



MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, AUGUST 31, 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, Nguyen, Oliverio, Pyle; Reed.

Absent: Council Members - Liccardo. (Excused)

Upon motion unanimously adopted, Council recessed at 9:33 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel with respect to anticipated litigation pursuant to Government Code subsection (b) of Section 54956.9 (Claim Filed) with significant exposure: (1) In re Claim of Ghenis; City Department: PRNS; (2) In re: Claim of Banuelos; City Department: DOT; (3) In re: Claim of Ortiz; City Department: DOT; (4) In re: Claim of Head; City Department: PRNS; (5) In re: Claim of Pham; City Department: Police. (B) to confer with Legal Counsel pursuant to Government Code subsection (c) of Section 54956.9 with respect to anticipated litigation in three (3) matters. (C) to confer with Legal Counsel pursuant to Government Code subsection (a) of Section 54956.9 with respect to existing litigation: (1) Colvin v. City, et al; Names of Parties Involved: Michael Colvin, Mary Beth Majors, James Becknall, City of San José, Does 1-20; Amount of Money or Other Relief Sought: Damages according to proof; (2) Beltran v. City; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV170281; Amount of Money or Other Relief Sought: Damages according to proof; (3) Citizens Against Airport Pollution v. City et al; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV177290; Amount of Money or Other Relief Sought: City to set aside and void approvals relating to 8th addendum to Airport Master Plan; (4) 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: C09-03735 RS; Amount of Money or Other Relief Sought: Declaratory and injunctive relief; (5) Elliott v. City; Names of Parties Involved: Greg Elliott, City of San José, Does 1-20; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV172738; Amount of Money or Other Relief Sought: Damages according to proof; (6) City v. International Association of Firefighters, et al; Names of Parties Involved: City of San José, International Association of Firefighters, Local 230; Court: Superior Court of California, County of Santa Clara; Case No: 1-06-CV-075858; Amount of

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Money or Other Relief Sought: Motion to compel arbitration; (7) City v. Association of Building, Mechanical and Building Inspectors; Names of Parties Involved: City of San José, Association of Building, Mechanical and Building Inspectors; Court: State of California Public Employment Relations Board; Case No: SF-CO-168-M; (8) Great Oaks Water, Inc. v. City, et al; Names of Parties Involved: Great Oaks Water Company, Inc., John W.S. Roeder, Betty B. Roeder, Betty B. Roeder Trust A and William C. Miller, Jr., and Betty B. Roeder, Trustees of the Walter S. Roeder Trust B, City of San José, San José Redevelopment Agency, South Bay Water Recycling, Does 1-100; Amount of Money or Other Relief Sought: Damages according to proof; (9) Murrel v. City; Names of Parties Involved: Dawn Murrel, City of San José, Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV172575; Amount of Money or Other Relief Sought: Damages according to proof; (10) City v. IAFF (Michael Baldwin); Names of Parties Involved: City of San José, International Association of Firefighters, Local 230, Michael Baldwin; Court: Superior Court of California, County of Santa Clara; Court of Appeal of the State of California, Sixth Appellate District; Case No: 1-09-CV142109, HO34726; (11) California Building Industry Association v. City, et al; Names of Parties Involved: California Building Industry Association, a California Nonprofit Corporation, City of San José, a California Municipal Corporation, City Council and Mayor of the City of San José, Does 1-200; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV-167289; Amount of Money or Other Relief Sought: Declaratory and Injunctive relief; (12) Bernal, et al v. City, et al; Names of Parties Involved: Mike C. Bernal, Susan R. Bernal, Nanetta Bernal, Lillian Bernal Auvinen, Katherine Lira, Diana Bernal-Tuyor, Mike A. Bernal, Gary James Bernal, Domenico Loverde, Tomas J. Martinez, Authur Paul Lira, Jr., Jerimiah Lira, Sommer Kai Espinosa, Lucia A. Bernal, Guillermo Espinosa, City of San José, Does 1-25; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-116141; Amount of Money or Other Relief Sought: Damages according to proof; (13) Berg & Berg Enterprises, LLC v. City, et al; Berg & Berg Enterprises, LLC, City of San José, City Council and Does 1-50; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV-091955; Amount of Money or Other Relief Sought: Damages according to proof; (14) Cicala, et al v. City, et al; Names of Parties Involved: Paul Cicala, Enrico Sagullo, Erick Sanchez, City of San José, Robert Davis, Officers Ordaz, Higgins, Marfia, Kyono, Siegel and Does; Court: United States District Court, Northern District of California; Case No: C08-04032 PVT; Amount of Money or Other Relief Sought: Damages according to proof; (15) Contreras v. City, et al; Names of Parties Involved: Emily Contreras and Jose Lua, Sr, individually and as Administrators of the Estate of Richard A. Lua, City of San José, Chief Robert Davis, Officer Eric Bachman, Officer Patrick Lynch, Genevieve Black and Does 1-10; Court: United States District Court, Northern District of California; Case No: C-10-00953-RMW; Amount of Money or Other Relief Sought: Damages according to proof; (16) Diamond Enterprises, et al v. City, et al; Names of Parties Involved: Jenny Wolfes Diamond Enterprises, SJ DBA Studio 8, City of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-06-CV071844; Amount of Money or Other Relief Sought: Damages according to proof; (17) Ho v. City, et al; Names of Parties Involved: Phuong Quang Ho, City of San José; Chief Robert Davis, Sgt. Jeffrey Martin, Officer Steven Payne, Jr.,

