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# Memorandum

**TO: HONORABLE MAYOR  
AND CITY COUNCIL**

**FROM: Nadine Nader**

**SUBJECT: Early Council Packet**

**DATE: November 30, 2010**

Approved

Date

11/30/10

## EARLY DISTRIBUTION COUNCIL PACKET FOR DECEMBER 14, 2010

Please find attached the Early Distribution Council Packet for the December 14, 2010 Council Meeting.

### **3.x Actions Related to the Authority to Award the Convention Center Project.**

**Recommendation:** Adopt a resolution:

- (a) Finding that the design-build procurement process will result in faster project completion than if the City used a procurement process involving its normal competitive bidding process;
- (b) Subject to the completion of the related bond financing and the appropriation of funds, authorize the City Manager to negotiate and execute a contract with Hunt Construction for the Convention Center Expansion and Renovation Project in an amount not to exceed \$117,000,000; and
- (c) Subject to the completion of the related bond financing and the appropriation of funds, authorize establishing a City-controlled contingency in the amount of \$3,000,000, and authorize the Director of Public Works to issue all change orders of any cost not to exceed \$3,000,000.

CEQA: Resolution No. 72767 and Addenda thereto. File No. PP08-002. Citywide.  
(Public Works)

### **4.x Agreements for the Airport West Property.**

**Recommendation:**

- (a) Approve Amendments to Two Amended and Restated Option Agreements and related Purchase Agreements with Coleman Airport Partners, LLC for the property located at 1125 Coleman Avenue.

- (b) Approve Amendments to an Amended and Restated Option Agreement and related Purchase Agreement with FWSH Partners, LLC related to the 14 acres for the Soccer Stadium site located at 1125 Coleman Avenue.

CEQA: EIR Resolution No. 71716, File No. PP08-093 and File No. PDC09-004.  
Council

**4.x Actions Related to the South Almaden Valley Urban Reserve.**

**Recommendation:** Reject the private request for an Alternative Draft Envision 2040 Land Use/Transportation Diagram designation of *Residential Neighborhood* allowing urban residential uses in the South Almaden Valley Urban Reserve because it is inconsistent with the Council's prior direction to consider no housing or job growth in the Urban Reserves within the timeframe of the Envision 2040 Plan. Council District 10.  
CEQA: Incomplete. (Planning, Building and Code Enforcement)

**7.x Agreement with the City of Santa Clara for the South Bay Water Recycling Program.**

**Recommendation:**

- (a) Adopt a resolution authorizing the City Manager to negotiate and execute the Eighth Amendment to the construction service agreement with the City of Santa Clara for the South Bay Water Recycling Program, extending the term of the agreement to December 31, 2012, adding a new project to the list of recycled water pipeline projects, and increasing the maximum amount payable by the City of San José by \$1,011,000 to a total maximum amount not to exceed \$34,661,000.
- (b) Adopt the following Funding Sources Resolution amendments in the San José/ Santa Clara Treatment Plant Capital Fund for 2010-2011:
  - (1) Increase the appropriation for Revised South Bay Action Plan –South Bay Water Recycling Extension by \$1,011,000;
  - (2) Increase the estimate for the U.S. Bureau of Reclamation Grant by \$511,000; and
  - (3) Decrease the Ending Fund Balance by \$500,000.

CEQA: Addendum to an EIR Resolution 64667, File No. PP10-184. (Environmental Services)

**TO BE DISTRIBUTED SEPARATELY**

**7.x Actions Related to the Single-Use Carryout Bag Ordinance.**

**Recommendation:**

- (a) Administrative Hearing on and Consideration of an Appeal of the Planning Commission's certification of the Final Environmental Impact Report (FEIR) for the proposed Single-Use Carryout Bag Ordinance, File No. PP09-193, amending Chapter 9.10 of Title 9 of the City's Municipal Code to prohibit the free distribution of single-use carryout paper and plastic bags at the point of sale for all commercial retail businesses in San José except restaurants and nonprofit

charitable reuse organizations. An exception is proposed for paper bags containing at least 40 percent recycled content, which can be provided to customers for a minimum store charge of \$0.10 upon adoption of the ordinance, with an automatic increase to \$0.25 two years after adoption of the ordinance.

- (b) Uphold the Planning Commission's certification and adopt a resolution to certify that:
- (1) The City Council has read and considered the Final EIR; and
  - (2) The Final EIR has been completed in compliance with the California Environmental Quality Act (CEQA); and
  - (3) The Final EIR reflects the independent judgment and analysis of the City of San José; and
  - (4) The Director of Planning, Building and Code Enforcement shall transmit copies of the Final EIR to any other decision-making body of the City of San José for the project.

(Planning, Building and Code Enforcement)

**TO BE DISTRIBUTED SEPARATELY**

- (c) Approve an ordinance to add Part 13 to Chapter 9.10 of Title 9 of the San José Municipal Code to ban single-use carryout plastic bags, and prohibit the free distribution of recycled paper bags by retail establishments, to be effective January 1, 2012.
- (d) Adopt a resolution to amend the Administrative Schedule of Fines to establish fines related to Carryout Bags and to repeal the prior Administrative Citation Schedule of Fines resolution.

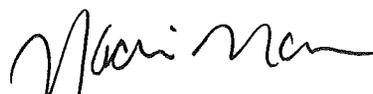
CEQA: Environmental Impact Report, File No. PP09-193. (Environmental Services)

**8.x Approval of Actions Related to the 2010 COPS Hiring Grant.**

**Recommendation:** Adopt a resolution accepting the 2010 COPS Hiring Program Grant in the amount of \$7,187,984 and authorizing the City Manager and Chief of Police to execute the Grant Agreement and all related documents; and to negotiate and execute additional amendments and related documents without further Council action. CEQA: Not a Project, File No. PP10-066(a), Agreements and Contracts for purchase of supplies. (Police/City Manager's Office)

**TO BE DISTRIBUTED SEPARATELY**

These items will also be included in the Council Agenda Packet with item numbers.



NADINE NADER  
Assistant to the City Manager



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Katy Allen

**SUBJECT:** SEE BELOW

**DATE:** 11-30-10

Approved

Date 11/30/10

**COUNCIL DISTRICT:** Citywide

**SUBJECT: DELEGATION OF AUTHORITY TO NEGOTIATE AND EXECUTE THE CONTRACT FOR THE CONVENTION CENTER EXPANSION AND RENOVATION PROJECT AND MAKING CERTAIN FINDINGS FOR USE OF DESIGN BUILD PROJECT DELIVERY METHOD**

## RECOMMENDATION

Adoption of a Resolution:

- (a) Finding that the design-build procurement process will result in faster project completion than if the City used a procurement process involving its normal competitive bidding process;
- (b) Subject to the completion of the related bond financing and appropriation of funds, authorize the City Manager to negotiate and execute a contract with Hunt Construction for the Convention Center Expansion and Renovation Project in an amount not to exceed \$117,000,000;
- (c) Subject to the completion of the related bond financing and appropriation of funds, authorize establishing a City-controlled contingency in the amount of \$3,000,000, and authorize the Director of Public Works the authority to issue all change orders of any cost not to exceed \$3,000,000.

