Note: Item 2.14 was heard in conjunction with Item 5.1. See Item 5.1 for further action.

Action: Upon motion by Council Member Constant, seconded by Council Member Oliverio and carried unanimously, the amendment to the agreement with Krong Design, Inc., extending the term of the agreement from February 28, 2011 to December 31, 2011, and increasing the amount of compensation by \$85,000, for a total amount not to exceed \$943,000 was approved. (11-0.)

- 2.15 (a) Approve a Cost Sharing Agreement with the City of Santa Clara for the construction of the grant-funded Silicon Valley ITS – Enhancement Project and other improvements, to clarify roles and responsibilities of each party, and to allow Santa Clara to reimburse the City up to a maximum amount of \$460,000 for the cost of the construction.**
- (b) Approve a Cost Sharing Agreement with the City of Campbell for the construction of the grant-funded Silicon Valley ITS – Enhancement Project and other improvements, to clarify roles and responsibilities of each party, and to allow Campbell to reimburse the City up to a maximum amount of \$40,209 for the cost of the construction.**

**CEQA: Exempt, File No. PP03-06-214. Council Districts 1, 4, 6, and 9. (Transportation)**

Documents Filed: Memorandum from Acting Director of Transportation Hans Larsen, dated February 1, 2010, recommending approval of the cost sharing agreements.

Action: A Cost Sharing Agreement with the City of Santa Clara for the construction of the grant-funded Silicon Valley ITS – Enhancement Project and other improvements, to clarify roles and responsibilities of each party, and to allow Santa Clara to reimburse the City up to a maximum amount of \$460,000 for the cost of the construction and a Cost Sharing Agreement with the City of Campbell for the construction of the grant-funded Silicon Valley ITS – Enhancement Project and other improvements, to clarify roles and responsibilities of each party, and to allow Campbell to reimburse the City up to a maximum amount of \$40,209 for the cost of the construction, were approved. (11-0.)

- 2.16 As recommended by the Rules and Open Government Committee on February 3, 2010:**

- (a) Approve the designation of the District 1 Annual Greek Flag Raising Event as a City Council Sponsored Special Event.**
- (b) Approve and accept in-kind donations of materials and services to support the event.**

**CEQA: Not a Project. (City Clerk)**

**[Rules Committee referral 2/3/10 – Item H(1)]**

Documents Filed: Memorandum from City Clerk Lee Price, MMC, dated February 11, 2010, transmitting the recommendations of the Rules and Open Government Committee.

Action: The designation of the District 1 Annual Greek Flag Raising Event as a City Council Sponsored Special Event and the donations of materials and services to support the event were approved. (11-0.)

- 2.17 Approve travel by Council Member Constant to Washington, D.C. on March 13-17, 2010 to attend the National League of Cities' Annual Congressional City Conference. Source of Funds: Mayor & Council Travel Fund. (Constant)**  
**(Rules Committee referral 2/10/10)**

**2.17 (Cont'd.)**

Documents Filed: Memorandum from Council Member Constant, dated February 9, 2010, requesting an excused absence due to authorized City business.

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

**2.18 As referred by the Rules and Open Government Committee on February 10, 2010, approve the appointment of Glen Ledet, Customer Service/Contract Compliance/Public Outreach Manager for California Waste Solutions, San José to serve as a private sector representative on the Silicon Valley Workforce Investment Network Board of Directors. CEQA: Not a Project. (Mayor)  
[Rules Committee referral 2/3/10 – Item G(1)]**

Documents Filed: Memorandum from City Clerk Lee Price, MMC, dated February 11, 2010, transmitting the recommendations of the Rules and Open Government Committee.

Action: Glen Ledet, Customer Service/Contract Compliance/Public Outreach Manager for California Waste Solutions, San José was appointed to serve as a private sector representative on the Silicon Valley Workforce Investment Network Board of Directors. (11-0.)

**2.19 As referred by the Rules and Open Government Committee on February 10, 2010:**  
**(a) Re-appoint Alphonse Arretz, Francine Davis, Alex Fraser and Victor Nakamoto for a second term to the Project Diversity Screening Committee;**  
**(b) Appoint Suneel Kelkar and Gail Sueki to fill the vacant Mayoral appointment positions on the Project Diversity Screening Committee.**  
**CEQA: Not a Project. (Mayor)**  
**[Rules Committee referral 2/3/10 – Item G(2)(a)]**

Documents Filed: Memorandum from City Clerk Lee Price, MMC, dated February 11, 2010, transmitting the recommendations of the Rules and Open Government Committee.

Action: Alphonse Arretz, Francine Davis, Alex Fraser and Victor Nakamoto were reappointed for a second term to the Project Diversity Screening Committee and Suneel Kelkar and Gail Sueki were appointed to fill the vacant Mayoral appointment positions on the Project Diversity Screening Committee. (11-0.)

**2.20 As referred by the Rules and Open Government Committee on February 10, 2010:**  
**(a) Approve the designation of the District 4 North San José Business Appreciation Luncheon as a City Council and Redevelopment Agency Sponsored Special Event.**  
**(b) Approve and accept donations from various individuals, businesses, or community groups to support the event.**  
**CEQA: Not a Project. (City Clerk)**  
**[Rules Committee referral 2/10/10 – Item H(2)]**

**2.20 (Cont'd.)**

Documents Filed: Memorandum from City Clerk Lee Price, MMC, dated February 11, 2010, transmitting the recommendations of the Rules and Open Government Committee.

