



CITY COUNCIL AGENDA

NOVEMBER 9, 2010

AMENDED AGENDA

PETE CONSTANT
ASH KALRA
SAM LICCARDO
KANSEN CHU
NORA CAMPOS

DISTRICT 1
DISTRICT 2
DISTRICT 3
DISTRICT 4
DISTRICT 5

CHUCK REED MAYOR

PIERLUIGI OLIVERIO	DISTRICT 6
MADISON P. NGUYEN	DISTRICT 7
ROSE HERRERA	DISTRICT 8
JUDY CHIRCO, VICE MAYOR	DISTRICT 9
NANCY PYLE	DISTRICT 10

The City of San José is committed to open and honest government and strives to consistently meet the community's expectations by providing excellent service, in a positive and timely manner, and in the full view of the public.

Welcome to the San José City Council meeting!

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

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

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

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

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

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

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

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

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

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

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

- **Call to Order and Roll Call**
9:00 a.m. - Closed Session, Call to Order in Council Chambers
Adjourn to Closed Session in Council Chambers Conference Room, W133
[See Separate Agenda](#) [See RDA Agenda](#)
1:30 p.m. - Regular Session, Council Chambers, City Hall
7:00 p.m. - Public Hearings, Council Chambers, City Hall

- **Invocation (District 10)**
San José Vietnam War Memorial Foundation

- **Pledge of Allegiance**
- **Orders of the Day**

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

ADJOURNMENT: This meeting will be adjourned in memory of Penelope Pries, known affectionately as Yiayia Penny, was a longtime San Jose resident and beloved member of the Greek-American community. (Constant)

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

- **Closed Session Report**

1. CEREMONIAL ITEMS

- 1.1 Presentation of a proclamation declaring the Week of November 7 – 13, 2010 as “National Nurse Practitioner Week” in the City of San José. (Constant)
- 1.2 Presentation of a commendation to Assemblymember Jim Beall for his ongoing dedication to public service. (Pyle/Chirco)
- 1.3 Presentation of a proclamation declaring the Month of November 2010 as “Sikh Awareness and Appreciation Month” in the City of San José. (Herrera)
TO BE HEARD IN THE EVENING
 - * (Rules Committee referral 11/03/10)
- 1.4 Presentation of a commendation to Geoff Roach for his many contributions to the musical and artistic scene in San José as Executive Director of San José Jazz. (Liccardo)
 - * (Rules Committee referral 11/03/10)

2. CONSENT CALENDAR

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

- 2.1 **Approval of Minutes.**
- 2.2 **Final adoption of ordinances.**

Recommendation: Final adoption of ordinances.

- (a) ORD. NO. 28836 – Amending Title 20 (the Zoning Code) of the San José Municipal Code to add new Sections to Part 4 of Chapter 20.70 (Downtown Off-Street Parking Requirements) and amending Chapter 20.90 (Parking and Loading) in its entirety, all to provide for required off-street bicycle parking facilities and spaces and clean air vehicle parking spaces.
- (b) ORD. NO. 28837 – Amending Chapter 9.10 of Title 9 of the San José Municipal Code by amending Sections 9.10.2410 and 9.10.2430 and by adding a new Section 9.10.2480 to allow for construction debris diversion in accordance with the provisions of California Green Building Standards Code.
- (c) ORD. NO. 28838 – Amending Title 24 of the San José Municipal Code to adopt the 2010 California Building, Residential, Plumbing, Mechanical, Electrical Codes, California Existing Building Code, California Historical Building Code, California Green Building Standards Code and 2009 International Existing Building Code with certain exceptions, modifications and additions.

2. CONSENT CALENDAR

2.2 Final adoption of ordinances. (Cont'd.)

Recommendation: Final adoption of ordinances.

