

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, AUGUST 17, 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 9:32 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code subsection (c) of Section 54956.9 with respect to anticipated litigation in one (1) matter. (B) to confer with Legal Counsel pursuant to Government Code subsection (a) of Section 54956.9 with respect to existing litigation: (1) In re: Hightower; Amount of Money or Other Relief Sought: Administrative Appeal. (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. 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 10:45 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

Pastor Arnold Perez, Cryy Out Christian Fellowship presented the Invocation. (District 7)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Herrera, seconded by Vice Mayor Chirco and carried unanimously, the Orders of the Day and the Amended Agenda were approved, and Item 1.3 was deferred to September 21, 2010 and Items 2.3(a) and (d) were deferred to August 24, 2010. (11-0)

CEREMONIAL ITEMS

- 1.1 Award for Transportation Planning Excellence for the San José Trail Program from the Federal Highway Administration, Federal Transit Administration and the American Planning Association. (Parks, Recreation and Neighborhood Services/Transportation/Public Works)**

Action: The award for Transportation Planning Excellence for the San José Trail Program was presented to Mayor Reed.

- 1.3 Presentation of a commendation recognizing Moreland Little League for their Accessibility Project. (Constant)
(Rules Committee referral 8/11/10)**

Action: Deferred to September 21, 2010 per Orders of the Day.

- 1.4 Presentation of a commendation to the Kamali'i O Ke Kai Outrigger Canoe Club for their passion to teach the unique sport of outrigger canoe paddling in the San José community and for their efforts to keep the Lake Cunningham Marina open. (Herrera)
(Rules Committee referral 8/11/10)**

Action: Mayor Reed and Council Member Herrera recognized and commended the Kamali'i O Ke Kai Outrigger Canoe Club.

CONSENT CALENDAR

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

2.1 Approval of Minutes.

- (a) Regular Minutes of April 6, 2010.**
- (b) Special Minutes of April 12, 2010.**
- (c) Regular Minutes of April 13, 2010.**
- (d) Regular Minutes of April 20, 2010.**
- (e) Regular Minutes of April 27, 2010.**
- (f) Joint San José Financing Authority Minutes of April 27, 2010.**
(City Clerk)

Documents Filed: (1) The Regular Minutes dated April 6, 2010, April 13, 2010, April 20, 2010 and April 27, 2010. (2) The Special Minutes dated April 12, 2010. (3) The Joint San José Financing Authority Minutes dated April 27, 2010.

Action: The minutes were approved. (11-0)

2.2 Final adoption of ordinances.

Action: There were none.

2.3 Approval of Council Committee Reports.

- (a) Rules and Open Government Committee Report of July 28, 2010. (Mayor)**
- (d) Rules and Open Government Committee Report of June 9, 2010. (Mayor)**

Action: Deferred to August 24, 2010 per Orders of the Day.

- (b) Community and Economic Development Committee Report of June 28, 2010. (Pyle)**
- (c) Transportation and Environment Committee Report of June 7, 2010. (Liccardo)**
- (e) Neighborhood Services and Education Committee Report of June 10, 2010. (Campos)**

Documents Filed: (1) Report of the Community and Economic Development Committee dated June 28, 2010. (2) Report of the Transportation and Environment Committee dated June 7, 2010. (3) Report of the Neighborhood Services and Education Committee dated June 10, 2010.

Public Comments: David Wall provided various comments on all of the Council Committees.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Herrera and carried unanimously, the Committee Reports were approved. (11-0)

2.4 Mayor and Council Excused Absence Requests.

Action: There were none.

2.5 City Council Travel Reports.

Action: There were none.

2.6 Approve Change Order No. 38 for the “San José/Santa Clara Water Pollution Control Plant, Fiscal Year 2007-2008 Capital Improvement Program, Alternative Disinfection Project,” to extend the project completion date by 109 working days to allow for completion of additional work in the amount of \$41,660. CEQA: Exempt, File No. PP07-145. (Environmental Services)

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated July 22, 2010, recommending approval of Change Order No. 38. (2) Letter from Chuck Reed, Chairperson, The Treatment Plant Advisory Committee, dated August 12, 2010, stating concurrence with the Staff recommendation.