Action: The designation of the District 4 North San José Business Appreciation Luncheon as a City Council and Redevelopment Agency Sponsored Special Event, and donations from various individuals, businesses, or community groups to support the event, were approved. (11-0.)

**2.21 As referred by the Rules and Open Government Committee on February 10, 2010:**

- (a) Approve the designation of Council District 9 to Celebrate Cambrian, Carolyn Norris Park Dedication, and the Cambrian Leadership Breakfast as City Council Sponsored Special Events.**
- (b) Approve and accept donations from various individuals, businesses, or community groups to support the event.**

**CEQA: Not a Project. (City Clerk)**

**[Rules Committee referral 2/10/10 – Item H(3)]**

Documents Filed: Memorandum from City Clerk Lee Price, MMC, dated February 11, 2010, transmitting the recommendations of the Rules and Open Government Committee.

Action: The designation of Council District 9 to celebrate the Cambrian, Carolyn Norris Park Dedication and the Cambrian Leadership Breakfast as City Council Sponsored Special Events and donations from various individuals, businesses, or community groups to support the event, were approved. (11-0.)

**2.22 As recommended by the Rules and Open Government Committee on February 17, 2010, adopt a resolution in support of the proposed measure known as the Local Taxpayer, Public Safety and Transportation Act of 2010 targeted for the November 2010 Statewide General Election. (City Manager's Office)**

**[Rules Committee referral 2/17/10 – Item D(1)]**

Documents Filed: Memorandum from City Clerk Lee Price, MMC, dated February 18, 2010, transmitting the recommendations of the Rules and Open Government Committee.

Council Member Chu requested that his colleagues support the proposed measure known as the Local Taxpayer, Public Safety and Transportation Act of 2010 targeted for the November 2010 Statewide General Election.

Mayor Reed reported that he met with the Mayors of the ten largest cities on February 22, 2010 and all present expressed opposition to the State taking local monies. Mayor Reed added that all the Mayors were united to keep local revenues within their jurisdictions.

Action: Upon motion by Council Member Chu, seconded by Council Member Constant and carried unanimously, Resolution No. 75282, entitled: "A Resolution of the Council of the City of San José In Support of the Local Taxpayer, Public Safety and Transportation Act of 2010", was adopted. (11-0.)

**2.23 As recommended by the Rules and Open Government Committee on February 17, 2010:**

- (a) Appoint Patty Brooks to the Project Diversity Screening Committee. (Constant)**
- (b) Reappoint Johnny Constantine Khamis to the Small Business Development Commission. (Nguyen)**

**[Rules Committee referral 2/17/10 – Items G(1)(b) and G(2)]**

Documents Filed: Memorandum from City Clerk Lee Price, MMC, dated February 18, 2010, transmitting the recommendations of the Rules and Open Government Committee.

Action: Patty Brooks was appointed to the Project Diversity Screening Committee and Johnny Constantine Khamis was reappointed to the Small Business Development Commission. (11-0.)

**2.24 As recommended by the Rules and Open Government Committee on February 17, 2010:**

- (a) Approve the designation of the District 5 Opening Reception for Bittersweet Harvest: The Bracero Program 1942-1964 as a City Council sponsored Special Event.**
- (b) Approve and accept donations from various individuals, businesses, or community groups to support the event.**

**CEQA: Not a Project. (City Clerk)**

**[Rules Committee referral 2/17/10 – Item H(2)]**

Documents Filed: (1) The Memorandum from City Clerk Lee Price, MMC, dated February 18, 2010, transmitting the recommendations of the Rules and Open Government Committee. (2) Supplemental memorandum from City Clerk Lee Price, MMC, dated February 22, 2010, noting that the event was rescheduled to March 8, 2010.

Action: The District 5 Opening Reception for Bittersweet Harvest: The Bracero Program 1942-1964 as a City Council sponsored Special Event and donations from various individuals, businesses, or community groups to support the event, were approved. (11-0.)

## **END OF CONSENT CALENDAR**

### **STRATEGIC SUPPORT SERVICES**

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

City Manager Debra Figone reported that the Five Year Budget Update will be released by Monday, March 1, 2010.

**3.2 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; and**
- (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, et al., and 2/9/10 – Item 3.6)**

Action: Deferred to March 9, 2010 per Administration.

## **COMMUNITY & ECONOMIC DEVELOPMENT**

- 4.1 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 and 2/2/10 – Item 4.1)**

Action: Deferred to March 2, 2010 per Administration.

## **NEIGHBORHOOD SERVICES**

- 5.1 Accept this report on the status of the Park Trust Fund for fiscal year 2008-2009, ending June 30, 2009. CEQA: Not a Project. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated February 1, 2010, recommending acceptance of the report.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera and carried unanimously, the report on the status of the Park Trust Fund for fiscal year 2008-2009, ending June 30, 2009, was accepted. (11-0.)