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Officer Gabriel Reyes, Officer Kenneth Siegel, Officer Jerome Smith; Court: United States District Court, Northern District of California; Case No: CV-10-01825 HRL; Amount of Money or Other Relief Sought: \$11 Million; (18) Kerkeles v. City, et al; Names of Parties Involved: Michael Kerkeles, AKA Michael Kerk, City of San José, Matthew Christian, Does 1-25; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV103523; Amount of Money or Other Relief Sought: Damages according to proof; (19) Moscoso v. City, et al; Names of Parties Involved: Aleyda Maritza Moscoso, Personal Representative of the Estate of Jorge Luis Truillo, Robert L. Davis, City of San José, John Does 1-25; Court: United States District Court, Northern District of California; Case No: C07 02998 JF; Amount of Money or Other Relief Sought: Damages according to proof; (20) Naymark, et al v. City, et al; Names of Parties Involved: Janice Naymark, Ronald Naymark, City of San José, San José Police Department, Robert Davis, City of Campbell, Campbell Police Department, David Gullo, Town of Los Gatos, City of Monte Sereno, Los Gatos/Monte Sereno Police Department, Scott Seaman, City of Palo Alto, Lynn Johnson, City of Santa Clara, Santa Clara Police Department, Stephen D. Lodge, State of California, California Highway Patrol, Michael L. Brown, County of Santa Clara, Office of the Santa Clara County Sheriff, Laurie Smith and Does 1-25; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV080008; Amount of Money or Other Relief Sought: Injunctive relief. (21) Noreen Salinas v. City, et al; Names of Parties Involved: Noreen Salinas, City of San José, Chief Robert Davis, Taser International, Inc., Does 1-10; Court: United States District Court, Northern District of California; Case No: C08-02625 RS (consolidated with C09-04410RS); Amount of Money or Other Relief Sought: Damages according to proof; (22) Swayzer v. City; Names of Parties Involved: Prince Swayzer II and Deborah Porter as Individuals and Jill Scott as Guardian Ad Litem for J.P.S., a minor and as Administrator of the Estate of Prince Swayzer III, deceased, City of San José, Taser International Inc. and Does 1-100; Court: United States District Court, Northern District of California; Case No: C10-03119 HRL; Amount of Money or Other Relief Sought: Damages according to proof; (23) Valdez, et al v. City, et al; Names of Parties Involved: Francisco Valdez, Ricardo Valdez, Daniel Martinez, Jamil Stubbs, City of San José, San José Police Chief Robert Davis, Officer R. Agaman (4041), Officer Martin (3894), Officer Rickert (3734), Officer Wallace (3922), Officer Orlando, Does 1-2500; Court: United States District Court, Northern District of California; Case No: C09 00176 RMW; Amount of Money or Other Relief Sought: Damages according to proof; (24) Vasquez v. City, et al; Names of Parties Involved: Ramon Jose Vasquez, Brian Ferrante, Individually and as an Officer of the San José Police Department and Tom Morales, Individually as an Officer of the San José Police Department, Does 1-50; Court: United States District Court, Northern District of California; Case No: CV10-00948 LKH; Amount of Money or Other Relief Sought: Damages according to proof; (25) Watson-Stalker et al v. City, et al; Names of Parties Involved: Tracy Watson, Renee Stalker, Olivia Stalker, Shafer Watson, Riley Watson, County of Santa Clara, County of Santa Clara Department of Family and Children Services, County of Santa Clara Department of County Counsel, County of Santa Clara District Attorney's Office, Santa Clara Valley Medical Center, Evergreen School District, City of San José, San José Police Department, Norma Sparks, Yazmina Letona, Sharon Burgan, Jewels Ramirez, Vu Tran, Ann Miller Ravel, Rima Singh, Aaron