## OUTCOME

This will allow the execution of the construction contract for the Project immediately upon receipt of bond proceeds, which is anticipated to occur in January 2011.

## BACKGROUND

On June 22, 2010, the City Council authorized staff to advertise a Request for Proposals for the Convention Center Project. Based on that action, staff has developed a more specific schedule to

move through the process to award the project. As of today, each milestone has been met and the procurement process is on schedule.

The following is a recap of the schedule.

- June 22 Approval of the RFP and Advertisement
- September 1 Due Date for RFP
- September 1 to 10 Evaluation of Proposals and Interviews
- October 5 Council Authorization to Negotiate
- October and November Contract Negotiations
- December 14 Council authorization to Award of Contract Subject to Completion of Bond Financing

On October 5, Council approved the rankings and authorized the Director of Public Works to negotiate the contract. Today's action is the third and final action for the Council necessary to award the project.

**ANALYSIS**

**Program Validation**

On October 28, 2010, an all-day program validation session was conducted by Hunt and Populous at the California Theatre. In attendance were representatives from Team San Jose, the hotels, convention center users, and Bay Area convention planners. The Hunt/Populous team presented their approach to the project, schematic drawings used to prepare their proposal and a program level cost estimate. The design concepts presented received broad support from the stakeholders. The contractor and architect committed to delivering the project for \$120 million on a 24 month schedule. The various cost elements are shown below.

<b>Summary of Cost Estimate in Millions</b>		
<b>Element</b>	<b>Cost</b>	<b>Notes</b>
Demolition	\$2.6 million	Old King Library
New Construction	\$62.8 million	125,000 new square feet
Central Plant	\$13.7 million	New chillers, boilers, cooling towers, pumps
Systems	\$12.9 million	New fire alarm, building management system
Renovation	\$20.0 million	Cosmetic front of house
Contingency	\$3.0 million	2.5% of \$120 million
Delivery Costs	\$5.0 million	Project delivery, art
<b>Total</b>	<b>\$120 million</b>	

The delivery costs are \$3.4 million for project delivery, \$0.6 million for special inspection and testing, \$0.6 million for public art, and \$0.4 million for construction support consultants.

The contract with Hunt Construction has been substantially negotiated and the terms have been agreed to by both parties. Delegation of authority to the City Manager to negotiate and execute the contract will allow the City to execute the contract immediately upon receipt of bond proceeds.

### **Contract Elements**

The contract with Hunt Construction is similar to the contract used for the Airport's Terminal Area Improvement Program, modified as necessary to accommodate the different scope of work. This contract is essentially a master agreement with Hunt that allows the City to negotiate successive construction contracts known as Guaranteed Maximum Price contracts (GMP) with the contractor.

In general the contract has been structured to allow the City flexibility to move elements of the project to a low bid environment if costs come in over the budget established for any project element. The contract fixes Hunt's profit, establishes the change order process, and provides a framework for dispute resolution. Key elements of the contract are as follows:

1. GMP – The GMP contract allows the City to negotiate a time and materials (not to exceed) cost for the design of a project element up to the 30% design level. Should the design-builder and the City agree to a GMP at this point, the project would proceed with final design and construction. Should the parties not agree, the process would be repeated at 60% design and 100% design. If the parties do not agree at 100% design to a GMP, the City may, at its discretion, publicly bid and award that element of work.
2. Contingencies - There are two contingencies available for unexpected conditions: a design-builder contingency and a City Contingency.

The "Design-Builder Contingency" covers unforeseen/unforeseeable costs that neither the architect/engineer nor the contractor could predict when the GMP was established. The use of these contingency funds is controlled by the design-builder, although the City will monitor the use of these contingency funds. Pursuant to the terms of the contract, the design-builder can use the funds without obtaining the City's authorization. However, the design-builder is responsible for any cost in excess of its contingency – unless the cost is eligible for a change order using the City-controlled contingency. Moreover, as discussed below the design-builder will be able to share in any savings generated from the contingency.

The contract also provides for a City-controlled contingency to cover costs arising from the issues arising during the Project that are not within the control or responsibility of Hunt, such as differing site conditions, force majeure events and change order work necessary to construct the Project. Expenditure of the City-controlled contingency will require a change order to be negotiated and executed by the Director of Public Works. Any costs in excess of the GMP and Design-Builder Contingency that are not eligible for a City-controlled contingency are the responsibility of the design-builder.

3. Contract Change Orders – In general, should unexpected conditions be encountered and a contract change order be issued by the City, Hunt will be entitled to extended overhead charges and additional working days.

4. Liquidated Damages - The contract contains liquidated damage provisions should the completion date for the project be late. The liquidated damages are \$3,500 per day, capped at 90 days.

5. Incentives – In facilities such as convention centers that require booking well in advance of the events it is difficult to quantify the value of early completion since the facility might not be used. As a result there are no incentives for early completion of the work.

6. Shared Savings – The contract contains provisions for cost savings to be shared between the City and Hunt. Should the GMP for any project element be negotiated for a value that is lower cost than the budgeted amount for that project element, the full amount of any such savings would immediately revert to the City. Should the actual cost to complete a project element be less than the GMP, inclusive of the design-builders contingency, the savings will be pooled for use in the event another project element costs more than the budgeted amount. Upon completion of all project elements, the cost savings for the program will be shared with 85% to the City and 15% to Hunt.

7. Fees – As part of the RFP process Hunt was required to provide certain fees in a sealed envelope to the City. After the qualifications based selection process was completed, the envelope was unsealed and the following fees were proposed by Hunt. These fees are very competitive with the current construction market, and staff supports approval of the terms including these fees.

Fee	Percent
Profit and Overhead as a percentage of design and construction	3.15
General Conditions as a percentage of design and construction	4.50
Design as a percentage of construction	6.75

8. Dispute Resolution – Consistent with the City’s Dispute Avoidance and Dispute Resolution Policy, the project team will engage in a partnering program and will establish a Dispute Resolution Board (DRB). The DRB will be used for any disputes that could lead to claims or litigation. Because the nature of design-build contracts is collaborative, the City and Hunt will only convene the DRB in the event of a dispute that cannot be resolved by the project team.

**Findings**

Section 1217(e)(7) of the City Charter – which is implemented by Chapter 14.07 of the Municipal Code - governs the process the City must follow to use the design-build project

procurement process. In order to use this process, the design-build contract must exceed \$5 million. If the contract exceeds \$5 million, the Council must find that the design-build process is likely to save money or result in faster project completion than if the City used its normal competitive bidding process.