- 5.2 Report on bids and award of contract for the Calabazas Branch Library Project to the lowest responsive bidder, Zolman Construction and Development, Inc., to include the base bid and Add Alternate Nos. 1 through 4 in the amount of \$4,860,000, and approval of a contingency in the amount of \$730,000. CEQA: Mitigated Negative Declaration, File No. PP08-023. Council District 1. (Public Works/Library)**

## 5.2 (Cont'd.)

Documents Filed: Memorandum from Director of Public Works Katy Allen and Director of Library Department Jane Light, dated February 1, 2010, recommending award of the contract to the lowest responsive bidder.

Director of Public Works Katy Allen responded to Council Member Constant's concerns about options and impacts if this project were delayed.

Brief discussion followed.

Action: Upon motion by Council Member Constant, seconded by Council Member Oliverio and carried unanimously, the award of contract for the Calabazas Branch Library Project to the lowest responsive bidder, Zolman Construction and Development, Inc., to include the base bid and Add Alternate Nos. 1 through 4 in the amount of \$4,860,000, with related contingency, was approved. (11-0.)

## TRANSPORTATION & AVIATION SERVICES

- 6.1 As recommended by the Transportation and Environment Committee on February 1, 2010, adopt a resolution in support of the City's pursuit of the relinquishment of State Route 82 and State Route 130 located within the City of San José to ensure policy support to initiate the State legislative and agreement negotiation processes with Caltrans that advance the relinquishment of State Routes 82 and 130. (Transportation)  
[Transportation and Environment Committee referral 2/1/10 – Item D(3)]**

Documents Filed: Memorandum from City Clerk Lee Price, MMC, dated February 11, 2010, transmitting the recommendations of the Transportation and Environment Committee.

Acting Director of Transportation Hans Larsen responded to Council questions and concerns.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Campos and carried unanimously, Resolution No. 75283, entitled: "A Resolution of the Council of the City of San José Adopting a Position of Support of the City's Pursuit of the Relinquishment of State Route 82 and State Route 132 Located Within the City of San José", was adopted. (11-0.)

- 6.2 As recommended by the Transportation and Environment Committee on February 1, 2010, approve an agreement with the Santa Clara Valley Transportation Authority to establish a vision statement and project description for the Santa Clara/Alum Rock Bus Rapid Transit Project. (Transportation)  
[Transportation and Environment Committee referral 2/1/10 – Item D(4)]**

## 6.2 (Cont'd.)

Documents Filed: Memorandum from City Clerk Lee Price, MMC, dated February 11, 2010, transmitting the recommendations of the Transportation and Environment Committee.

Motion: Council Member Campos moved approval of an agreement with the Santa Clara Valley Transportation Authority. Council Member Liccardo seconded the motion.

Acting Director of Transportation Hans Larsen responded to Council questions and concerns. Discussion followed.

Council Members Oliverio and Constant expressed concerns about the cost implications.

Public Comments: Ross Signorino spoke in support to the Staff recommendations.

Action: On a call for the question, the motion carried, and the agreement with the Santa Clara Valley Transportation Authority to establish a vision statement and project description for the Santa Clara/Alum Rock Bus Rapid Transit Project was approved. (9-2. Noes: Constant, Oliverio.)

## JOINT COUNCIL/REDEVELOPMENT AGENCY

The Council/Redevelopment Agency Board was convened at 2:42 p.m. to consider Items 9.1, 9.2, 9.3 in a Joint Session.

### 9.1 **Accept report on the feasibility of initiating the expansion and renovation of the Convention Center in FY 2009-10 and direct staff:**

- (a) **To present to the Team San José/CVB Board of Directors a plan to utilize additional non-general fund revenue sources to finance the proposed Convention Center Expansion.**
- (b) **To proceed with a Request for Proposal design-build solicitation after non-general fund revenue sources to support financing the project have been identified.**

**CEQA: Resolution No. 72767. (City Manager's Office/Redevelopment Agency)**

Documents Filed: (1) Memorandum from Mayor Reed and Council Members Constant, Nguyen, Herrera and Kalra, dated February 18, 2010, recommending acceptance of the Staff report summarizing the Feasibility of Initiating the Expansion of the Convention Center, with additional recommendations. (2) Memorandum from Council Member Liccardo, dated February 23, 2010, recommending amending paragraph four of the February 18, 2010 joint memorandum from Mayor Reed and Council Members Constant, Nguyen, Herrera and Kalra, to reflect that absent any oversight or flaw in the Staff's analysis, any funding of a "gap" should be confined to options presented in the Staff memorandum dated February 12, 2010. (3) Memorandum from City Manager Debra Figue and Redevelopment Agency Executive Director Harry S. Mavrogenes,