- (d) [ORD. NO. 28839](#) – Amending Chapter 17.12 of the San José Municipal Code to adopt the 2010 California Fire Code with local amendments relating to Fire Flow, Sprinkler and Fire Alarm Systems and Standards, Access Control Devices, Breathing Air Replenishment and Public Radio Coverage, Large Battery Charging Systems and Continuous Gas Detection Systems and To Maintain Existing of Fire Protection and Regulatory Authority.
- (e) [ORD. NO. 28840](#) – [Repealing Section 6.02.160 of Chapter 6.02 and amending](#) various Sections and adding Sections to Chapter 6.60 of Title 6 of the San José Municipal Code to limit the application of the Public Entertainment Permit Ordinance to venues with occupancy greater than one hundred, limit the discretion of the Chief of Police in approving applications for permits and licenses and in setting conditions on permits and licenses, specify time lines by when an application for a permit or license must be acted upon, adjust security requirements, extend the term of Public Entertainment Permits, create a renewal process for permits and licenses, provide for managers to move between venues, clarify the application process for permits and licenses and clarify provisions to ensure consistency throughout the Code.

2.3 Approval of Council Committee Reports.

Recommendation: Approval of Council Committee Reports.

- (a) [Rules and Open Government Committee Report of October 20, 2010.](#) (Mayor)
- (b) Community and Economic Development Committee Report of October 25, 2010. (Pyle)

2.4 Mayor and Council Excused Absence Requests.

2.5 City Council Travel Reports.

2.6 [Agreement with Arena Management.](#)

Recommendation: Adopt a resolution authorizing the City Manager to negotiate and execute a Fourth Amendment to the Amended and Restated Management Agreement with Arena Management by and between the City and San Jose Arena Management, regarding the removal of certain restrictions on the advertising of alcohol in public areas of the HP Pavilion. (City Manager's Office)

3. STRATEGIC SUPPORT SERVICES

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

3.2 [Airport Commercial Paper Program Letter of Credit Extension Presentation](#)

Recommendation: Adopt a resolution to authorize the negotiation, execution and delivery of the amendment to the Second Amended and Restated Letter of Credit and Reimbursement Agreement by and among the City, JPMorgan Chase Bank, N.A., Bank of America, N.A., and Dexia Credit Local, acting through its New York Branch, related to the City of San José Airport Commercial Paper Program in order to extend the term of this agreement, remove Dexia Credit Local as a party to the agreement, reduce the amount of available credit, and to authorize other related actions. CEQA: Not a Project, File No. PP10-066, Agreements/Contracts (New or Amended). (Finance)

3.3 [Service Delivery Evaluation and Options for Maximizing Financial Benefits from the San José Municipal Water System to the General Fund.](#)

[Supplemental – Memo from the Office of the City Manager](#)

[Attachment – Memo from Councilmembers Herrera, Chu and Pyle](#)

Recommendation: As recommended by the Rules and Open Government Committee on October 13, 2010, accept the preliminary Work Plan and proposed Evaluation Criteria to assess service delivery evaluation and options for maximizing financial benefits from the San José Municipal Water System. (City Manager's Office)

[Rules Committee referral 10/13/10 – Item H(3)]

3.4 [Take-Home Vehicles Audit.](#)

Recommendation: As recommended by the Public Safety, Finance and Strategic Support Committee on October 21, 2010, accept the Take-Home Vehicles Audit and the Administration's Response to the Audit. (City Auditor)

[Public Safety, Finance and Strategic Support Committee referral 10/21/10 – Item D(5)]

3.5 [Actions Related to Supplemental Retiree Benefit Reserves.](#)

Recommendation:

- (a) Approve an ordinance amending Section 3.36.580 of Part 4 of Chapter 3.36 of Title 3 of the San José Municipal Code to provide that there shall be no supplemental retiree benefit reserve distribution from the Police and Fire Department Retirement Plan during fiscal year 2010-11, upon a finding that is need to adopt the ordinance within a time period which does not allow for a sixty day review period by Board of Administration of the Police and Fire Department Retirement Plan under San José Municipal Code Section 3.36.485.A.; and refer the ordinance to the Board for study and consideration pursuant to San José Municipal Code Section 3.36.485.B; and [Ordinance](#)
- (b) Direction to staff to forward for review by the Board of Administration of the Federated City Employees Retirement Plan a draft [resolution](#) amending and restating Resolution No. 72859 to provide that there shall be no supplemental retiree benefit reserve distribution from the Federated City Employees Retirement Plan during fiscal year 2010-11.