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West, George Kennedy, Clifton Black, Rose Real, Robert Pruitt, Cheryl Harms, Claudia Blodgett, Gary Kishimoto, John Hamilton, Anita Noble, Janet Kahle, Mary Ritter, David Kearns, Rajul Kazi, Robert Davis, William Hoyt, Craig Blank; Court: United States District Court, Northern District of California; Case No: C06-04029 RMW; Amount of Money or Other Relief Sought: Damages according to proof; (26) City v. Union Pacific Railroad Company; Names of Parties Involved: City of San José, Union Pacific Railroad Company, a Delaware Corporation and Does 1-15; Court: Superior Court of California, County of Santa Clara; Case No: 1-04-CV-026149; Amount of Money or Other Relief Sought: Seeking to obtain real property through eminent domain for fair market value; (27) Carrasco v. City, et al; Names of Parties Involved: Arthur Carrasco, Hector Solorio, Virginia Solorio, Louisa Maldonado, City of San José and Does 1-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-10-CV-165390; Amount of Money or Other Relief Sought: Damages according to proof; (28) Toan Nguyen v. City; Names of Parties Involved: Toan Thanh Nguyen, Ann Thuy Nguyen, City of San José Department of Transportation, City of San José Department of Public Works; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-115637; Amount of Money or Other Relief Sought: Damages according to proof; (28) Lefall, et al v. City; Names of Parties Involved: Dion Lefall, George Louie, Gloria Vaughn, Derrick Jackson, City of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV-094037; Amount of Money or Other Relief Sought: Damages according to proof; (30) Simmons v. City, et al; Names of Parties Involved: Hugh Patrick Simmons, Michelle Simmons, San José Electrical Contractor, Inc., Pacific Dream Homebuilders, Dream Homebuilders, Royal Cabinetry and Designs, Inc., Thomas F. Sramek, Acevedo Trucking, Rodolfo Acevedo, Suzanne Sramek, City of San José, Does 2-100; Court: Superior Court of California, County of Santa Clara; Case No: 1-09-CV148054; Amount of Money or Other Relief Sought: Damages according to proof; (31) De La Rosa, et al v. City, et al; Names of Parties Involved: Richard E. De La Rosa, Dennis Fong, Jose Mendoza, City of San José, Avo Makdessian, Does 1-100; Court: Superior Court of California, County of Santa Clara, Court of Appeal, 6th Appellate District; Case No: 1-03-CV-817097, H031583; Amount of Money or Other Relief Sought: Damages according to proof; (32) Licking Enterprises, Inc. v. City, et al; Names of Parties Involved: Licking Enterprises, Inc., City of San José, a Municipal Corporation, San José City Council, Ron Gonzales, Cindy Chavez, Ken Yeager, Chuck Reed, Forrest Williams, Linda J. LeZotte, Nora Campos, George Shirakawa, Jr., David D. Cortese, John DiQuisto, sued in their official capacities; Court: United States District Court, Northern District of California; Case No: C07-00735 RMW (PVT); Amount of Money or Other Relief Sought: Damages according to proof; (33) Smith v. City, et al; Names of Parties Involved: Ted Smith, City of San José, San José Elections Commission, Does 1-20; Court: Superior Court of California, County of Santa Clara; Case No: 1-07-CV-089167; Amount of Money or Other Relief Sought: Damages according to proof; (34) Vietnamese-American Community of Northern California v. City, et al; Names of Parties Involved: Vietnamese-American Community of Northern California, City of San José, City Council of San José; Court: Superior Court of California, County of Santa Clara; Case No: 1-08-CV-107082; Amount of Money or Other Relief Sought: For Declaratory and Injunctive Relief according to proof. (D) to confer with Labor Negotiator pursuant to

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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/employeerelations/moa.asp>; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 11:15 a.m. and reconvened to Regular Session at 1:33 p.m. in the Council Chambers.

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

Absent: Council Members - Liccardo. (Excused)

INVOCATION

Reverend Edward Kwong, San José Christian Alliance Church, presented the Invocation. (District 7)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (10-0-1. Absent: Liccardo.)

CEREMONIAL ITEMS

1.1 Presentation of a commendation to Lake Cunningham Regional Park Rangers Stephanie Ferris and Fred Cortopassi for performing heroic measures in the work place where they assisted in the rescue of a visitor by saving his life. (Herrera)

Action: Mayor Reed and Council Member Herrera recognized and commended Lake Cunningham Regional Park Rangers Stephanie Ferris and Fred Cortopassi for their heroism.

**1.2 Presentation of a proclamation declaring September 8, 2010 as “International Literacy Day” in the City of San José. (Chu)
(Rules Committee referral 8/25/10)**

Documents Filed: “Good Food, Good Memories”, stories by Adult Learners, Partners In Reading, Adult and Family Literacy Program, San José Public Library.

Action: Mayor Reed and Council Member Chu recognized September 8, 2010 as “International Literacy Day” in the City of San José.

CONSENT CALENDAR

Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (10-0-1. Absent: Liccardo.)

2.1 Final adoption of ordinances.

Action: There were none.

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 28793 – 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. C10-008**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28793 executed on August 24, 2010, submitted by the City Clerk.

Action: Ordinance No. 28793 was adopted. (10-0-1. Absent: Liccardo.)

- (b) **ORD. NO. 28794 – 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. C10-016**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28794 executed on August 24, 2010, submitted by the City Clerk.

Action: Ordinance No. 28794 was adopted. (10-0-1. Absent: Liccardo.)

- (c) **ORD. NO. 28795 – 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. PDC09-028**

2.2 (c) (Cont'd.)

Documents Filed: Proof of Publication of the Title of Ordinance No. 28795 executed on August 24, 2010, submitted by the City Clerk.

Action: Ordinance No. 28795 was adopted. (10-0-1. Absent: Liccardo.)

- (d) ORD. NO. 28796 – Rezoning certain real property situated at the southwest corner of Foxworthy Avenue and Almaden Expressway (1175 Hillsdale Avenue; APN: 451-06-066 & -068), to A(PD) Planned Development Zoning District. PDC08-015**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28796 executed on August 24, 2010, submitted by the City Clerk.