## 9.1 (Cont'd.)

### Documents Filed: (Cont'd.)

(3 Cont'd.) dated February 12, 2010, recommending acceptance of the staff report on the feasibility of the expansion and renovation of the convention center with further direction to Staff. (4) Staff presentation dated February 23, 2010, summarizing the Feasibility of Initiating the Expansion of the Convention Center in Fiscal Year 2009 – 2010. (5) Letter from Jeffrey V. Smith, County Executive, County of Santa Clara, dated February 23, 2010, expressing objections to several proposed actions of the City Council, Redevelopment Agency Board and San José Joint Financing Authority. (6) Letter from Neil Struthers, CEO, Santa Clara & San Benito Counties Building & Construction Trades Council, dated February 23, 2010, expressing support to the joint memorandum from Mayor Reed and Council Members Constant, Nguyen, Herrera and Kalra. (7) Letter from Gary Hageman, Wyndham, San José Hotels, Inc., dated February 23, 2010, expressing support to the joint memorandum from Mayor Reed and Council Members Constant, Nguyen, Herrera and Kalra. (8) Letter from Robert Gardner, EDA Consortium, dated February 18, 2010, urging Council to support the next steps for the Convention Center expansion and renovation. (9) Letter from Randy Cross, Associate Director, Event Services and Venues, SPIE, dated February 18, 2010, urging Council to support the next steps for the Convention Center expansion and renovation. (10) Three emails from the public all dated February 23, 2010, urging Council to support the next steps for the Convention Center expansion and renovation.

City Manager Debra Figone provided opening comments.

Chief Development Officer Paul Krutko presented the Feasibility of Initiating the Expansion of the Convention Center in FY 2009-2010.

Mayor Reed requested a report on the National Decorators and Team San José. Chief Development Officer Paul Krutko stated that Staff will provide an information memorandum to the Council on the issues.

Mayor Reed provided meeting disclosures.

Public Comments: Speaking in support to the joint memorandum from Mayor Reed and Council Members Constant, Nguyen, Herrera and Kalra, dated February 18, 2010, recommending acceptance of the Staff report summarizing the Feasibility of Initiating the Expansion of the Convention Center, with additional recommendations, and the Convention Center expansion and renovation were: Ben Field, South Bay Labor Council, Bob Blanchet, Alex Griego, Leeland Washington, Arnold Borges, Vicky Deleal, Robert Hipskind, Daniel Garcia Sr., Teamsters Local 287, Hector Guzman, Josue Garcia, Building Trades Council, George Netto, James Paine, Michael Mulcahy, Pat Sausedo, San José Silicon Valley Chamber of Commerce, Vikas Patel, Diane Driscoll, Ross Signorino, Bill Fairweather, Frank Difu and Gary Hageman.

## 9.1 (Cont'd.)

Lizanne Reynolds and Gary Graves, County of Santa Clara, expressed concern because this action and other proposed actions today will further prejudice the Agency's ability to fulfill its obligations to the County.

Deputy Executive Director Janet Kern, Chief Development Officer Paul Krutko and Director of Finance Scott Johnson responded to Council questions.

Motion: Council Member Constant moved approval of the memorandum he cosigned with Mayor Reed and Council Members Nguyen, Herrera and Kalra, dated February 18, 2010, accepting the Staff report with additional recommendations. Council Member Kalra seconded the motion.

Council Member Constant offered meeting disclosures and provided comments.

Council Member Liccardo expressed concerns about using Fund 536 to fill the potential gap.

Extensive Council discussion followed.

Council Member Campos and Council Member Chu provided meeting disclosures.

Council Member Kalra suggested that Staff engage with the building trades to encourage local employment.

Council Member Liccardo expressed opposition to the joint memorandum and spoke in support to the Staff recommendations regarding Fund 536.

City Attorney Richard Doyle clarified issues about awarding contracts and noted that the Finance Staff will return with scenarios.

Action: On a call for the question, the motion carried, the memorandum from Mayor Reed and Council Members Constant, Nguyen, Herrera and Kalra was approved, accepting the Staff report on the feasibility of initiating the expansion and renovation of the Convention Center with the following direction to Staff: (1) Move forward with a design build solicitation to expand and renovate the Convention Center as expeditiously as possible. (2) Direct the City Manager and Redevelopment Agency Executive Director to recommend a team that will manage the expansion and renovation of the Convention Center, utilizing the expertise of Staff that is managing the Airport Design build project. (3) Based on the design build process and recommended proposal, return to the City Council with the documents necessary to move forward with a financing plan. (4) In the event that the design build process results in a funding gap, complete an analysis on utilizing Fund 536 and other non general fund sources to fill the potential gap and return to the City Council with funding options. (10-1. Noes: Liccardo.)

Council Member Constant left the Joint/Redevelopment Agency meeting at 4:36 p.m.