* (Rules Committee referral 11/03/10)

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.1 [Reorganization/Annexation of Penitencia No. 77, McKee No. 136, McKee No. 135, and Capitol No. 57.](#)

Recommendation: Adopt resolutions ordering the reorganization/annexation of the following territories:

- (a) Penitencia No. 77: An approximately 119 gross acre County island 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 and the detachment of the same from the appropriate special districts including Central Fire Protection, County Lighting, County Sanitation, and Area No. 01 (Library Services) County Service. [Resolution](#)
- (b) McKee No. 136: An approximately 31 gross acre County island generally bounded by Patt Avenue to the north, McKee Road to the south, North White Road to the east, and the detachment of the same from the appropriate special districts including Central Fire Protection, County Lighting, County Sanitation, and Area No. 01 (Library Services) County Service. [Resolution](#)
- (c) McKee No. 135: An approximately 64 gross acre County island generally bounded by Gay Avenue to the north, North Capitol Avenue to the west, Alum Rock Avenue to the south, and a line approximately 950 feet southwesterly of North White Road to the east and the detachment of the same from the appropriate special districts including Central Fire Protection, County Lighting, County Sanitation, and Area No. 01 (Library Services) County Service. [Resolution](#)
- (d) Capitol No. 57: An approximately 127 gross acre County island generally bounded by Florence Avenue to the north, South White Road to the east, Story Road and Lower Silver Creek to the south, and South Capitol Avenue to the west and the detachment of the same from the appropriate special districts including Central Fire Protection, County Lighting, County Sanitation, and Area No. 01 (Library Services) County Service. [Resolution](#)

CEQA: The environmental impacts of this project were addressed by a Final EIR entitled, "San José 2020 General Plan," and certified on August 16, 1994, by the City of San José City Council. Council Districts 4 and 5. (Planning, Building and Code Enforcement)

TO BE HEARD IN THE EVENING

4.2 [TEFRA Hearing for the Proposed Bond Issuance by CSCDA for the McCreery Courtyards Apartment Project.](#)

Recommendation: Adopt a [resolution](#):

- (a) Authorizing the Director of Finance or designee to hold Tax Equity and Fiscal Responsibility Act ("TEFRA") Hearings for the issuance of \$25,000,000 of New Issue Bond Program bonds by the California Statewide Communities Development Authority ("CSCDA") for the benefit of McCreery Courtyard Apartments Project located at 1884 Alum Rock Avenue and 71, 73 and 75 McCreery Ave, San Jose, CA.

(Item continued on the next page)

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.2 TEFRA Hearing for the Proposed Bond Issuance by CSCDA for the McCreery Courtyards Apartment Project. (Cont'd.)

Recommendation:

- (b) Authorizing the Mayor to approve the issuance of Tax-Exempt Multifamily Housing Revenue Bonds, by the CSCDA in an aggregate principal amount not to exceed \$25,000,000 to be used for construction and permanent financing for the 93 unit affordable housing project known as McCreery Courtyard Apartments.
(Housing)

CEQA: Mitigated Negative Declaration, File No. PDC002-082, and addendum thereto, File No. PDC04-088. Council District 5. SNI: Mayfair. (Housing/Finance)

* (Rules Committee referral 11/03/10)

5. NEIGHBORHOOD SERVICES

5.1 Funding Recommendations for New Park Facilities.

Recommendation: Adopt a [resolution](#) to:

- (a) Implement a pilot program, through December 31, 2011, to authorize staff:
- (1) To proceed with the development of any new park, trail or recreational facility for which there is (1) an appropriation of all funding necessary for the full development of the project including design and construction for all improvements and amenities set forth in the City Council approved master plan for that project and (2) identification of funding for a three-year park establishment period; and
 - (2) To proceed with the development of any new park, trail or recreational facility for which there is (1) an appropriation of funding for the design and construction of the project for all improvements and amenities set forth in the City Council approved master plan for the project and (2) a “donation” agreement for all work during the three-year park establishment period; and
 - (3) To use parkland fees and Construction & Conveyance taxes to fund a three-year park establishment period as part of the full cost of the development of any new park, trail or recreational facility, provided that including such funding does not prevent funding the design and building of a new park, trail, or recreational facility identified as an “existing” or “Priority 1” project in the adopted Greenprint Update.