Action: Ordinance No. 28796 was adopted. (10-0-1. Absent: Liccardo.)

- (e) ORD. NO. 28797 – 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. PDC08-065**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28797 executed on August 24, 2010, submitted by the City Clerk.

Action: Ordinance No. 28797 was adopted. (10-0-1. Absent: Liccardo.)

2.3 Approval of Council Committee Reports.

- (a) Rules and Open Government Committee Report of August 11, 2010. (Mayor)**
(b) Transportation and Environment Committee Report of August 16, 2010. (Liccardo)
(c) Public Safety, Finance and Strategic Support Committee Report of August 19, 2010. (Nguyen)

Documents Filed: (1) The Rules and Open Government Committee Report dated August 11, 2010. (2) The Transportation and Environment Committee Report dated August 16, 2010. (3) The Public Safety, Finance and Strategic Support Committee Report dated August 19, 2010.

Action: The Council Committee Reports were approved. (10-0-1. Absent: Liccardo.)

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 travel by Council Member Herrera to San Diego, CA on September 15-17, 2010 to attend the annual League of California Cities Annual Conference & Expo as one of the City's designated representatives. Source of Fund: Office Budget. (Herrera)
(Rules Committee referral 8/25/10)**

Documents Filed: Memorandum from Council Member Herrera, dated August 20, 2010, requesting approval of travel.

Action: The travel request from Council Member Herrera was approved. (10-0-1. Absent: Liccardo.)

- 2.7 (a) Approve Council Member Herrera's travel to Washington, D.C. on September 28-29, 2010 to participate in the Silicon Valley Leadership Group's "CEO/Senior Officer Advocacy" trip. Source of Funds: Valley Transportation Agency
(b) Request for an excused absence for Council Member Herrera from the Regular City Council Meeting on September 28, 2010. (Herrera)
(Rules Committee referral 8/25/10)**

Documents Filed: Memorandum from Council Member Herrera, dated August 20, 2010, requesting approval of travel and an excused absence.

Action: The travel request for Council Member Herrera was approved and her absence was excused. (10-0-1. Absent: Liccardo.)

- 2.8 Approve Council Member Herrera's travel to Seattle, WA on October 27-29, 2010 to participate in the annual San José-Silicon Valley Chamber of Commerce City-to-City trip as one of the City's designated representatives. Source of Funds: Mayor/Council Travel Fund. (Herrera)
(Rules Committee referral 8/25/10)**

Documents Filed: Memorandum from Council Member Herrera, dated August 18, 2010, requesting approval of travel.

Council Member Campos requested clarification on the Council Travel Policy. City Clerk Lee Price responded that there have not been any changes to the Council Travel Policy and that this trip will be paid by the Mayor/Council Travel Fund.

Action: Upon motion by Council Member Constant, seconded by Council Member Campos and carried unanimously, the travel for Council Member Herrera was approved. (10-0-1. Absent: Liccardo.)

2.9 As recommended by the Rules and Open Government Committee on August 25, 2010:

- (a) Appoint Ralph Aceves, Founder, President, and CEO of Ovalpath, Inc., to serve as a private sector representative on the Silicon Valley Workforce Investment Network Board of Directors as required by law.**
- (b) Appoint José A. González, CEO of Infolink, to serve as a private sector representative on the Silicon Valley Workforce Investment Network Board of Directors as required by law.**

(Mayor)

[Rules Committee referral 8/25/10 – Items G(1)(a) - G(1)(b)]

Documents Filed: Memorandum from City Clerk Lee Price, MMC, dated August 26, 2010, transmitting the recommendations of the Rules and Open Government Committee.

Action: Ralph Aceves, Founder, President, and CEO of Ovalpath, Inc., was appointed to serve as a private sector representative on the Silicon Valley Workforce Investment Network Board of Directors as required by law and José A. González, CEO of Infolink, was appointed to serve as a private sector representative on the Silicon Valley Workforce Investment Network Board of Directors as required by law. (10-0-1. Absent: Liccardo.)

2.10 As recommended by the Rules and Open Government Committee on August 25, 2010, approve the recommended City positions for six resolutions to be considered at the Annual League of California Cities (LOCC) Conference to be held in San Diego, September 15-17. (City Manager's Office)

[Rules Committee referral 8/25/10 – Item H(2)]

Documents Filed: Memorandum from City Clerk Lee Price, MMC, dated August 26, 2010, transmitting the recommendations of the Rules and Open Government Committee.

Action: The recommended City positions for six resolutions to be considered at the Annual League of California Cities Conference to be held in San Diego, September 15-17 were approved. (10-0-1. Absent: Liccardo.)

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 on the Police Chief recruitment, and reported that an information memorandum will be circulated about a recent press conference held by Local 230 IAFF regarding Fire Department Dynamic Deployment.