- 9.2 Contingent upon Redevelopment Agency Board approval of the 2009-2010 Agency Budget to be heard on February 23, 2010, the following actions are recommended:**
- (a) Adopt resolutions by the City Council and Redevelopment Agency Board authorizing the City Manager and Executive Director to negotiate and execute a Second Amendment to the Loan Agreement from the City to the Redevelopment Agency from the General Purpose Parking Fund to:**
    - (1) Extend the repayment term of the existing \$6.8 million loan amount.**
    - (2) Provide for an additional loan from the City to the Redevelopment Agency from the Parking Capital Development Fund, in an amount not to exceed \$6.8 million, for the purpose of reimbursing the Agency for its payment of debt service in FY 2009-2010, FY 2010-2011 and FY 2011-12 for the Fourth and San Fernando Parking Garage, subject to appropriation of funds.**
  - (b) City Council adoption of the following 2009-2010 Appropriation Ordinance amendments in the Parking Capital Development Fund:**
    - (1) Establish a Loan to the Redevelopment Agency – Fourth and San Fernando Parking Garage appropriation in the amount of \$1,700,000.**
    - (2) Decrease the Department of Transportation Parking Capital Development project in the amount of \$1,700,000.**

**CEQA: Not a Project. Council District 3. (City Manager’s Office/Redevelopment Agency)**

Documents Filed: (1) Memorandum from City Manager Debra Figone and Redevelopment Agency Executive Director Harry S. Mavrogenes, dated February 12, 2010, recommending adoption of resolutions and appropriation ordinance amendments. (2) Staff presentation dated February 23, 2010 summarizing the Fourth and San Fernando Garage Debt Payments.

Deputy Director of Public Works Timm Borden provided an overview of the Fourth and San Fernando Garage Debt Payments and responded to Council questions.

Motion: Council Member Liccardo moved approval of the Staff recommendations. Council Member Nguyen seconded the motion.

A brief discussion followed.

Action: On a call for the question, the motion carried unanimously, Resolution No. 75284, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Second Amendment to the Loan Agreement from the City to the Redevelopment Agency from the General Purpose Parking Fund”; Redevelopment Agency Board Resolution No. 5943, entitled: “A Resolution of the Board of Directors of the Redevelopment Agency of the City of San José Authorizing the City Manager and Executive Director to Negotiate and Execute a Second Amendment to the Loan Agreement from the City to the Redevelopment Agency from the General Purpose Parking Fund to (1) Extend the Repayment Term of the Existing \$6.8 Million Dollar Loan Amount and (2) Provide for an Additional Loan from the City to the Redevelopment Agency from the Parking Capital Development Fund in an Amount Not

## **9.2 (Action Cont'd.)**

To Exceed \$6.8 Million, For the Purpose of Reimbursing the Agency for Its Payment of Debt Service in FY 2009-2011, FY 2010-2011 and FY 2011-2012 for the Fourth and San Fernando Parking Garage, Subject to Appropriation of Funds” and Ordinance No. 28723, entitled: “An Ordinance of the City of San José Amending Ordinance No. 28593 to Appropriate Monies in the Parking Capital Development Fund for the Loan to the Redevelopment Agency-Fourth and San Fernando Parking Garage; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”, were adopted. (9-0-2. Absent: Constant, Kalra.)

## **9.3 Accept Staff’s response to the Council Referral from the February 8, 2010 Study Session regarding Economic Development Incentives. (City Manager’s Office)**

Action: Deferred to March 9, 2010 per Orders of the Day.

The Joint Council/Redevelopment Agency Board was adjourned at 4:42 p.m.

## **OPEN FORUM**

Documents Filed: Letter from Charles T. Johnson, dated February 16, 2010, describing his suggestions to Council.

Charles T. Johnson suggested the following: (1) installing enclosures for birds to nest upon light fixtures in parking lots; (2) color-coding bus schedule routes, and (3) a crosswalk for public safety at Hyde Avenue and Bollinger Road near Hyde Middle School.

## **ADJOURNMENT**

The Council of the City of San José adjourned the afternoon session at 5:42 p.m.

## RECESS/RECONVENE

The City Council recessed at 5:42 p.m. from the afternoon Council Session and reconvened at 7:01 p.m. in the Council Chambers, City Hall.

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

Absent: Council Members - None.

City Clerk Lee Price read the requests for continuance of the applications. Upon motion by Council Member Pyle, seconded by Council Member Herrera, and carried unanimously, the below noted continuances and actions were taken as indicated. (11-0.)

## CEREMONIAL ITEMS

**1.2 Presentation of a commendation to the Alameda Business Association for their continued efforts and dedication in revitalizing the Alameda Business District. (Oliverio)**

Action: Mayor Reed and Council Member Oliverio recognized and commended the Alameda Business Association for their continued efforts and dedication in revitalizing the Alameda Business District.

**1.3 Presentation of commendations to Harker and Lynbrook High School students for being selected as semi-finalists and finalists in the 2010 Intel Science Talent Search. (Constant)**

Action: Mayor Reed and Council Member Constant recognized and commended Harker and Lynbrook High School students for being selected as semi-finalists and finalists in the 2010 Intel Science Talent Search.

## PUBLIC HEARINGS

**11.2 Consider an ordinance rezoning the real property located at/on the west side of North 6th Street, approximately 200 feet south of East Taylor Street (675 N 6th Street) from LI Light Industrial Zoning District to A(PD) Planned Development Zoning District to allow up to 75 affordable housing units on a 0.55 acre site (First Community Housing). CEQA: Resolution to be adopted.  
PDC08-010 – District 3**

## 11.2 (Cont'd.)

Documents Filed: (1) Memorandum from Council Member Liccardo, dated February 22, 2010, recommending approval of the Staff recommendation with a funding strategy identified. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC08-010, dated January 19, 2010. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated January 28, 2010, transmitting the Planning Commission recommendation of approval. (4) Proof of Publication of Notice of Public Hearing, executed on November 20, 2009, submitted by the City Clerk.