At its February 23, 2010 meeting, the Council identified a series of projects (program) at the Convention Center which included four elements: demolition, new construction, systems improvements, and cosmetic renovation. Staff has estimated the cost of the program and has determined that the approximate cost would be \$120 million.

In addition, staff has performed a schedule analysis for the project comparing design-build to the traditional design-bid-build method of project delivery. The table below summarizes the comparison of the delivery methods. A more complete comparison of the delivery methods is contained in Attachment A.

<b>Comparison of Delivery Methods by Time in Months</b>		
<b>Process</b>	<b>Design-Bid-Build</b>	<b>Design-Build</b>
Acquire Designer	8	10
Design	12	24
Acquire Contractor	3	
Construct	20	
<b>Totals</b>	<b>43 months</b>	<b>34 months</b>

Based on the above comparison, it is reasonable for the City Council to make the necessary finding that the design-build method of delivering the Project will be faster than the traditional design-bid-build method of project delivery.

**Local and Small Contractor Outreach**

The Hunt proposal contained a local and small contractor outreach plan that featured the following elements to ensure local and small business opportunities to the maximum extent possible.

- Competitive bidding at the local level for non-named subcontractors.
- Hunt will not self perform any trade work.
- Named local subcontractors and sub consultants.
- Contractors commitment to use local labor.
- Direct contact through mass advertising, one-on-one contact, email and electronic notification.
- Transparent bid opening and evaluation.
- Subcontractor prequalification to level the playing field.

In addition, staff will keep records on the local labor utilization through our certified payroll process. Hunt has estimated that this project will create 300 to 500 craft trade jobs for the life of the project.

### **Project Financing**

In addition to the aforementioned project schedule, the Finance Department has proceeded with a financing schedule designed to yield the anticipated project costs. On June 14, 2010, the Finance Department issued a Request for Proposals for underwriting services for the issuance of Convention Center Community Facilities District bonds. Based on the results of the process, Bank of America was selected as senior manager with Citibank and Wells Fargo selected as co-managers.

The financing teams' principal objective is to generate up to \$120 million in net proceeds for the project without exposing the City's General Fund to undue risk. The underwriting team will assist the City in the structuring and marketing of the financing which is expected to sell in early 2011. The Finance Department will present the financing plan for City Council and City of San José Financing Authority Board approval in early 2011.

### **EVALUATION AND FOLLOW-UP**

Staff will be recommending a financing plan to the Council in January 2011.

### **PUBLIC OUTREACH/INTEREST**

If approved by the City Council, staff will continue to work with stakeholders to solicit input on the process.

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City.
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach.

This memorandum will be posted on the City's Internet website for the December 14, 2010 Council agenda.

11-30-10

**Subject: Authority to Award the Convention Center Project**

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**COORDINATION**

This staff report has been coordinated with the City Attorney's Office, San José Redevelopment Agency, and the Departments of Finance, General Services, Planning, Building and Code Enforcement, City Manager's Budget Office and the Capital Facilities Advisory Committee.

**COST SUMMARY/IMPLICATIONS**

The award of the project is contingent upon completion of the bond sale related to the Project.

**CEQA**

CEQA: Resolution No. 72767 and Addenda thereto. File No. PP08-002.

/s/

KATY ALLEN

Director, Public Works Department

For questions please contact HARRY FREITAS, DEPUTY DIRECTOR, at 408-535-8300.



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Kim Welsh

**SUBJECT:** See Below

**DATE:** November 30, 2010

Approved

Date

11/30/10

**COUNCIL DISTRICT: 3**

## SUBJECT

**AMENDMENT OF BUSINESS TERMS FOR THE OPTION, PURCHASE, AND SALE OF THE AIRPORT WEST PROPERTY FOR DEVELOPMENT AND FOR DEVELOPMENT OF A MAJOR LEAGUE SOCCER STADIUM**

## RECOMMENDATION

Adopt a resolution to:

1. Approve Amendments to Two Amended and Restated Option Agreements and related Purchase Agreements with Coleman Airport Partners LLC for the property located at 1125 Coleman Avenue.
2. Approve Amendments to an Amended and Restated Option Agreement and related Purchase Agreement with FWSH Partners LLC related to the 14 acres for the Soccer Stadium site located at 1125 Coleman Avenue.

## OUTCOME

The Developers of the project, Coleman Airport Partners LLC and FWSH Partners LLC (Developer), have advised City staff that they wish to move forward with development of the site, but cannot proceed under the current terms of their respective agreements with the City due to the downturn in the economy and lack of liquidity in the marketplace. Current economic conditions continue to significantly impact the demand for new construction in Silicon Valley and pose a particular challenge in maintaining the ability for the Developer to continue their real property interest in the site. Approval of the proposed recommendations will allow the development of the Airport West site to move forward despite these difficult economic conditions, while minimizing negative impacts to the General Fund and providing counter-cyclical investment. The development proposal for the Airport West property continues to include 1.5 million square feet of office/R&D space, 95,000 square feet of retail space, 300 hotel rooms development, and a 14 acre parcel reserved for a 15,000 seat soccer stadium. The property once developed will generate substantial property tax, sales and use tax for the City.

Retaining a highly successful developer in the current economic climate will allow the City to move development forward as the economy recovers.

The adoption of the resolution would reduce non-refundable option payments by \$2 million to \$5 million as well as extend the option period from 2013 to 2015. If Developer closes on the property earlier, a reduction of \$4 million in non-refundable option payments will occur. While Developer's intent is to proceed with the soccer stadium prior to the development of the other portions of the site, in the event that the economic climate continues to preclude the implementation of the stadium the option includes provisions for the City to consider allowing retail on the stadium site.

### **BACKGROUND**

In 2005, the City of San Jose purchased the 74.8 acre property located at 1125 Coleman Avenue from FMC. The property is now known as the Airport West property. The City's intent was to purchase only 52 acres of the property to support the Airport expansion program. FMC was unwilling to sell the City a portion of the site. In order to assist the Airport, the City acquired the additional 23.23 acres. The Airport required significant land for construction lay down, interim parking and, at the time, off-Airport rental car operations. The intention and vision for the property was to assist the Airport with the construction of the new terminal as well as develop the site for economic development purposes to support job and revenue generation.

In May 2008, the City Council approved a Memorandum of Understanding (MOU) between the City and Coleman Airport Partners LLC that outlined the price, option period and uses on the property. Approved uses included the development of a proposed Earthquakes Major League Soccer Stadium on roughly 14 acres of the site. The balance of the site would include 1.5 million square feet of office, R&D, 300 hotel rooms and 95,000 square feet of retail space. On May 5, 2009 the City Council approved an amendment to the approved option terms for the property in recognition of the global economic crisis. The amendment reduced the purchase price and the amount for option payments. Restated Business Terms included:

- Coleman Airport Partners LLC and FWSH Partners LLC controlling 64.5 acres for a purchase price of \$89,010,000.
- Revised option payments of \$1 million to be paid June 30, 2010; \$2.5 million to be paid June 30, 2011; and \$3.5 million to be paid June 30, 2012 for the 50.5 acres.
- Option payments are not be applicable to the purchase price and are non-refundable
- FWSH Partners controls 14 acres for a purchase price \$7 million for the stadium. The stadium site has no development entitlement rights.