Action: Change Order No. 38 for the “San José/Santa Clara Water Pollution Control Plant, Fiscal Year 2007-2008 Capital Improvement Program, Alternative Disinfection Project,” to extend the project completion date by 109 working days to allow for completion of additional work in the amount of \$41,660, was approved. (11-0)

2.7 Report on bids and award of contract for the SJ-20 Recycled Water San José Lateral and Garden Extensions– Phase A project to the low bidder, Pacific Underground Construction, Inc., in the amount of \$137,825; and approval of a budget contingency of 15% of the contract amount (\$21,000). CEQA: Resolution No. 64667, File No. PP10-019. (Environmental Services/Public Works)

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean and Director of Public Works Katy Allen, dated July 20, 2010, recommending award of the contract to the low bidder, with related contingency. (2) Letter from Chuck Reed, Chairperson, The Treatment Plant Advisory Committee, dated August 12, 2010, stating concurrence with the Staff recommendation.

Action: The award of contract for the SJ-20 Recycled Water San José Lateral and Garden Extensions– Phase A project to the low bidder, Pacific Underground Construction, Inc., in the amount of \$137,825, with related contingency, was approved. (11-0)

2.8 Report on bids and award of contract for the SJ-21 Recycled Water San José Schools Extension – Phase A project to the low bidder, Pacific Underground Construction, Inc., in the amount of \$254,560; and approval of a budget contingency of 15% of the contract amount (\$38,000). CEQA: Resolution No. 64667, File No. PP10-018. (Environmental Services/Public Works)

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean and Director of Public Works Katy Allen, dated July 20, 2010, recommending award of the contract to the low bidder, with related contingency. (2) Letter from Chuck Reed, Chairperson, The Treatment Plant Advisory Committee, dated August 12, 2010, stating concurrence with the Staff recommendation.

2.8 (Cont'd.)

Action: The award of contract for the SJ-21 Recycled Water San José Schools Extension, Phase A project to the low bidder, Pacific Underground Construction, Inc., in the amount of \$254,560, with related contingency, was approved. (11-0)

- 2.9 (a) Adopt a resolution authorizing the City Manager to negotiate and execute agreements with Pacific Gas and Electric (PG&E) with terms covering the period August 16, 2010 through December 31, 2012 to:**
- (1) Conduct a Community Energy Championship Fund Program and receive funding in an amount not to exceed \$531,035.**
 - (2) Conduct a Municipal Whole House Rehabilitation Pilot Program and receive funding in an amount not to exceed \$370,000.**
- (b) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund for 2010-2011:**
- (1) Establish a City-wide appropriation to the Environmental Services Department for Silicon Valley Energy Watch (SVEW) Innovator Pilots in the amount of \$626,860.**
 - (2) Increase the Estimate for Revenue from Local Agencies by \$626,860.**

CEQA: Community Energy Championship Fund: Not a Project, File No.PP10-066 (e), Agreements and Contracts for services that involve no physical changes to the environment; Municipal Whole House Rehab Pilot: Not a Project, File No.PP10-067, Non-Project Specific Funding Mechanism. (Environmental Services/Housing/City Manager's Office)

Action: Deferred to August 24, 2010 per City Attorney's Office.

2.10 Adopt a resolution:

- (a) Declaring the vacant 2,176 square foot City-owned parcel [APN 455-20-071] on Evans Lane southwest of the Almaden Expressway and Guadalupe 87 Freeway surplus to the needs of the City.**
- (b) Approving an agreement for the sale of the property to the adjoining property owner, Evans Lane Apartments, L.P. for \$6,093, and authorizing the Director of General Services to execute any documents necessary for the transfer of the Property.**

CEQA: Exempt, File No. PP10-122. Council District 6. (General Services)

Documents Filed: Memorandum from Director of General Services Peter Jensen, dated July 26, 2010, recommending adoption of a resolution.