Mayor Reed opened the public hearing.

Jeff Oberdorfer, First Community Housing, spoke to the merits of the affordable senior housing project in Japantown.

Public Comments: Tamon Norimoto, Japantown Community Congress and Leon Kimura, San José Japanese American Citizens League, spoke in support to the Japantown Senior Housing project.

Mayor Reed closed the public hearing.

Motion: Council Member Liccardo moved approval of his memorandum dated February 22, 2010, recommending approval of the Staff recommendation with a funding strategy identified and read overriding considerations into the record. Council Member Herrera seconded the motion.

Mayor Reed provided meeting disclosures.

Council Member Oliverio explained that his no vote was based upon no park fees, no ongoing property tax and no building and construction taxes.

Action: On a call for the question, the motion carried, the recommendation of the Planning Commission and the Planning Director was approved, as modified by the memorandum from Council Member Liccardo, dated February 22, 2010: (1) Staff to identify a funding strategy for an enhanced crosswalk or other pedestrian facility across Taylor Street by the time of the approval of the Planned Development Permit. (2) The strategy should include transportation impact fees from this development and other nearby developments (such as the Corp Yard site), State bond funds supporting transit-oriented development or other sources. (3) A requirement on this developer as a “guarantee” or “backstop” for those funding alternatives, with a reasonable “cap” to limit costs and should be included as a condition with the Planned Development Permit; Council Member Liccardo read a Statement of Overriding Considerations into the record: “The Final Environment Impact Report for this proposed project identified significant and unavoidable environmental impacts. However, as described in more detail in the proposed resolution of the EIR findings for this item there is no feasible way to lessen or avoid these significant effects for this project and approval of this proposed project is

## 11.2 (Action Cont'd.)

anticipated to result in several benefits to the City. All of these benefits outweigh the significant, unavoidable environmental impacts identified in the Final EIR for this Project”; Ordinance No. 28724, entitled: “An Ordinance of the City of San José Rezoning Certain real Property Situated at the West Side of North Sixth Street, Approximately 800 Feet Southerly of East Taylor Street, from LI Light Industrial to A(PD) Planned Development Zoning District”, was passed for publication and Resolution No. 75288, entitled: “A Resolution of the Council of the City of San José Making Certain Findings Concerning Significant Effects, Mitigation Measures and Alternatives and Adopting a Statement of Overriding Considerations for the Japantown Senior Apartments Project (File PDC08-010) for Which an Environmental Impact Report Has Been Prepared in Accordance with the California Environmental Quality Act of 1970, as Amended”, was adopted. (10-1. Noes: Oliverio.)

## 11.4 Conduct an Administrative Hearing and consider an Appeal of the Planning Commission’s decision to deny a Conditional Use Permit and Determination of Public Convenience to allow off-sale of alcoholic beverages at an existing convenience store on a 1.01 gross acre site, with no new construction, in the CG General Commercial Zoning District, located at 2247 Alum Rock Avenue (Bill L. and Shirley A. Dalton Trustee & Et Al, Owner). CEQA: Exempt. CP09-019 & ABC09-001 – District 5

Documents Filed: (1) Memorandum from Council Member Campos, dated February 17, 2010, recommending denial of the subject Conditional Use Permit. (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated February 4, 2010 transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP09-019 & ABC09-001 dated November 24, 1009. (3) Proof of Publication of Notice of Public Hearing, executed on February 5, 2010, submitted by the City Clerk.

Director of Planning, Building and Code Enforcement Joseph Horwedel noted that he received a request from the applicant to defer the Administrative Hearing to a later date.

Mayor Reed opened the public hearing.

Public Comments: Speaking in support to the Staff/Planning Commission recommendation to deny a Conditional Use Permit and Determination of Public Convenience to allow off-sale of alcoholic beverages at an existing convenience store were Elma Arredondo, Las Mariposas, Felipe Jaurez, K.O.N.A. SNI, Kathryn Benson and Alofa Talivaa, Sierra Neighborhood Association.

Mayor Reed closed the public hearing.

Motion: Council Member Campos moved approval of her memorandum dated February 17, 2010, recommending denial of the subject Conditional Use Permit. Council Member Oliverio seconded the motion.

#### 11.4 (Cont'd.)

Mayor Reed and Council Members Oliverio and Liccardo expressed support to the motion.

Action: On a call for the question, the motion carried unanimously, Resolution No. 75289 was adopted to deny the appeal of the Applicant. (11-0.)

#### 11.5 Consider an ordinance rezoning the real property located on the north side of Auzerais Avenue between Bird Avenue and Royal Avenue from LI Light Industrial to A(PD) Planned Development Zoning District to demolish an existing gas station building and construct a new gas station mini-mart/car wash on a 0.6 gross acre site (395 Bird Avenue) (Vintners Distributors, Inc., Sunny Goyal, Owner/Developer). SNI: Burbank/Del Monte. CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1). PDC09-023 – District 6

Action: Continued to March 16, 2010.