A 9.3 acre portion of the Airport West property had been previously discussed as a Bay Area Rapid Transit (BART) maintenance facility. In 2009, the City was informed that BART no longer was in need or desired a portion of the Airport West site. Subsequently, staff has been working on a proposal to develop a regional soccer facility to serve residents of San Jose and the region.

In May, 2010 Coleman Airport Partners indicated to staff that economic conditions related to new construction remain poor and requested a 90-Day extension of the Option Agreement to

allow Developer and the City to renegotiate the current terms of the Amended and Restated Option Agreement for the Development site and the Commercial site. On June 22, 2010, and subsequently on September 21, 2010, the Council approved two 90-day extensions to the Option Agreement for the Development site and the Commercial site. Staff has continued to work with the Developer throughout this period to outline appropriate amendments to the Option Agreements and the Developer continues to make substantial investment in planning, design, and preconstruction work for development of the site.

## ANALYSIS

### Proposed Amendment

The Airport West property remains one of the most important development sites in San Jose. Maintaining the viability of sites like this is critical to supporting the City's long term economic growth by providing suitable locations for the significant employment growth and regional amenities being considered in the Envision 2040 General Plan Update. The proposed amendment to the option agreement focuses on three key areas requiring modification:

- The timing and amount of option payments
- An incentive for near term purchase of the stadium parcel contingent upon the remaining demolition of buildings
- Provisions for alternate uses should the stadium prove infeasible.

### Option Timing and Amounts

While the Developer remains confident in the long-term viability of the site, the near-term economic environment remains adverse to new development, especially of a speculative nature. Land values continue to be disproportionately impacted by the economic decline and Developer has requested that their respective option agreements be renegotiated to reflect current market conditions. The current agreements provide the following payment schedule:

December 21, 2010 to June 30, 2011	\$1,000,000
July 1, 2011 to June 30, 2012	\$2,500,000
July 1, 2012 to June 30, 2013	\$3,500,000

These payments reflect a total of \$7,000,000 to be received by the City through June 30, 2013. To maintain a financially viable interest in this property, the Developer is requesting that the schedule be revised to provide a higher initial payment to the City with a reduced total amount over a longer horizon. The revised non-refundable payment schedule would be:

December 21, 2010 to December 21, 2013	\$2,000,000*
December 22, 2013 to December 21, 2014	\$1,000,000
December 22, 2014 to December 31, 2015	\$2,000,000

\*If Developer purchases the 14-acre soccer stadium parcel by June 2012, a credit equivalent to the first \$2 million option payment will be given, reducing the total option payments for that parcel from \$7 million to \$5 million.

This revised agreement would result in a maximum of \$5,000,000 in option payments being paid to the City through December 31, 2015, down from \$7 million in the current agreement which is a decrease of \$2 million in option payments. The option payments will be nonrefundable and will not be applied to the Purchase Price of the Development Site or the Commercial Site but may be applied to the Stadium Site as discussed below. The proposed reduction in option payments are a direct result of the downturn in the local economy combined with tight financial markets. Currently in the San Jose MSA, new commercial/industrial construction has stalled as tenants are seeking more favorable lease terms given the amount of existing vacant space. The Developer remains committed to the project as demonstrated by their investing over \$6 million in option payments, construction design and entitlement work. Developers anticipate the build to suit market will return after 2013 and therefore are looking to extend the option period.

### Conclusion

The national and world economy has changed dramatically since the City entered into a negotiations agreement with the Developer in June 2007 and since the Council approved the original agreement in May 2008. The Developer's proposed restructuring reflects this changed reality and the reduction in the site's value over the last two years. Property and Portfolio Research (PPR) a leading provider of commercial real estate statistics has forecasted office/R&D values in San Jose returning to FY 2006-2007 levels by early 2015. In addition, the Santa Clara County Assessor has commented that the value of industrial and commercial property will continue to drop for the next two to three years at a minimum.

The Developer's independent financial capacity, proven track record for delivering projects, and desire to continue with the project based on the strength of the site still represent an important opportunity during this recession. The ability to maintain the financial viability of new development on this key opportunity site will be critical to maintain the City's financial interest in the property and support long term economic development goals. The revised proposal creates incentive for the Earthquakes Stadium to move ahead of the office and commercial development providing much needed counter-cyclical investment and job creation in San Jose.

### Near Term Purchase

The City's Economic Development Strategy calls for a distinctive set of sports, arts, and entertainment offerings, and specifically aims to enable construction of the San Jose Earthquakes/Major League Soccer Stadium on the Airport West property. To ensure that this best-in-class professional sports venue remains the high priority in developing the property, the proposal incents the Developers to purchase the 14 acre stadium parcel earlier than the proposed 2013 end of the option agreement. Under the current terms of the option agreement, the Developer has until June 30, 2013 to complete the purchase of the 14-acre stadium parcel, priced at \$7,000,000. The proposed amendment provides an incentive to the Developer of the Stadium to complete this transaction within 18 months of making the first additional option payment to the City. If Developer closes on this portion of the property within 18 months (June 2012), the option payment of \$2,000,000 to be received by December 21, 2010 will be applied to the \$7,000,000 purchase price. In the event that the Developer does not purchase the stadium parcel within 18 months of the making the first option payment they will pay a total of \$5,000,000 in option payments.

November 30, 2010

**Subject:** Amended and Restated Option Agreements for the Airport West Property

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In addition, the proposed amendment provides that the Developer will demolish all existing buildings on the stadium parcel within six months of purchase to encourage ready development at the site. The value associated with this demolition is estimated to be \$3 million and the City will be obtaining a performance bond in that amount to make certain that the demolition occurs. The bond will be returned to the Developer when the demolition is completed.

#### Alternate Development on Stadium Site

The near-term development of this key property is important to the fiscal viability of the City's investment in the site and to promote new development and economic vitality in the immediate area. There remains a possibility that a stadium may be financially infeasible at the location. The Developer requests that in addition to the financial amendments to the agreement that the City will allow the sale of the Stadium Site for an alternative retail development at this location for \$7,000,000. The Developer's proposal is to allocate 200,000 feet worth of traffic capacity from the current office/R&D entitlements on the economic development portion of the property to the Stadium portion. It should be noted that any commercial development would be required to adhere to all relevant City policies. In the event that the stadium is developed, this traffic capacity would be released back to the economic development parcel for office/research and development uses.