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 (a) **Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the Multi-Source Housing Fund:**
- (1) **Increase the estimate for Earned Revenue by \$1,300,000.**
 - (2) **Increase the Neighborhood Stabilization Program appropriation in the Housing Department by \$1,300,000.**
- (b) **Adopt a resolution to authorize the Director of Housing to negotiate and execute a contract amendment up to an additional \$2,068,859, for a total award of \$5,868,859, with Community Rehabilitation Partners to implement the federally-funded Neighborhood Stabilization Program Single-Family Acquisition, Rehabilitation, and Resale Program.**

CEQA: Exempt, File No. PP09-166. Council Districts 2, 3, 5, 7 and 8. SNI: K.O.N.A., Mayfair, Tully Senter, Gateway East, West Evergreen, Spartan Keyes, Five Wounds/Brookwood Terrace, East Valley/680 Communities, Edenvale/Great Oaks. (Housing/City Manager's Office)

Documents Filed: Memorandum from Director of Housing Leslye Krutko and Budget Director Jennifer Maguire, dated August 9, 2010, recommending adoption of an appropriation ordinance and funding sources resolution amendments and a resolution.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Herrera and carried unanimously, Ordinance No. 28805, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28765 to Appropriate Monies in Multi-Source Housing Fund for the Neighborhood Stabilization Program; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; Resolution No. 75545, 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 Multi-Source Housing Fund" and Resolution No. 75546, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Housing to Negotiate and Execute a Contract Amendment with Community Rehabilitation Partners to Implement the Neighborhood Stabilization Program Single Family Acquisition, Rehabilitation and Resale Program", were adopted. (10-0-1. Absent: Liccardo.)

- 4.2 (a) **Adopt a resolution:**
- (1) **Authorizing the issuance of a tax-exempt multifamily housing revenue note designated as "City of San José Multifamily Housing Revenue Note (Kings Crossing Apartments), Series 2010C" in an aggregate principal amount not to exceed \$25,380,000 (the "Governmental Lender Note" or "Note").**
 - (2) **Approving a loan of Note proceeds to Kings Crossing, L.P., a California limited partnership created by Charities Housing Development Corporation to finance the construction of the Kings Crossing Apartments located at the corner of N. King Road and Dobbins Drive in San José.**

- 4.2 (a) (3) **Approving in substantially final form the Borrower Loan Agreement, Funding Loan Agreement, Assignment of Deed of Trust, and Regulatory Agreement and Declaration of Restrictive Covenants (the “Documents”).**
- (4) **Authorizing the Assistant Director of Finance, Treasury Division Manager, Debt Administrator, and Director of Housing, or their designees, to execute and, as appropriate, to negotiate, execute and deliver these Documents and other related Note documents as necessary.**
- (b) (1) **Council by motion waive the 10-day noticing requirement for the following item, approve its placement on the agenda, and consider the following recommendation.**
- (2) **Adopt a resolution authorizing the Director of Housing to negotiate and execute an agreement between the City, Kings Crossing L.P., Citibank N.A., and Family Supportive Housing, Inc. memorializing the City's agreement to fund of that portion of a City's conditional grant to Family Supportive Housing, Inc. ("FSH") necessary to pay FSH's share of the shared costs of the work that is needed for both the Kings Crossing L.P. and FSH projects, regardless of an non-construction related default by FSH.**

CEQA: EIR Resolution No. 74196, File No. PDC07-015. (Housing/Finance)

Documents Filed: (1) Memorandum from Director of Housing Leslye Krutko and Assistant Director of Finance Julia H. Cooper, dated August 9, 2010, recommending adoption of a resolution. (2) Supplemental memorandum from Director of Housing Leslye Krutko, dated August 25, 2010, explaining requested changes from Citibank to the structure of the transaction as a condition of final approval.

Motion: Vice Mayor Chirco moved approval of the Staff recommendations. Council Member Pyle seconded the motion.

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

Public Comments: Jerry Mungai spoke in opposition to the Staff recommendations.

Action: On a call for the question, the motion carried, Resolution No. 75547, entitled: “A Resolution of the Council of the City of San José Authorizing the Execution and Delivery of Loan Documents Relating to Financing for the Kings Crossing Apartments and Approving Other Related Documents and Actions” and Resolution No. 75548, entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Housing to Negotiate and Execute an Agreement Between the City of San José, Kings Crossing L.P., Citibank, N.A. and Family Supportive Housing, Inc”, were adopted. (9-1-1. Noes: Oliverio. Absent: Liccardo.)

- 4.3 Conduct a public hearing and consider an ordinance rezoning the real property located at the northwest corner of Winfield Boulevard and Blossom River Way (1009 Blossom River Way) to allow for the conversion of some of the existing independent living units to assisted living units at an existing Senior Living Facility on a 7.91 gross acre site (Ventas Inc, Owner). CEQA: Mitigated Negative Declaration.**

PDC10-004 – District 9

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC10-004, dated July 14, 2010. (2) Proof of Publication of Notice of Public Hearing, executed on August 13, 2010, submitted by the City Clerk.

Mayor Reed opened the public hearing.

Motion: Vice Mayor Chirco moved approval of the Staff recommendations. Council Member Pyle seconded the motion.

Public Comments: Peter Johnston, PDC Northwest, representing the Owner of Brookdale Senior Living, spoke in support to the rezoning which will improve the neighborhood and the lives of the seniors that live at the facility.