Action: [Resolution No. 75528](#), entitled: "A Resolution of the Council of the City of San José Declaring Certain City Owned Property Located Adjacent to 1800 Evans Lane as Surplus to the Needs of the City, Approving an Agreement to Sell and Authorizing the Director of General Services to Execute All Necessary Documents Necessary for the Transfer of Such Property to the Adjacent Property Owner, Evans Lane Apartments, L.P.", was adopted. (11-0)

- 2.11 Adopt a resolution authorizing the City Manager, or designee, to accept the tentative award of a grant from the California Office of Traffic Safety in the amount of \$69,000 to deliver traffic safety education programs to elementary and middle schools within the Franklin-McKinley Children’s Initiative area and to negotiate and execute any documents to effectuate the grant. CEQA: Not a Project, File No. PP10-069(a), City Organizational & Administrative Activities. Council District 5 and 7. SNI: Tully-Senter; Seven Trees Pilot. (Transportation)**

Documents Filed: Memorandum from Acting Director of Transportation Hans F. Larsen, dated July 26, 2010, recommending adoption of a resolution.

Council Member Nguyen thanked Staff for their hard work and Council Members Liccardo and Campos for their letter of support for this grant.

Public Comments: Mark Trout expressed support to the acceptance of the grant and also spoke off topic.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Herrera and carried unanimously, [Resolution No. 75529](#), entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager or Designee to Accept a Tentative Award of a Grant from the California Office of Traffic Safety for Traffic Safety Education for the Franklin-McKinley Children’s Initiative Area in an Amount Not To Exceed \$69,000 and to Negotiate and Execute All Related Documents”, was adopted. (11-0)

- 2.12 Adopt the following Appropriation Ordinance and Funding Sources Resolution in the General Fund (Fund 001) to:**

- (a) Accept the donation of surplus campaign funds from Neighbors for Sam Liccardo City Council 2010 and recognize revenue in the amount of \$1,960 in Council District 3.**
- (b) Increase the appropriation to Council District 3 (Appropriation 1030) in the amount of \$1,960.**

**(City Clerk/City Manager’s Office)
(Rules Committee referral 8/4/10)**

Documents Filed: Memorandum from City Clerk Lee Price, MMC and Budget Director Jennifer Maguire, dated August 4, 2010, recommending appropriation ordinance and funding sources resolution amendments.

Action: [Ordinance No. 28792](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 28765 to Appropriate Monies in the General Fund for Council District No. 3; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption” and [Resolution No. 75530](#), entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 75447 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2010-2011 to Adjust Revenues in the General Fund”, were adopted. (11-0)

- 2.13 As recommended by the Rules and Open Government Committee on August 11, 2010, approve the proposed designation of Council Member Kansen Chu as the voting delegate at the September 17, 2010 Annual Business Meeting for the League of California Cities (LOCC). (City Manager’s Office)**

Documents Filed: Memorandum from City Clerk Lee Price, MMC, dated August 12, 2010, transmitting the recommendations of the Rules and Open Government Committee.

Action: Council Member Kansen Chu was approved as the designated voting delegate at the September 17, 2010 Annual Business Meeting for the League of California Cities.

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone provided an update about current negotiations with the International Association of Firefighters, Local 230 (IAFF).

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 As recommended by the Community and Economic Development Committee on June 28, 2010, accept the status report and the following staff recommendations regarding consideration of the draft Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (Plan or HCP/NCCP):**

- (a) Continue to work with Wildlife Agencies to ensure feasible and reasonable requirements are identified in the HCP/NCCP, including but not limited to financial obligations.**
- (b) Continue to ensure that the costs incurred to meet the Plan requirements as adopted by the partner agencies are less than or equal to the benefits of the Plan.**
- (c) Continue to ensure that the Draft Plan does not put the City’s General Fund at risk for being responsible to fund Plan implementation in the absence of development fees or other assumed revenue sources.**
- (d) Continue to be diligent in the review and comment of non-local partner agencies’ CEQA documents with regard to direct and indirect impacts on the Plan area from projects outside the Plan area, and encourage the Wildlife Agencies to do the same.**
- (e) Staff recommends the City Council accept the Draft Guiding Principles for the Burrowing Owl Conservation Strategy and direct staff to continue to dialogue with the Local Partners and Wildlife Agencies regarding potential inclusion of City owned land in the Western Burrowing Owl (WBO) conservation strategy in accordance with the Guiding Principles.**

(Planning, Building and Code Enforcement)

(Deferred from 8/03/10 – Item 4.2 and 8/10/10 – Item 4.2)

4.1 (Cont'd.)