#### Outstanding Debt

In 2005, the City purchased approximately 52 acres with lease revenue bonds through the City's Financing Authority (the "Authority"). The City obtained a HUD loan for the remaining 23.23 acres. The lease revenue bonds issued in 2005 refunded in 2008 with the Authority's Series 2008F Bonds ("Series 2008F Bonds") as a result of the bond market disruption. The Series 2008F Bonds are secured by lease revenues from the sublease of the 52 acres of the Airport West property between the City and the Authority. The HUD loan is secured by 23.23 acres of the Airport West property in addition to CDBG funds and additional City property.

Additionally, the Airport issued \$9,467,000 in commercial paper notes, secured by a subordinate pledge of Airport revenues, to make lease payments to the Authority for the use of 52 acres portion of the Airport West property for construction lay down and contractor parking at the Airport West property. The Airport's use of the Airport West property terminated as of June 30, 2010.

The Series 2008F Bonds and the HUD Loan must be repaid in order to complete a sale of the property. The commercial paper notes are not secured by the property, and will be paid by the Airport through other sources.

**Outstanding Secured Debt Related to Acquisition and Use of Airport West Property**  
**(As of November, 2010)**

<b>Debt Instrument</b>	<b>Outstanding Principal</b>
Lease Revenue Bonds	\$67,195,000
HUD Section 108 Loan	\$21,877,000
<i>Total Debt</i>	<i>\$89,072,000</i>

**General Fund Impact**

The proposal maintains the purchase price at \$89,010,000 less the \$5 million credit for the 50.5 acre economic development parcel and the 14 acre stadium parcel, while reducing the amount received for option payments and extending the term of the option agreement.

The balance of revenues to the City that would be received from the remaining 9.3 acre parcel previously identified for use by VTA for BART in the near term. Staff is exploring options for the use of the property as a regional soccer facility by the Parks, Recreation and Neighborhood Services Department. In the instance that the City retains the regional soccer facility use the City will need to support continuing debt service associated with the remaining debt on the property.

Since 2008-2009, the City has incurred debt service costs of \$10.6 million. Through the proposed option payment, an additional \$23 million in debt service costs would be incurred through 2014. This debt service obligation was factored into the 2011-2015 General Fund Five-Year Forecast issued in February 2010. A portion of this debt service cost would be reimbursed from the proposed option payments.

**EVALUATION AND FOLLOW-UP**

Staff will continue to work with the Developer to move the stadium site forward and to market the office project to appropriate tenants.

**POLICY ALTERNATIVES**

***Alternative: The City Council could direct staff to maintain the current options with Developer***

**Pros:** The City would maintain the shortened option period as well as the existing option payment schedule.

**Con:** At the present time, the current option payment is about to expire and given the structure of the existing agreement, the Developer has informed the City they would have to make the difficult decision to walk away from the project.

***Alternative: The City Council could direct staff to conduct a Request for Proposal (RFP) process for the Airport West Property***

**Pros:** The City could receive a higher price for the Airport West Property.

**Cons:** In the current economic climate, particularly in light of the difficulty obtaining real estate financing, it is not likely a greater price for the Airport West property could be obtained.

**Reason for not recommending:** The proposal being considered offers the City counter cyclical investment in a \$50 million dollar stadium and related construction jobs, possibly securing a professional Major League Soccer team, and continues the partnership with Developer, retaining their proven experience and access to capital to quickly move forward with full development of the project when economic conditions improve.

**PUBLIC OUTREACH/INTEREST**

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.  
**(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach.

This memorandum will be posted on the City's web site and discussed at the December 14<sup>th</sup> City Council meeting.

**COORDINATION**

This memorandum was coordinated with the City Attorney's Office, Budget Office, Parks, Recreation and Neighborhood Services and the Finance Department.

**FISCAL/POLICY ALIGNMENT**

The project aligns with the City's Economic Development Strategy #12, "Develop a Distinctive Set of Sports, Arts, and Entertainment Offerings Aligned with San Jose's Diverse and Growing Population."

**COST SUMMARY/IMPLICATIONS**

As noted earlier, the City's current outstanding principal associated with the property is:

<b>Debt Instrument</b>	<b>Outstanding Principal</b>
Lease Revenue Bonds	\$67,195,000
HUD Section 108 Loan	\$21,877,000
<i>Total Debt</i>	<i>\$89,072,000</i>

As described below, the Developer's desire to move forward with the project at a reduced purchase price of \$84 million for 64.5 acres of land and reduced option payments in the amount of \$7 million over a four year period. The debt service costs (principal and interest) required through FY 2013-14 are anticipated to be approximately \$23 million. Staff has indicated that the application of the \$7 million in the Developer's option payments plus the application of the sale proceeds from both the 14 acre soccer parcel and rent payments from the proposed regional soccer facility could eliminate any impact to the General Fund in the short term to cover debt service prior to the sale of the 50.5 acre development parcel. There is potential risk to the General Fund in that purchase of the soccer parcel and the 9.3 acre parcel could be delayed and the amount obtained for the 9.3 acre parcel could be insufficient to cover debt service, causing the General Fund additional expense. In this scenario the General Fund would pay for outstanding debt service payments until such time as the remaining 50.5 acres are sold. The Budget Office has already assumed debt service costs associated with the property in its current budget forecast.

General Fund Portion of Principal for 74.8 acres	\$89,072,000
Application of a Purchaser Credit	\$5,000,000
Developer's Purchase Price	84,000,000
<i>Budget Surplus/Deficit</i>	<i>\$72,000</i>

It should be noted that the CSFA 2008F bonds are backed by a letter of credit (LOC) which will be up for renewal in June 2011. It is unclear whether any penalties would be assessed related to the letter of credit should Developer buy the property before the City's LOC expires.

**Sale of the Property**

As discussed above, the City has existing secured debt of \$89 million dollars for the 74.8 acre Airport West property. Developer's proposed revised purchase price for the 64.5 acres of the property is \$89 million. \$5 million of the \$6 million previously paid by the Developer will be

HONORABLE MAYOR AND CITY COUNCIL

November 30, 2010

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applicable to the purchase price at closing, so the total amount of revenue paid by the Developers for the property, if the property closed escrow prior to 2011 would be \$84 million.

The best case scenario for sale of the property would entail Developer purchasing the property as early as possible, limiting the City's carry costs on the property. Under the worst case scenario, the City could sell the soccer parcel and 9.3 acre parcel, applying the proceeds of those sales to debt service payments without subsequent sale of the property to the Developer. In this instance, diminished parcel size against the remaining debt for the full 74.8 acre parcel would represent the greatest risk of future indebtedness associated with the remaining 50.5 acre parcel. It is important to note, however, that the smaller 50.5 acres retains all of the development entitlement that is currently spread across the 74.8 acres as previously approved by City Council.