Mayor Reed closed the public hearing.

Action: On a call for the question, the motion carried unanimously, Ordinance No. 28806, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Northwest Corner of Winfield Boulevard and Blossom River Way (1009 Blossom River Way) from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District”, was passed for publication. (10-0-1. Absent: Liccardo.)

NEIGHBORHOOD SERVICES

- 5.1 (a) Adopt a resolution authorizing the City Manager to negotiate and execute a fourth amendment to the agreement with the Viet Heritage Society for the development, maintenance, and operations of the Vietnamese Heritage Garden to:**
- (1) Modify the current project delivery model to reflect a Phased project (Phase Ia, Phase Ib, and Phase II).**
 - (2) Define the elements contained within Phases Ia and Ib;**
 - (3) Update key project delivery dates.**
 - (4) Amend the payment amounts and schedule associated with Phases Ia and Ib.**
 - (5) Modify the period of Viet Heritage Society maintenance responsibility to include the maintenance of Phase Ia through completion of Phase Ib.**

- 5.1 (b) **City Council certification that:**
- (1) **Funding strategies will be pursued so that the projected funding for the operation and maintenance of the Vietnamese Heritage Garden should be made available beginning in 2011-2012, the first year of operation.**
 - (2) **Appropriate efforts will be undertaken so that those funding strategies cover the entire cost of the project, including operation and maintenance costs, as to not require a decrease in existing basic neighborhood services.**

CEQA: File No. PP04-228 (Addendum to an EIR). Council District 7. SNI: Tully/Senter. (Parks, Recreation and Neighborhood Services)

Documents Filed: (1) Memorandum from Mayor Reed and Council Member Nguyen, dated August 26, 2010, recommending approval of the Staff recommendations. (2) Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated August 11, 2010, recommending adoption of a resolution and approval of Council certification that funding strategies will be pursued and appropriate efforts undertaken with regard to funding.

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

Mayor Reed and Council Members Herrera, Campos and Oliverio expressed support to the motion.

Public Comments: Dr. Ngai Nguyen, Viet Heritage Society, recognized and thanked the Mayor and Council Members, and expressed support to the project on behalf of the community and the Viet Heritage Society.

Action: On a call for the question, the motion carried unanimously, Resolution No. 75549, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Fourth Amendment to the Agreement with the Viet Heritage Society for the Development, Maintenance and Operations of the Vietnamese Heritage Gardens to Modify Phase I by Splitting the Phase into Phase IA and IB, Update Project Delivery Dates, Amend Payment Amounts and Payment Schedule and Modify Maintenance Responsibilities", was adopted; and City Council certification was granted that funding strategies will be pursued so that the projected funding for the operation and maintenance of the Vietnamese Heritage Garden should be made available beginning in 2011-2012, the first year of operation and appropriate efforts will be undertaken so that those funding strategies cover the entire cost of the project, including operation and maintenance costs, as to not require a decrease in existing basic neighborhood services. (10-0-1. Absent: Liccardo.)

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 Hold a public hearing on the application of On the Move Trucking and Recycling for a Commercial Solid Waste and Recyclables Collection Franchise, approve the ordinance granting the franchise, and approve the Commercial Solid Waste and Recyclables Collection Franchise Agreement for a term from October 27, 2010 to June 30, 2012 with the option of three one-year extensions. CEQA: Exempt, File No. PP08-228. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services John Stufflebean, dated August 9, 2010, recommending holding a public hearing and approval of an ordinance. (2) Proof of Publication of Notice of Public Hearing, executed on August 20, 2010, submitted by the City Clerk. (3) Statement of Conflict of Interest Form dated August 31, 2010, from Council Member Chu, declaring a conflict of interest with California Waste Solutions.

Mayor Reed opened the public hearing.

Council Member Chu disclosed a conflict of interest arising from California Waste Solutions and recused himself from voting.

Public Comments: There was no testimony from the floor. Mayor Reed closed the public hearing.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Herrera and carried unanimously, Ordinance No. 28807, entitled: “An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to On the Move Trucking and Recycling”, was passed for publication. (9-0-1-1. Absent: Liccardo. Disqualified: Chu.)

- 7.2 Authorize submittal of the 2009-2010 Stormwater Permit Annual Report and certification to the San Francisco Bay Regional Water Quality Control Board in conformance with the Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit requirements, pursuant to the Federal Clean Water Act. CEQA: Not a Project, File No. PP10-069(a), City Organizational & Administrative Activities. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services John Stufflebean, dated August 9, 2010, recommending authorization of the submittal of the Annual report and certification to the San Francisco Bay Regional Water Quality Control Board.

Deputy Director of Environmental Services Melody Tovar provided the Staff Report. Director of Environmental Services John Stufflebean was available for questions.

7.2 (Cont'd.)

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the submittal of the 2009-2010 Stormwater Permit Annual Report and certification to the San Francisco Bay Regional Water Quality Control Board, was authorized. (9-0-2. Absent: Constant, Liccardo.)