Documents Filed: (1) Memorandum from City Clerk Lee Price, MMC, dated July 22, 2010, transmitting the recommendations of the Community and Economic Development Committee. (2) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated August 10, 2010, transmitting the Draft Guiding Principles for the Western Burrowing Owl Conversation Strategy document. (3) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated August 2, 2010, providing new information about the Western Burrowing Owl. (4) Staff presentation dated August 17, 2010 outlining the Santa Clara Valley Habitat Plan.

Director of Planning, Building and Code Enforcement Joseph Horwedel presented the Staff Report and responded to Council questions.

Public Comments: Speaking in support to the draft Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan but expressing concern about the fate of the Western Burrowing Owl were David Cook, Bob Power (Santa Clara Valley Audubon), Brian Schmidt (Committee for Green Foothills) and Linda Ruthruff.

David Wall spoke in opposition to the Staff recommendations. Mark Trout spoke off topic.

Council discussion followed.

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

Council Member Herrera requested to amend the motion to direct Staff to return to the appropriate Committee with plan implementation actions. The amendment was accepted by Council Members Kalra and Liccardo.

Action: On a call for the question, the motion carried unanimously, the status report and the Staff recommendations as outlined above were accepted, with Staff directed to refer to the appropriate Council Committee plan implementation actions. (10-0-1. Absent: Constant.)

TRANSPORTATION & AVIATION SERVICES

- 6.2 Adopt a resolution to repeal Resolution No. 74494 (Master Speed Limit Resolution) and establish a 15 mph school zone speed limit on Dana Avenue between Hester Avenue and Naglee Avenue. CEQA: Exempt, File No. PP10-113. Council District 6. (Transportation)
(Rules Committee referral 8/11/10)**

Documents Filed: Memorandum from Acting Director of Transportation Hans F. Larsen, dated August 12, 2010, recommending adoption of a resolution.

6.2 (Cont'd.)

Acting Director of Transportation Hans Larsen responded to Council questions.

Public Comments: David Wall spoke in support to the Staff recommendations.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Constant and carried unanimously, [Resolution No. 75531](#), entitled: "A Resolution of the Council of the City of San José Establishing the Speed Limit on Dana Avenue Between Hester Avenue and Naglee Avenue by Decreasing the Speed Limit from 25 MPH to 15 MPH During School Hours, When Children are Present and Repealing Resolution No. 74494", was adopted. (11-0)

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 (a) **Conduct a public hearing to accept and respond to public comment on the Municipal Water System's 2010 Public Health Goals Report on Water Quality.**
- (b) **Approve report and direct staff to file with the California Department of Public Health.**

CEQA: Not a Project, File No.PP10-069(a), Reports involving no approvals of City actions. (Environmental Services)

The Public hearing was held.

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated July 26, 2010, recommending holding a public hearing and approving the report with direction to staff. (2) Proof of Publication of Notice of Public Hearing, executed on July 23, 2010, submitted by the City Clerk.

Mayor Reed opened the public hearing.

City Clerk Lee Price pointed out that there were no written comments received by the Office of the City Clerk.

Public Comments: Mark Trout spoke off topic.

Mayor Reed closed the public hearing.

City Clerk Lee Price stated that the Council may take action on this item.

Action: Upon motion by Vice Mayor Chirco, seconded by Council Member Herrera and carried unanimously, the report was approved and Staff was directed to file with the California Department of Public Health. (11-0)

OPEN FORUM

- (1) David Wall presented comments related to the Sewer Service and Use Charge and Proposition 218.
- (2) Mark Trout voiced his own personal viewpoints on various topics.
- (3) Joan Todd and Jim Piezzo, Green Earth Management, stated that the City of San José permitting process is slow and expensive.

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 3:20 p.m.

RECESS/RECONVENE

The City Council recessed at 3:20 p.m. from the afternoon Council Session and reconvened at 7:04 p.m. in the Council Chambers, City Hall.