As discussed above, the option to RFP the property in this economic climate represents an even greater risk to the City. The current developers are motivated to protect the investment they have already made in the site. In addition they have adjacent land holdings and stand to benefit from control over larger land holdings in a premier location near downtown San Jose and the Airport. Staff believes that an RFP has a high potential to yield a developer who will offer a similar option arrangement at a significantly reduced price than that currently being offered by the current Developer. Option payments are also likely to be further reduced and the General Fund will be obligated to shoulder debt service payments during the RFP and negotiation period for the 74.8 acre property.

**CEQA**

EIR Resolution No. 71716, File No: PP08-093 and File No: PDC09-004.

/s/

KIM WALES

Chief Strategist/Acting Director

Economic Development

For questions please contact Nanci Klein, Division Manager, at (408) 535-8181.



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** November 22, 2010

Approved

Date

11/29/10

**COUNCIL DISTRICT:** 10  
**SNI AREA:** N/A

**SUBJECT: PRIVATE REQUEST FOR ALTERNATIVE DRAFT ENVISION 2040 PLAN LAND USE DESIGNATION FOR URBAN RESIDENTIAL USES IN SOUTH ALMADEN VALLEY URBAN RESERVE (SAVUR) (REQUEST NO: ESJ2040-007)**

## RECOMMENDATION

Reject the private request for an Alternative Draft Envision 2040 Land Use/Transportation Diagram designation of *Residential Neighborhood* allowing urban residential uses in the South Almaden Valley Urban Reserve because it is inconsistent with the Council's prior direction to consider no housing or job growth in the Urban Reserves within the timeframe of the Envision 2040 Plan.

## OUTCOME

Council rejection of the private request for an Alternative Draft Envision 2040 Land Use/Transportation Diagram designation of *Residential Neighborhood*, allowing urban residential uses in the South Almaden Valley Urban Reserve, would retain the designation *South Almaden Valley Urban Reserve* in the Draft Envision Plan Land Use/Transportation Diagram and would reaffirm the Council's prior direction that the General Plan Update should consider no housing or job growth in the Urban Reserves within the timeframe of the Envision 2040 Plan. Monies paid at the time of submittal as the base amount for staff costs for environmental review of the private request would be refunded.

## BACKGROUND

On October 19, 2010, the City Council accepted staff's recommendation for a process to review private requests for Alternative Draft Envision 2040 land use designations and potentially allow

consideration by the City Council of requests which could achieve environmental clearance at the time of Council consideration of the Draft Envision Plan, scheduled for June 2011. This process established a deadline of November 15, 2010 for submittal of such requests for Alternative Envision 2040 land use designations on the Draft Envision Land Use/Transportation Diagram (Diagram).

Staff received fifteen requests by the November 15th deadline. The subject request for an Alternative land use designation of *Residential Neighborhood* on the Draft Diagram on an approximately 340-acre site in the South Almaden Valley Urban Reserve (Request No. ESJ2040-007) was submitted by the Keenan Land Company as both owner and representative of 19 parcels. The request letter states that the site is within the Urban Growth Boundary, and could accommodate 750 to 925 single-family residential units, a small commercial center and public open space.

Staff has begun initial review of all the request submittals. Through this initial review, staff has identified that the proposed request for an Alternative Draft Envision 2040 Land Use/Transportation Diagram designation of *Residential Neighborhood*, allowing future urban residential development and growth in the South Almaden Valley Urban Reserve, is inconsistent with the fundamental principles of the Envision General Plan Update previously accepted by the Council, and inconsistent with the Preferred Land Use Scenario approved by the Council as the basis for the development of the General Plan Update Draft Environmental Impact Report (DEIR). This request would require the major reworking of technical analyses prepared for the Update DEIR due to the request's potentially significant environmental and growth inducing impacts.

## ANALYSIS

On June 16, 2009, the City Council approved the Final Selection of Growth Study Alternatives and provided direction to proceed with environmental, fiscal and economic analyses of the four proposed Land Use Study scenarios for the Envision 2040 General Plan Update, including a geographic distribution for new job and housing growth capacity within each scenario. The four Land Use Study scenarios were based on the clear set of principles articulated in the draft Envision San Jose 2040 Vision (Vision) and draft Land Use/Transportation Scenario Guidelines (Guidelines), both also previously accepted by the City Council in April 2009. Following these clear principles, and specific prior consideration of the potential use of the Urban Reserves as part of the General Plan Update, none of the four approved scenarios include either housing or job growth in both the South Almaden Valley and Coyote Valley Urban Reserves as part of the Envision San Jose 2040 process. All projected growth could be accommodated within the existing Urban Service Area. In contrast, growth in the Urban Reserves would not further the Guidelines, would be anticipated to result in significantly greater negative environmental implications and negative fiscal impacts than infill development, and would not improve the vibrancy or sustainability of the City of San Jose.

Subsequently on April 20, 2010, the City Council approved the selection of the General Plan Preferred Land Use Scenario to include the proposed geographic distribution and total amount of job and housing growth capacity, and to serve as the basis for the California Environmental Quality Act (CEQA) analysis required for consideration and approval by the Council of the Envision San Jose 2040 Plan, scheduled for June 2011. This Draft Environmental Impact Report (DEIR) will include

review and analysis of the approved Preferred Land Use Scenario and alternative scenarios as required by CEQA, including the "No Project" scenario. Only the No Project Scenario (continuation of the existing San Jose 2020 General Plan) anticipates partial development of the Coyote Valley Urban Reserve (3,700 jobs and 10,000 housing units) and South Almaden Valley Urban Reserve (0 jobs and 800 housing units), assuming the satisfaction of long established prerequisite conditions (commonly referred to as triggers). None of the Envision scenarios includes development in the Urban Reserves. Therefore, the DEIR would not provide environmental clearance for an alternative that mixes San Jose 2020 and Envision 2040 General Plans.

### Conclusion

This request for consideration of urban residential uses in the South Almaden Urban Reserve is far outside the range of Envision 2040 land use alternatives currently being analyzed in the DEIR, both in the locations and the amounts of job and housing growth. Any consideration of this request would represent a dramatic departure from the careful iterative development of the Envision Preferred Land Use Scenario and Draft Envision Land Use/Transportation Diagram through the three-year process guided by the Task Force. This process included significant engagement by the community and a wide range of stakeholder groups, with significant milestones in the Envision process endorsed by the City Council.

Because there is no Envision land use scenario including any urban development by 2040 in the Urban Reserves, direction to allow consideration of this request for the Alternative Envision 2040 land use designation of *Residential Neighborhood* in SAVUR (rather than *Urban Reserve*) would require fundamental changes to the scope of review for, and a significant delay of many months in starting over with the technical analysis required for the completion of the Envision General Plan Draft Environmental Impact Report. The Envision DEIR is currently anticipated to circulate in mid-December 2010 to allow an on-schedule Council consideration of the Envision General Plan in June 2011.