7.3 As recommended by the Transportation and Environment Committee on August 16, 2010:

- (a) **Accept the status report on Stormwater Permit Implementation including:**
 - (1) **Storm Drain Inlet Marking Program**
 - (2) **Trash Reduction Efforts**
 - (3) **Regional Coordination**
- (b) **Direct the City Attorney's office to prepare an ordinance amending Chapters 15.14, 20.95, and 20.100 of the San José Municipal Code as needed to address provisions in the Municipal Regional Stormwater National Pollutant Discharge Elimination System (NPDES) Permit related to legal controls on: operation and maintenance of stormwater treatment systems and construction sites.**

CEQA: Not a Project, File No. PP10-068(c), revisions to an existing policy. (Environmental Services/Public Works/Planning, Building and Code Enforcement)

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

Deputy Director of Environmental Services Melody Tovar presented the Staff Report. Director of Environmental Services John Stufflebean was available for questions.

Action: Upon motion by Vice Mayor Chirco, seconded by Council Member Pyle and carried unanimously, the status report on Stormwater Permit Implementation was accepted and the City Attorney was directed to prepare an ordinance amending Chapters 15.14, 20.95, and 20.100 of the San José Municipal Code as needed to address provisions in the Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit related to legal controls on: operation and maintenance of stormwater treatment systems and construction sites . (8-0-3. Absent: Constant, Kalra, Liccardo.)

PUBLIC SAFETY SERVICES

8.1 **Accept the staff response to the Civil Grand Jury Report entitled, "Disaster Preparedness in our County and Cities." CEQA: Not a Project, File No. PP10-069(a), City Organizational & Administrative Activities. (Fire)**

Documents Filed: Memorandum from Fire Chief William McDonald, dated August 9, 2010, recommending acceptance of the Staff response to the Civil Grand Jury Report.

8.1 (Cont'd.)

Motion: Vice Mayor Chirco moved approval of the Staff response to the Civil Grand Jury Report entitled, "Disaster Preparedness in our County and Cities." Council Member Nguyen seconded the motion.

Fire Chief William McDonald and Director of the Office of Emergency Services Christopher Godley responded to Council questions.

Council discussion followed.

Council Member Campos requested a list of the Council Members appointed and/or selected field offices to allow constituents to have immediate access to government in response to a major event. Director of the Office of Emergency Services Christopher Godley responded that information will be sent out within the next two weeks, including the disaster handbook.

Council Member Chu requested that Staff provide enhanced efforts to reach out to non-English speaking residents. Director Godley explained that Staff had identified those segments of the community and are networking to provide the needed services.

Public Comments: David Wall stated, that in his opinion, the City of San José was unprepared for a disaster and that residents should be warned periodically.

Action: On a call for the question, the motion carried unanimously, the Staff response to the Civil Grand Jury Report entitled, "Disaster Preparedness in our County and Cities", was accepted. (10-0-1. Absent: Liccardo.)

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.4 (a) **Conduct an Administrative Hearing and consider adoption of a resolution adopting a Mitigated Negative Declaration for a Planned Development Zoning from A(PD) Planning Development Zoning District to R-1-8(PD) Planned Development Zoning District to allow for the demolitions of four (4) commercials-industrial buildings and the construction of 94 single-family detached residences on a 15.8 gross acre site, located on the west side of Guadalupe Mines Road, approximately 1,130 feet southerly of Via Campagna (6411 Guadalupe Mines Road).**
- (b) **Conduct a public hearing and consider 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 Chris Davenport, Developer). CEQA: Mitigated Negative Declaration to be adopted.**

- 4.4 (b) **Director of Planning, Building and Code Enforcement and Planning Commission recommend approval with the following conditions and plan revisions to be included in the proposed rezoning:**

The project shall be fully compliant with the Riparian Corridor Policy with a riparian setback development standard of 100 feet except for a 30-foot riparian setback on the south end of the site (defined by the south edge of “public street A” to the southern property line).

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, Kamkar Opposed; Cahan and Platten Absent)

PDC10-005 – District 10

(Continued from 8/17/10 – Item 11.4)

Documents Filed: (1) Memorandum from Council Member Pyle, dated August 17, 2010, recommending approval of the project with conditions. (2) Memorandum from Council Member Pyle, dated August 31, 2010, recommending approval of the project with additional recommendation to her original memorandum dated August 17, 2010. (3) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated August 5, 2010, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC10-005, dated August 3, 2010. (4) Memorandum from Planning Commission Secretary Joe Horwedel, dated August 12, 2010, transmitting the recommendation of the Planning Commission. (5) Supplemental memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated August 27, 2010, advising Council of four appeals filed on August 19, 2010 and a summary of comments and responses. (6) Proof of Publication of Notice of Public Hearing, executed on July 23, 2010, submitted by the City Clerk. (7) Summary Report on the Application for Brookside Estates from Trumark Companies dated August 11, 2010. (8) Letter from Lawrence Johmann, President, Guadalupe-Coyote Resource Conservation District, dated August 31, 2010, expressing opposition to the project and providing notice that an appeal was filed on August 20, 2010. (9) Eleven letters/emails from the public all dated August 31, 2010, expressing concerns and objections about the development being considered on Guadalupe Mines Road.