#### 11.6 Conduct an Administrative Hearing and consider an Appeal of the Planning Commission's decision to deny a Conditional Use Permit and Determination of Public Convenience to allow off-sale of alcoholic beverages on a 3.7 gross acre site, in the CP Pedestrian Commercial Zoning District, located at 1711 Branham Lane (Jason Kim, Owner). CEQA: Exempt. CP09-047 & ABC09-002 – District 9

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated February 5, 2010 transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP09-047 & ABC09-002 dated November 30, 2009. (2) Proof of Publication of Notice of Public Hearing, executed on February 12, 2010, submitted by the City Clerk.

Mayor Reed opened the public hearing.

Public Comments: Josephine Oh, the Applicant, spoke to the merits of this appeal to promote the success of this family owned business.

Mayor Reed closed the public hearing.

Vice Mayor Chirco stated she could not make a finding of overriding considerations for the public benefit in this case.

Motion: Vice Mayor Chirco moved approval to deny the appeal for a Conditional Use Permit and Determination of Public Convenience to allow off-sale of alcoholic beverages at the subject site. Council Member Pyle seconded the motion.

A brief discussion followed.

## 11.6 (Cont'd.)

Action: On a call for the question, the motion carried unanimously, Resolution No. 75290 was adopted to deny the appeal of the Applicant. (11-0.)

## 11.3 **Early consideration of denial of a General Plan Amendment request to change the Land Use/Transportation Diagram designation to add Mixed Industrial Overlay to an existing Heavy Industrial land use designation on a 3.95 gross acre site, located at 2159 South 10th Street (Provident Holdings & Investments LLC, Owner). CEQA: Incomplete. Director of Planning, Building and Code Enforcement and Planning Commission recommend denial (5-1-1). GP09-07-02 – District 7**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated February 3, 2010, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP09-07-02, dated January 15, 2010. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated February 11, 2010, transmitting the Planning Commission recommendation of denial.

Director of Planning, Building and Code Enforcement Joseph Horwedel summarized the General Plan Amendment request to change the Land Use/Transportation Diagram Designation.

Mayor Reed opened the public hearing.

Public Comments: Speaking in support to the General Plan Amendment request were Walter Carbaugh and Jorge Delgado.

Mayor Reed closed the public hearing.

Mayor Reed expressed support to the Staff recommendation for early denial because the amendment does not conform to the City of San José's economic strategy or with the General Plan and it does not meet the framework for the preservation of employment lands.

Motion: Council Member Nguyen moved approval to overturn the early denial of the Applicant's request, with direction to Staff to continue processing the application, and to complete the EIR for review and consideration at the Spring General Plan Hearings. Council Member Herrera seconded the motion.

Extensive Council discussion followed.

Vice Mayor Chirco argued that it would be a disservice to the community to support the motion.

Council Member Oliverio concurred with the comments from Mayor Reed and expressed his objection to the motion.

### **11.3 (Cont'd.)**

Mayor Reed and Council Members Chu, Campos, Constant and Liccardo provided meeting disclosures.

Council Members Kalra, Campos and Herrera agreed that due process for the Applicant was important and expressed support to the motion.

Council Member Liccardo pointed out that there was not an economic rationale to allow this amendment because of the prevalence of heavy industrial activity in the Monterey Corridor.

Council Member Pyle stated that safety was a number one propriety.

Action: On a call for the question, the motion carried, the Applicant's request was approved, Staff was directed to continue to process the application and complete the Environmental Review. The Applicant's request will be considered at the April 27, 2010 General Plan Hearings. (6-5. Noes: Chirco, Liccardo, Pyle, Oliverio; Reed.)

### **OPEN FORUM**

Trini Esquiviz and Felipe Juarez, K.O.N.A. SNI Neighborhood Association, requested monies for school improvements located within their neighborhood.

### **ADJOURNMENT**

The Council of the City of San José was adjourned at 8:25 p.m. in the memory of Juanita Serrato-Lopez who passed away on January 26, and Diana Pena Lopez who passed away on January 30, both residents of San Jose. They are survived by loving husband and son, Robert Lopez, a City of San Jose Housing Department employee. (City Manager's Office).

In memory of Frank Schiavo, longtime resident of Council District 7, a retired environmental studies lecturer from San José State University, and president of the Citizens Against Airport Pollution (CAAP). Frank Schiavo was the recipient of numerous awards and honors for his environmental advocacy. His efforts has helped co-author various legislation and policy regarding environmental issues, including the City of San José's Compost Ordinance. He is survived by his stepmother and sister. (Nguyen)

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC  
City Clerk

smd/02-23-10 MIN

## JOINT/REVDVELOPMENT AGENCY ITEMS

The Joint Redevelopment Agency Board convened at 5:08 p.m. to consider Item 8.1 in a Joint Session.