### POLICY ALTERNATIVES

Staff has identified the following policy alternative to the staff recommendation, with a Pro and Con for the alternative, as well as the reason for not selecting the policy alternative.

***Alternative #1: Accept the request and direct staff to work with the requesting parties to analyze the Alternative Envision 2040 land use designation of Residential Neighborhood on 340 acres in the South Almaden Valley Urban Reserve and prepare environmental review documents to allow Council consideration of the Alternative land use designation together with consideration of the Envision San Jose 2040 General Plan.***

**Pros:** Developing environmental clearance for and additional analysis of the requested Alternative land use designation to allow urban residential uses in the South Almaden Valley Urban Reserve would provide the City Council with an additional land use scenario option when considering approval of the Envision General Plan to guide the City's future development through 2040.

**Cons:** The requested Alternative Envision 2040 land use designation would be a fundamental change in Task Force and City Council direction for the Envision 2040 General Plan and would be entirely inconsistent with the Vision and Guiding Principles developed by the Envision Task Force and community during the past three years. Completing analysis and environmental review for this request is clearly inconsistent with the Draft Envision Plan and work of the Task Force and community as accepted by the City Council. Processing this request would create new ambiguity as to the City's goals as they are and have been expressed in the Draft Envision General Plan Update. Finally, processing this request would significantly delay the completion of the DEIR and therefore, consideration of the Update by the Council would extend past the deadline of June 2011.

**Reason for not recommending:** Sufficient policy direction has already been provided by the Envision Task Force and City Council during the past three years of the Envision General Plan Update, which have considered and refined a set of Land Use Study scenarios and a Preferred Land Use Plan to serve as the basis for the Update's Environmental Impact Report. Inclusion of an Envision Plan scenario with any development in the South Almaden Valley Urban Reserve would require extensive new technical analyses, delay the Update past June 2011, necessitate consultant contract amendments, and incur additional consultant and staff costs. Staff costs are high because all of the non-management positions involved in the Update are temporary, scheduled to expire in June 2011.

Even if the requestor is willing to pay for all of these additional costs, consideration of this request undermines the fundamental tenets of the Envision Plan which focuses growth in locations with transit and other infrastructure services. The Envision General Plan Update process represents a significant investment by the City Council, Envision Task Force and the community in developing a clear and cohesive vision for the City's future. Rejection of the proposed alternative urban land use designation in the South Almaden Urban Reserve would demonstrate a clear commitment to the Draft Envision General Plan as created through the collaborative community Envision process.

### **PUBLIC OUTREACH/INTEREST**

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The requestor and property owners of parcels within the subject site have received notice of the December 14, 2010 City Council meeting and of staff's recommendation for Council to reject the

request for an Alternative Envision 2040 land use designation in the South Almaden Valley Urban Reserve, and the notice was posted on the Envision General Plan web site.

Significant and regular community outreach has occurred as part of the Envision San José 2040 General Plan Update process, both through traditional means and through use of online resources. Prior to each Task Force meeting, e-mails are sent to a subscription list that consists of approximately 700 individuals who have subscribed online or at a Task Force or community meeting. All Task Force meeting agendas and materials are posted on the Envision San José 2040 website in advance of the meeting, and synopses and audio recordings of meetings are posted online following each meeting. Additional community outreach has occurred at seven Saturday and evening Community Workshops that attracted a cumulative total of approximately 500 people. Full summaries of all Community Workshops are available under the "Community Outreach & Task Force" heading at [http://www.sanjoseca.gov/planning/gp\\_update/Background.asp](http://www.sanjoseca.gov/planning/gp_update/Background.asp).

In addition to the more traditional outreach efforts identified above, staff has engaged a significant portion of the San José community with online outreach efforts. Between August 1, 2009 and November 15, 2009, nearly 4,500 registered users visited an online Wiki planning site, and of these visitors, nearly 2,800 completed an online survey, and 2,200 answered open-ended questions. Improving public transit was most frequently referenced as the single thing that would make San José a better city, diversity was mentioned most frequently as San José's most significant asset, and respondents ranked "proximity to shops and restaurants" as their most important criteria in choosing a place to live during the next 30 years. A full summary of the Wiki planning report is available online at [http://www.sanjoseca.gov/planning/gp\\_update/documents/WikiReport-Final\\_001.pdf](http://www.sanjoseca.gov/planning/gp_update/documents/WikiReport-Final_001.pdf).

Additionally, to support the development of the Preferred Land Use Scenario staff supplemented a conventional community meeting with an online questionnaire that generated approximately 1,000 complete responses. In allocating 100 points to any of ten priorities for shaping San José's future, community members ranked economic development first, fiscal stability second, and minimizing environmental impacts third. Increasing transit ridership was ranked fourth, with creating neighborhood villages closely following as a fifth priority. A full summary of the survey responses is available online at [http://www.sanjoseca.gov/planning/gp\\_update/documents/SurveySummaryResponse-3-29-10\\_000.pdf](http://www.sanjoseca.gov/planning/gp_update/documents/SurveySummaryResponse-3-29-10_000.pdf).

In addition to these efforts, staff has created a Facebook page to help engage the community in providing input into and following the Envision process. All of these outreach efforts has garnered receipt of statewide recognition from the American Planning Association.

## **COORDINATION**

The preparation of this memorandum has been coordinated with the City Attorney's Office.

Staff representatives of all City Departments are actively participating in the Envision process. The Envision process has been coordinated with a number of outside agencies, including the Santa Clara Valley Water District, the various School Districts, Santa Clara County and the California

Department of Transportation. Staff has worked particularly closely with the Valley Transportation Authority on the development of the Draft Land Use/Transportation Scenario.

### **FISCAL/POLICY ALIGNMENT**

The submitted request for an Alternative Envision 2040 General Plan land use designation to allow urban uses within the South Almaden Valley Urban Reserve is inconsistent with the Guiding Principles of the Envision General Plan Update. The Principles focus growth in infill locations close to transit and existing services, particularly to achieve the Envision goal of improving the City's fiscal stability. Updating the General Plan is an opportunity for the City to determine the future fiscal and policy direction of the City. The Task Force and staff are working together to develop a General Plan update consistent with direction provided by the City Council when it launched the Envision San José 2040 process and consistent with the Council's funding actions for the Envision effort. Improvement of the City's fiscal condition through careful land use planning has been a key goal for the Task Force, the public, and staff throughout the Envision process, consistent with current City policies and goals; urban development in the Urban Reserves by 2040 is a fundamental contradiction to this goal.

### **COST SUMMARY/IMPLICATIONS**

Council direction at this time to reject the request for an Alternative Envision 2040 General Plan land use designation would allow staff to complete the preparation of the DEIR for environmental review of the Draft Envision Plan and Land Use/Transportation Diagram under the City's current contracts with the environmental and technical consultants. Based on the existing scope of those contracts, staff is scheduled to complete the Envision San José 2040 process in June of 2011. Funding for this effort extends through June 2011.