(Item continued on the next page)

5. NEIGHBORHOOD SERVICES

5.1 Funding Recommendations for New Park Facilities. (Cont'd.)

Recommendation:

- (b) Modify the park maintenance exemption to the City's prevailing wage requirements approved by the City Council on February 12, 2008 to include any "donated" park establishment period services or park maintenance by a developer or other entity with, or without, an interest in a development in the City, provided that the donation is for a minimum of two years and meets the other conditions set forth in the memorandum.

CEQA: Not a Project, File No. PP10-068, General Procedure and Policy Making.
(Parks, Recreation and Neighborhood Services)

TO BE HEARD IN THE EVENING

- * **RECOMMEND DEFERRAL PER DISTRICT 3**

6. TRANSPORTATION & AVIATION SERVICES

7. ENVIRONMENTAL & UTILITY SERVICES

8. PUBLIC SAFETY SERVICES

9. JOINT COUNCIL/REDEVELOPMENT AGENCY

- **Open Forum**

Members of the Public are invited to speak on any item that does not appear on today's Agenda and that is within the subject matter jurisdiction of the City Council or Redevelopment Agency Board.

- **Council will recess until 7:00 p.m.**

10. GENERAL PLAN PUBLIC HEARINGS ON CONSENT CALENDAR

No General Plan Public Hearing at this time.

11. PUBLIC HEARINGS

(To be heard by the City Council at 7:00 p.m.)

Notice to the public: There will be no separate discussion of Public Hearings Consent Calendar (Item 11.1) as they are considered to be routine by the City Council and will be adopted by one motion. If a member of the City Council, staff, or public requests discussion on a particular item, that item will be removed from the Public Hearings Consent Calendar (Item 11.1) and considered separately.

11.1 Public Hearings on Consent Calendar.

No Public Hearings on Consent Calendar at this time.

11.2 [Rezoning real property located on the southwest corner of West San Carlos Street and Sunol Street.](#)

[Supplemental Memo from the Planning Commission](#) [Presentation](#)

Recommendation: Consider an [ordinance](#) rezoning the real property located on the southwest corner of West San Carlos Street and Sunol Street (860 W. San Carlos Street) from HI Heavy Industrial Zoning District to A(PD) Planned Development Zoning District to remove three existing warehouse buildings and allow up to 800 attached residential units and up to 30,000 square feet for commercial use on a 8.25 gross acre site (Auzerais Investment, Inc, Green Valley Corp, Santa Clara County Transit Dist, The George Figone Exemption Trust, The Sunol Street Trust, Owner; Green Republic LLP, Developer). SNI: Burbank/Del Monte. CEQA: EIR Resolution No. 75192.
[PDC08-061](#) – District 6

11.3 [Rezoning real property located on the east side of Almaden Expressway.](#) [Supplemental Memo from the Planning Commission](#)

Recommendation: Consider an [ordinance](#) rezoning the real property located on the east side of Almaden Expressway approximately 250 feet north of Redmond Avenue (16440 Almaden Expressway) from R-1-1 Single-Family Residence Zoning District to A(PD) Planned Development Zoning District to allow for the development of up to nine (9) single-family detached units on a 0.95 gross acre site (Logan Susan J, Owner). CEQA: Mitigated Negative Declaration.
[PDC07-064](#) – District 10

- **Open Forum**

Members of the Public are invited to speak on any item that does not appear on today's Agenda and that is within the subject matter jurisdiction of the City Council or Redevelopment Agency Board.

- **Adjournment**

This meeting will be adjourned in memory of Penelope Pries, known affectionately as Yiayia Penny, was a longtime San Jose resident and beloved member of the Greek-American community. (Constant)

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

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

1. Public Meeting Decorum:

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

2. Signs, Objects or Symbolic Material:

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

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

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

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