- 8.1 (a) **Adoption of resolutions by the Redevelopment Agency Board approving the revised FY 2009-2010 Capital and Operating Budgets and amendments to the corresponding FY 2009-2010 Revenue and Appropriations Resolutions.**
- (b) **Adoption of a resolution by the Redevelopment Agency Board approving the FY 2010-2015 Capital Improvement Program.**
- (c) **Adoption of resolutions by the Redevelopment Agency Board and City Council authorizing the Executive Director and the City Manager to negotiate and execute an amendment to the FY 2009-2010 Cooperation Agreement for the Merged Redevelopment Project Area to reflect the revised Agency's FY 2009-2010 Capital and Operating Budgets.**
- (d) **Adoption of resolutions by the Redevelopment Agency Board and City Council authorizing the Executive Director and the City Manager to negotiate and execute an amendment to the FY 2009-2010 Cooperation Agreement for Operating Expenses to decrease the rental payment from the Agency to the City for office space at City Hall.**

**[MERGED]**

Documents Filed: (1) Memorandum from Mayor Reed, dated February 19, 2010, recommending that the Redevelopment Agency Board and the City Council approval and adoption of the proposed Fiscal Year 2009-2010 Redevelopment Agency Capital and Operating Budget and Fiscal Year 2010-2015 Capital Improvement Program with the direction that until funds to make payments to the State are secured and until further direction from the Agency Board is provided, the Agency Executive Director is directed to not spend any unrestricted funds unless contractually obligated or for budgeted operating expenses. (2) Memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated February 12, 2010, recommending adoption of resolutions. (3) Supplemental memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated February 22, 2010, providing the proposed revised Agency FY 2009-2010 Operating and Capital Budget contains reductions in payments to the City and the City will be refunding to the Agency, funds previously transferred via Project Services memoranda, requiring that the Cooperation Agreements between the City and Agency be amended to reflect those revisions. (4) Attachment A, The Redevelopment Agency of the City of San José Merged Area Source and Use of Funds Summary dated February 23, 2010.

Motion: Vice Mayor Chirco moved approval of the memorandum from Mayor Reed dated February 19, 2010, recommending approval of the Redevelopment Agency Board Budgets with further direction to the Executive Director. Council Member Liccardo seconded the motion.

Council Member Campos pointed out that she could not support the funding of the Autumn Parkway Street extension.

## 8.1 (Cont'd.)

Council Member Oliverio stated that the Redevelopment Agency dollars should be concentrated on business recruitment and economic development.

Redevelopment Agency Executive Director Harry S. Mavrogenes requested to amend the motion to add clarifications with regard to the unrestricted funds. The amendment was accepted by Vice Mayor Chirco and Council Member Liccardo, as described below in "Action".

Public Comments: Speaking in support to the adoption of the Redevelopment Agency Budget were Daniel Fenton, Team San José and Melissa A. Morris, Law Foundation of Silicon Valley.

Action: On a call for the question, the motion carried, RDA Resolution No. 5945, entitled: "A Resolution of the Board of Directors of the Redevelopment Agency of the City of San José Approving the Revised FY 2009-2010 Capital Budget"; RDA Resolution No. 5946, entitled: "A Resolution of the Board of Directors of the Redevelopment Agency of the City of San José Approving the Revised FY 2009-2010 Operating Budget"; RDA Resolution No. 5947, entitled: "A Resolution of the Board of Directors of the Redevelopment Agency of the City of San José Approving Amendments to the FY 2009-2010 Revenue and Appropriations Resolutions"; RDA Resolution No. 5948, entitled: "A Resolution of the Board of Directors of the Redevelopment Agency of the City of San José Approving the FY 2010-2015 Capital Improvement Program"; RDA Resolution No. 5949, entitled: "A Resolution of the Board of Directors of the Redevelopment Agency of the City of San José Authorizing the Executive Director and City Manager to Negotiate and Execute an Amendment to the FY 2009-2010 Cooperation Agreement for the Merged Redevelopment Project Area to Reflect the Revised Agency's FY 2009-2010 Capital and Operating Budgets"; RDA Resolution No. 5950, entitled: "A Resolution of the Board of Directors of the Redevelopment Agency of the City of San José Authorizing the Executive Director and City Manager to Negotiate and Execute an Amendment to the FY 2009-2010 Cooperation Agreement for Operating Expenses to Decrease the Rental Payment from the Agency to the City for Office Space at City Hall"; Resolution No. 75286, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Amendment to the FY 2009-2010 Cooperation Agreement for the Merged Redevelopment Project Area to Reflect the Revised Agency's FY 2009-2010 Capital Budget" and Resolution No. 75287, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Amendment to the FY 2009-2010 Cooperation Agreement for Operating Expenses to Reflect the Revised Agency's FY 2009-2010 Operating Budget", were adopted; and approved as modified by the memorandum from Mayor Reed, dated February 19, 2010, adding direction that until funds to make payments to the State are secured and until further direction from the Agency Board is provided, the Agency Executive Director is not directed to spend any restricted funds unless contractually obligated or for budgeted operating expenses. The following clarifications on unrestricted funds were accepted: the services and projects that are

## **8.1 (Action Cont'd.)**

eligible to be paid with these taxable bond proceeds that the Agency may expend funds on are services related to ongoing discussions with the County, services related to financing, services related to real estate negotiations, services related to environmental studies or services related to ongoing discussions with the County and financing real estate negotiations or environmental studies. (9-2. Noes: Campos, Oliverio.)

The Council of the City of San José and Redevelopment Agency Board was adjourned at 5:31 p.m.