Director of Planning, Building and Code Enforcement Joseph Horwedel provided the Staff Report. Deputy Director of Planning, Building and Code Enforcement Laurel Prevetti was available for questions.

Mayor Reed opened the Administrative hearing and the public hearing on Item 4.4(a)(b).

Appellants speaking in favor of the appeal and a 100 foot setback along the length of the creek were: Bob Power (Santa Clara Valley Audubon Society) and Brian Schmidt (Committee for Green Foothills).

4.4 (Cont'd.)

Erik Schoennauer, representing Trumark Companies, the Applicant, responded and spoke to the merits of the project. He explained that 700 trees will be planted, addressed issues outlined by the Appellants and urged the City Council to uphold the Director of Planning, Building and Code Enforcement and Planning Commission recommendation to approve 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: James Robbinoff (Santa Clara Valley Audubon Society), Libby Lucas, Freddy Howell, David Cook, Patrick Pizzo, Patricia Colombe, Brent Graham, Manjeshwar Bhat, Jim Wang, Junzhi Wang, Malavika Ghosh, Susan Ditter, Julia Wen, Gary Weiner, Harry Fu, Nancy Bernardi, Todd Wheeler and Ron Jacobs.

Erik Schoennauer, representing the Applicant, provided a rebuttal and stated that the riparian area will not be touched and that the benefit to the ecology/habitat was enormous. He stated that 700 trees will be planted and no trees in existing habitat will be touched. He added that pavers will be installed and a public accessible trail will be built along the frontage of the creek, including benches.

Director of Planning, Building and Code Enforcement Joseph Horwedel provided clarifications with respect to the 100 foot setback.

Mayor Reed provided meeting disclosures.

Motion on Item 4.4(a): Council Member Pyle moved approval to deny the appeals and uphold the Mitigation Declaration. Council Member Constant seconded the motion.

Council Members Constant, Campos and Chu provided meeting disclosures.

Mayor Reed and Council Member Herrera expressed support to the motion to deny the appeals.

Council Member Pyle read the recommendations contained in her memoranda dated August 17, 2010 and August 31, 2010.

Motion on Item 4.4(b): Council Member Pyle moved approval of her memoranda dated August 17, 2010 and August 31, 2010. Council Member Nguyen seconded the motion.

Council Members Kalra and Nguyen provided meeting disclosures.

Council Member Kalra stated that the overall improvement of the riparian corridor does not go far enough in complying with the policies that the Council has set forth.

4.4 (Cont'd.)

Council Member Oliverio pointed out that Monolithic Power, a semiconductor company with 160 employees, will be moving out of San José because they cannot expand and noted that he would be registering a no vote for the record.

Action: On a call for the question, the motion carried, the recommendation of the Planning Director and Planning Commission was approved, Resolution No. 75550, entitled: “A Resolution of the Council of the City of San José Approving and Adopting a Mitigated Negative Declaration Prepared for a Planned Development Rezoning for the Brookside Estates Project for Which an Initial Study Was Prepared, All in Accordance with the California Environmental Quality Act and Adopting a Mitigation Monitoring and Reporting Program”, was adopted denying the appeals and Ordinance No. 28808, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated 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”, was passed for publication, as amended by memoranda from Council Member Pyle, dated August 26, 2010 and August 31, 2010, outlining the following conditions of conditional of approval: (1) Develop project with an average 70 foot riparian setback. (2) Develop Streets A and B as public streets with sidewalks, park strips and on street parking on both sides as proposed. (3) The remaining streets to be developed as 30 foot private streets with sidewalks, park strips and on street parking as proposed. (4) Oak trees outside the riparian setback to be replaced at the standard rate per City guidelines and the project will continue to evaluate the preservation of additional oak trees within the context of the proposed grading plan. (5) Given the concerns with existing condition of traffic weaving on the section of Camden between Coleman/Guadalupe Mines and Hicks Road, the Developer has offered to contribute \$15,000 to help pay for the costs of a traffic study and potential mitigation work; Staff should accept these additional funds and look at ways to address this issue. (6) Increase the amount of impervious surface to be removed to 101,000 square feet require the Developer to use pervious pavers in all driveway aprons. (7) Direct the Developer to work with the City Parks Staff to determine the appropriate location for the playground and appropriate equipment. (8) Require the development to provide the City with easement rights through the entire length of the property along the creek for trail purposes. (9) Require the Developer to work with City Staff to balance the use of retaining walls, drainage and ADA regulations. (10) Direct the Developer to continue to work with professional arborists and biologists to ensure that the preserved trees in the Riparian Corridor are not negatively impacted by fill or grading. (8-2-1. Noes: Kalra, Oliverio. Absent: Liccardo.)

OPEN FORUM

Robert Cortese thanked Council Members for coming to the Italian Festival, suggested using grazing goats for grass fire control on Communication Hill, and proposed Communication Hill would be an ideal location for a model glider park.

DJOURNMENT

This Council of the City of San José was adjourned at 4:25 p.m. in memory of Maria Elena Montellano, resident of Alviso and beloved owner of Maria Elena's Restaurant who passed away on June 29, 2010. (Chu/Campos)

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

smd/08-31-10 MIN

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