Present: Council Members - Campos, Chirco, Chu, Constant, Nguyen, Kalra, Liccardo, Nguyen, Oliverio (7:09 p.m.), Pyle (7:26 p.m.); Reed.

Absent: Council Members - None.

CEREMONIAL ITEM

- 1.2 **Presentation of a commendation to Don Gagliardi for his years of service as President of the 13th Street NAC, Chair of the District 3 Neighborhood Advisory Group, and the numerous hours he has toward the betterment of his community and the City of San José. (Liccardo)**

Action: Mayor Reed and Council Member Liccardo recognized and commended Don Gagliardi.

TRANSPORTATION & AVIATION SERVICES

- 6.1 **Conduct a public hearing pursuant to Section 11.18.060 of the San José Municipal Code to consider an appeal of the Traffic Appeals Commission's decision to uphold the Director of Transportation's denial of the request for installation of all-way stop signs at the two intersections of Vallejo Drive and Colombo Drive, and Vallejo Drive and Latimer Avenue located in the City of San José, and adopt a resolution setting forth the City Council's decision. CEQA: Exempt, File No. PP06-171. Council District 1. (Police/Transportation)**

Documents Filed: (1) Memorandum from Council Member Constant, dated August 13, 2010, recommending approval to appeal and reverse the denial of the of all-way stop signs, with further direction to Staff. (2) Memorandum from Acting Director of Transportation Hans F. Larsen and Police Chief Robert L. Davis, dated July 26, 2010, recommending conducting a public hearing and adoption of a resolution to deny the appeal. (3) Staff presentation dated August 17, 2010 summarizing the Appeal of Denial for All-Way Stop Signs. (4) Thirty one letters from the public all dated August 17, 2010, regarding the Appeal of the All-Way Stop Signs. (5) Presentation from the Hathaway Park Neighborhood Association dated August 17, 2010 outlining the Stop Sign Appeal.

Acting Director of Transportation Hans Larsen, Police Captain Jeff Smith and Deputy Director of Transportation Laura Wells presented the Staff Report.

Mayor Reed opened the public hearing.

6.1 (Cont'd.)

Richard Hendricks, Hathaway Park Neighborhood Association, Appellant, presented the Stop Sign Appeal.

Public Comments: Speaking in support to the appeal in support of installing the stop signs and stating that safety was their prime concern were Jason Klawitter, Rosa I. Pelleler, Wade Hall, Andrea Miller, Tina Morrill, Anne Wilde, Richard McCoy, David Wilde, Nancy DeMatte and Robert Benscoter.

Mayor Reed closed the public hearing.

Motion: Council Member Constant moved approval of his memorandum dated August 13, 2010, to appeal and reverse the denial of the of all-way stop signs, with further direction to Staff. Council Member Campos seconded the motion.

Council discussion followed.

Action: On a call for the question, the motion carried unanimously, the memorandum from Council Member Constant, dated August 13, 2010, was approved, [Resolution No. 75532](#), entitled: "A Resolution of the Council of the City of San José Approving the Appeal to Reverse the Decision to Uphold the Director of Transportation's Denial of the Request for the Installation of All-Way Stop Signs at the Two Intersections of Vallejo Drive and Colombo Drive and Vallejo Drive and Latimer Avenue", was adopted, as amended: (1) Approving the appeal and reversing the denial of the Hathaway Park Neighborhood Association's request for an update of all-way stop signs from two-way stop signs at the intersections of Vallejo Drive and Colombo Drive and Vallejo Drive and Latimer Avenue. (2) The City Manager was directed to have the all-way stop signs installed as soon as possible. (3) The City Manager was directed to evaluate whether the existing pedestrian warning signs can be changed to "Stop Ahead" signs. (11-0)

PUBLIC HEARINGS ON CONSENT CALENDAR

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

- 11.1 (a) **Consideration of an ordinance rezoning the real property located on the southwest corner of W. Julian Street and Pleasant Street (350 W. Julian Street) from LI Light Industrial to DC Downtown Core on a 0.81 gross acre site (City of San José, Owner) CEQA: Use of San José Downtown Strategy 2000 EIR. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2; Cahan and Platten Absent).**
C10-008 – District 3

11.1 (a) (Cont'd.)

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated July 22, 2010, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C10-008, dated July 2, 2010. (2) Memorandum from Planning Commission Secretary Joe Horwedel, dated August 12, 2010, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing, executed on July 23, 2010, 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: The recommendation of the Planning Director and Planning Commission was approved, [Ordinance No. 28793](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Southwest Corner of West Julian Street and Pleasant Street (350 West Julian Street) from the LI Light Industrial Zoning District to the DC Downtown Core Zoning District”, was passed for publication. (11-0)

- (b) Consideration of an ordinance rezoning the real property located on the northwest side of Berryessa Road, 250 feet southwesterly of N. Capitol Avenue (2471 Berryessa Road) from the CP Commercial Pedestrian Zoning District to the CG Commercial General Zoning District on a 1.3 gross acre site (2471-2481 Berryessa LLC, Owner). CEQA: San José 2020 General Plan EIR Resoluion No. 65459. Director of Planning, Building and Code Enforcement recommend approval. No Planning Commission action required.**

C10-016 – District 4

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C10-016, dated July 26, 2010. (2) Proof of Publication of Notice of Public Hearing, executed on July 30, 2010, 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: The recommendation of the Planning Director was approved, [Ordinance No. 28794](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated at the North Side of Berryessa Road, Approximately 130 Feet West of North Capitol Avenue (2471-2481 Berryessa Road) From CP Commercial Pedestrian to CG Commercial General Zoning District”, was passed for publication. (11-0)

- 11.1 (c) **Consideration of a Director Initiated Conforming Rezoning from County of Santa Clara to R-1-8 Single Family Residence Zoning District as to approximately 13 gross acres for an approximately 119 gross acre unincorporated County of Santa Clara pocket consisting of 624 parcels, generally bounded by both sides of Golf Drive, the west side of Toyon Avenue, both sides of Penitencia Creek Road and both sides of Gridley Street (Owners: Multiple). CEQA: San José 2020 General Plan EIR, Resolution No. 65459. (Related Annexation Penitencia No. 77)**
C10-012 – District 5

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on July 23, 2010, submitted by the City Clerk.

Action: Dropped, to be renoticed.

- (d) **Consideration of a Director Initiated Conforming Rezoning from County of Santa Clara to R-1-8 Single Family Residence Zoning District as to an approximately 31 gross acre unincorporated County of Santa Clara pocket consisting of 115 parcels, generally bounded by Patt Avenue, McKee Road, North White Road, and a line 150 feet westerly of Francis Drive (Owners: Multiple). CEQA: San José 2020 General Plan EIR, Resolution No. 65459. (Related Annexation McKee No. 136)**
C10-013 – District 5

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on July 23, 2010, submitted by the City Clerk.

Action: Dropped, to be renoticed.

- (e) **Consideration of a Director Initiated Conforming Rezoning from County of Santa Clara to R-1-8 Single Family Residence Zoning District as to an approximately 64 gross acre unincorporated County of Santa Clara pocket consisting of 268 parcels, generally bounded by Gay, North Capitol and Alum Rock Avenues, and a line approximately 950 feet southwesterly of North White Road (Owners: Multiple). CEQA: San José 2020 General Plan EIR, Resolution No. 65459. (Related Annexation McKee No. 135)**
C10-014 – District 5

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on July 23, 2010, submitted by the City Clerk.

Action: Dropped, to be renoticed.

- 11.1 (f) **Consideration of a Director Initiated Conforming Rezoning from County of Santa Clara to R-1-8 Single Family Residence Zoning District as to an approximately 127 gross acre unincorporated County of Santa Clara pocket consisting of 630 parcels, generally bounded by Florence Avenue, South White Road, Story Road, Lower Silver Creek, and South Capitol Avenue (Owners: Multiple). SNI: East Valley/680 Communities. CEQA: San José 2020 General Plan EIR, Resolution No. 65459. Related Annexation Capitol No. 57)**
C10-015 – District 5

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on July 23, 2010, submitted by the City Clerk.

Action: Dropped, to be renoticed.

- (g) **Consideration of an ordinance rezoning the real property located on the east side of Ruby Avenue, 100 feet northerly of Murillo Avenue (2494 Ruby Avenue) from the A(PD) Planned Development Zoning District which previously allowed a new religious assembly facility to the A(PD) Planned Development Zoning District to allow up to 10 single-family detached residences on a 2.51 gross acre site (Ruby Estates, LLC/Mahmood Ghori, owner). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement & Planning Commission recommend approval (7-0-0)**
PDC09-028 – District 8

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC09-028, dated July 2, 2010. (2) Memorandum from Planning Commission Secretary Joe Horwedel, dated July 26, 2010, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing, executed on June 4, 2010, 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: The recommendation of the Planning Director and Planning Commission was approved, [Ordinance No. 28795](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the East Side of Ruby Avenue, Approximately 100 Feet Northerly of Murillo Avenue (2494 Ruby Avenue) from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District”, was passed for publication. (11-0)

- 11.1 (h) **Consideration of an ordinance rezoning the real property located at the southwest corner of Foxworthy Avenue and Almaden Expressway (1175 Hillsdale Avenue) from A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District to allow up to 24,250 square feet of commercial uses on a 2.17 acre site (Calvary Chapel San José, Owner). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement & Planning Commission recommend approval (7-0-0).
PDC08-015 – District 9**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC08-015, dated July 2, 2010. (2) Memorandum from Planning Commission Secretary Joe Horwedel, dated July 21, 2010, transmitting the recommendation of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing, executed on June 4, 2010, 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: The recommendation of the Planning Director and Planning Commission was approved, [Ordinance No. 28796](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Southwest Corner of Foxworthy Avenue and Almaden Expressway (1175 Hillsdale Avenue, APN 451-06-066 and 451-06-068) to A(PD) Planned Development Zoning District”, was passed for publication. (11-0)

END OF PUBLIC HEARINGS ON CONSENT CALENDAR

PUBLIC HEARINGS

- 11.2 Consider an ordinance rezoning the real property located at/on the west side of N. Third Street, 340 feet south of Hensley Street (405 N Third Street) in the Hensley Historic District from the R-M Multiple Residence Zoning District to the A(PD) Planned Development Zoning District to allow up to six residential units within the existing structure(s) on a 0.17 gross acre site (Layne Sharon J, Owner; Bill Priest, Developer). SNI: 13th Street. CEQA: Exempt. Director of Planning, Building and Code Enforcement recommends denial and Planning Commission recommends approval of 4 units only (5-2-0, Do and Jensen opposed).**

PDC08-033 – District 3

(Continued from 4/27/10 – Item 11.2 and 6/15/10 – Item 11.2)

Action: Deferred and renoticed to September 21, 2010, Per Applicant's Request.

- 11.3 Consideration of an ordinance rezoning the real property located at the northern terminus of Grand Oak Way, approximately 250 feet northwest of Hematite Court (6776 San Felipe Road) to allow for the development of three (3) single-family detached residences in addition to an existing single-family residence on a 2.07 gross acre site (Kulwant S. Sidhu, Owner/Developer). CEQA: Exempt. Director of Planning, Building and Code Enforcement & Planning Commission recommend approval with a condition to include a development standard requiring driveway access to lots 3 and 4 be placed along the northern property line; (7-0-0).**

PDC08-065 – District 8

Documents Filed: (1) Memorandum from Council Member Herrera, dated August 17, 2010, recommending approval of the Planning Commission recommendation, with the exception that the driveway access for the new units be located along the northern property line. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC08-065, dated June 9, 2010. (3) Memorandum from Planning Commission Secretary Joe Horwedel, dated July 22, 2010, transmitting the Planning Commission recommendation of approval with a condition to include a development standard requiring driveway access to lots 3 and 4 be placed along the northern property line. (4) Proof of Publication of Notice of Public Hearing, executed on June 4, 2010, submitted by the City Clerk.

Motion: Council Member Herrera moved approval of her memorandum dated August 17, 2010 approving the Planning Commission recommendation, with the exception that the driveway access for the new units be located along the northern property line. Council Member Pyle seconded the motion.

Director of Planning, Building and Code Enforcement Joseph Horwedel stated that the one of options that Staff will look at during the Permit stage was narrowing the driveway since it only serves two dwelling units.

Mayor Reed opened the public hearing.

11.3 (Cont'd.)

Peter Smith, Charles Davidson Company, representing the Applicant, spoke to the merits of the project and addressed comments about the driveway issue.

Public Comments: Urging the City Council to approve the Planning Commission recommendation and the memorandum from Council Member Herrera, including moving the driveway access to the northern property line were Larry Clemens, Carmen Rose, Dana Rose, Kathleen Helsing and Jackie Clemens.

Mr. Sidhu, Property Owner/Applicant, shared his views about the project and driveway issues.

Mayor Reed closed the public hearing.

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Commission was approved, [Ordinance No. 28797](#), entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Northern Terminus of Grand Oak Way, Approximately 250 Feet Northwest of Hematite Court (6776 San Felipe Road) from the A-Agricultural Zoning District to A(PD) Planned Development Zoning District”, was passed for publication, as amended (driveway access to the new units to be located along the northern property line, as recommended by Council Member Herrera). (11-0)

11.4 **Consideration of an ordinance rezoning the real property located on the west side of Guadalupe Mines Road, approximately 1,130 feet southerly of Via Campagna (6411 Guadalupe Mines Road) from A(PD) Planned Development Zoning District to R-1-8(PD) Planned Development Zoning District to allow for the demolition of 4 commercial/industrial buildings and the construction of 94 single-family detached residences on a 15.8 gross acre site (Brokaw Interests, Owner; Trumark Companies, Developer). CEQA: Mitigated Negative Declaration. Director of PBCE and Planning Commission recommend approval with the following conditions and plan revisions to be included in the proposed rezoning: The project fully is compliant with the Riparian Corridor Study with a riparian setback development standard of 100 feet except for a 30-foot riparian setback on the south end of the site); All streets are public streets with full cross sections; Oak trees within the area proposed for residential development are reviewed for integration into the development including revised site grading to preserve natural grades; the net density does not exceed 8.0 housing units per net acre as defined by the General Plan. (4-1-2, Noes: Kamkar; Absent: Cahan, Platten)** **PDC10-005 – District 10**

Director of Planning, Building and Code Enforcement Joseph Horwedel commented that Staff received a letter from the Santa Clara Valley Audubon Society this morning regarding the late notification for the hearing of the environmental review for this project. Director Horwedel recommended that Council open the public hearing, take testimony, and pointed out that Council may consider a deferral of this item to a later date.

11.4 (Cont'd.)

Council Member Pyle expressed concern that the Santa Clara Valley Audubon Society was not notified timely about the hearing tonight.

Mayor Reed provided meeting disclosures. Mayor Reed opened the public hearing.

Erik Schoennauer, representing Trumark Companies, the Applicant, spoke to the merits of the project.

Public Comments: The following speakers expressed support to the 100 foot setback, concern about safety issues, urged Staff to keep the environment natural, expressed opposition to this type of housing, cited concerns about negative effects on the bird population species in the area, objected to removing 12 Heritage Sycamore trees and voiced concerns about evacuation in an emergency/disaster: Libby Lucas, Brian Schmidt (Committee for Green Foothills), David Cook (Santa Clara Valley Audubon Society), Brent Graham, Craig Breon, Malauka Ghosh, Jianfei Shao, Gary Wewer, Ron Jacobs, Deborah Jacobs, Jim Wang, Susan Ditter, Junzhi Wang, Zach Yang, Soumen Ghosh, Pradeep Chandra, Lydia Wheeler, Larry Ames, Courtney Barrett (Waste Management) and Jean Dresden.

Erik Schoennauer, representing the Applicant, rebutted and reiterated the merits of the project.

Mayor Reed closed the public hearing.

City Attorney Richard Doyle provided clarification and recommended that the City Council consider bringing this item back in two weeks.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, Item 11.4 was continued to August 31, 2010. (11-0)

ADJOURNMENT

The Council of the City of San José was adjourned at 9:53 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

smd/08-17-10 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.