### **BUDGET REFERENCE**

Council rejection of the requested Alternative Envision 2040 General Plan land use designation would allow completion of the Envision General Plan Update with budgeted resources within the existing timeframe.

HONORABLE MAYOR AND CITY COUNCIL  
**Subject: South Almaden Valley Urban Reserve**  
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**CEQA**

Incomplete.

/s/  
JOSEPH HORWEDEL, DIRECTOR  
Planning, Building and Code Enforcement

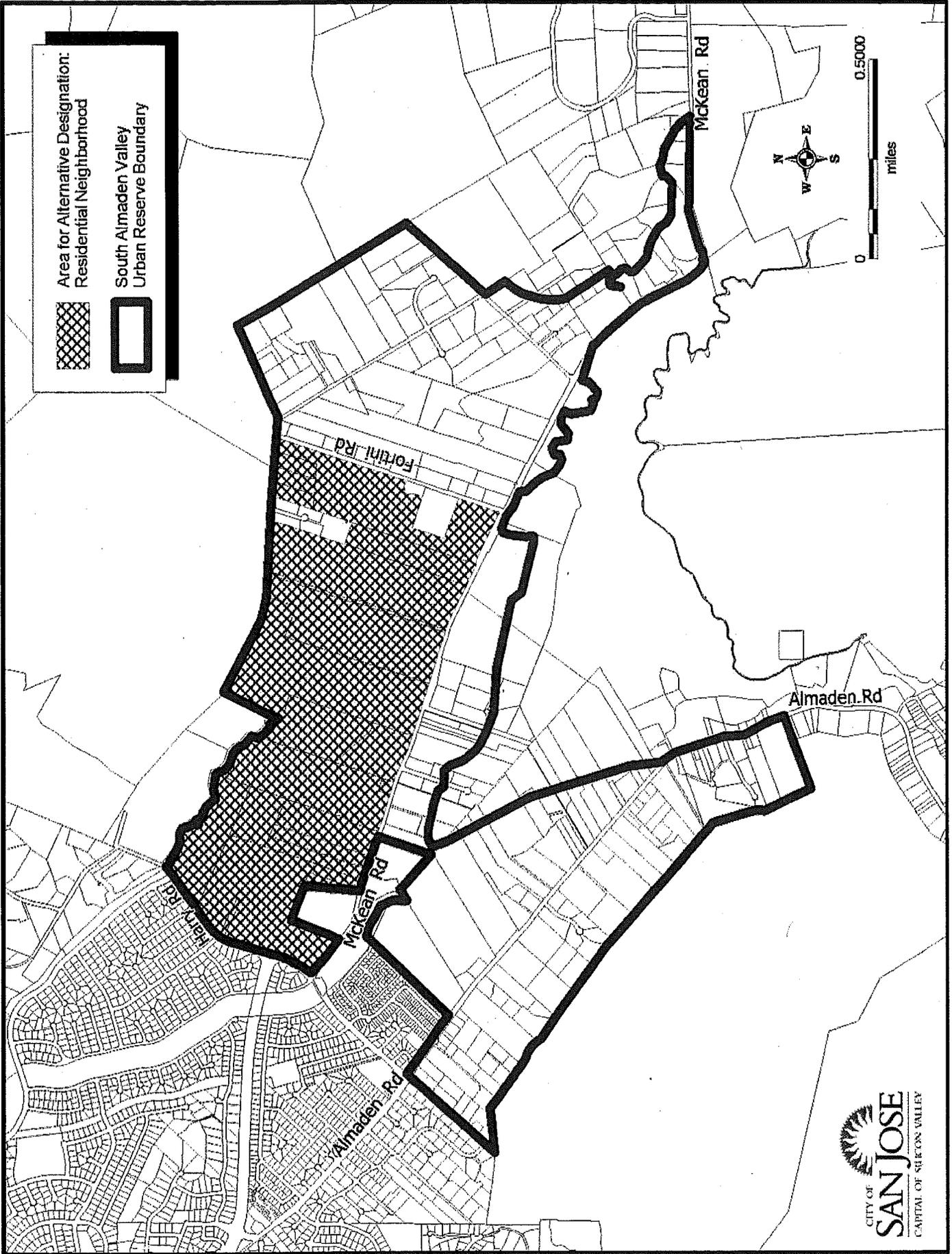
For questions please contact Laurel Prevetti at 408-535-7901.

Attachment: Map of subject site

Area for Alternative Designation:  
Residential Neighborhood



South Almaden Valley  
Urban Reserve Boundary





# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** John Stufflebean

**SUBJECT:** CARRYOUT BAG REGULATION

**DATE:** 11-22-10

Approved 

Date 11/30/10

**COUNCIL DISTRICT:** City-Wide

## RECOMMENDATION

1. Approve an ordinance to add Part 13 to Chapter 9.10 of Title 9 of the San José Municipal Code to ban single-use carryout plastic bags, and prohibit the free distribution of recycled paper bags by retail establishments, to be effective January 1, 2012.
2. Adopt a resolution to amend the Administrative Schedule of Fines to establish fines related to Carryout Bags and to repeal the prior Administrative Citation Schedule of Fines resolution.

## OUTCOME

Adoption of the proposed ordinance and resolution would advance the City's efforts to reduce the use of single-use carryout plastic and paper bags, and increase shopping with reusable bags. A reduction in single-use carryout bags would support the stormwater permit requirement to reduce trash in storm drains and creeks, and enhance water quality; reduce litter in City streets; and reduce the cost of litter control and recycling programs. The recommendation is consistent with the City's Green Vision and Zero Waste goals, Action 5 of the Urban Environmental Accords to become a Global Sustainable City, and the Clean Bay Project, (Cities Keep It Clean).

## BACKGROUND

On September 22, 2009, Council directed the Administration to develop a proposed ordinance that would prohibit the use of single-use carryout plastic and paper bags. This prohibition would apply to all retail establishments except restaurants, with an exemption for certain nonprofit and social service organizations. Single-use carryout paper bags made of 40% postconsumer recycled content could be made available for a minimum charge. The Administration was asked to collaborate with the retail industry to evaluate the amount of the charge.

### **Environmental Impact Report**

Pursuant to the California Environmental Quality Act, the Administration prepared a Draft Environmental Impact Report (EIR) to disclose any significant environmental impact of the proposed ordinance. This Draft EIR was circulated for public comment on July 12, 2010. The Planning Commission held a public hearing and certified the Final EIR on November 17, 2010.

An appeal was filed on the Final EIR certification on November 19, 2010. A separate staff report regarding the appeal will be forwarded to the Council from the Department of Planning, Building, and Code Enforcement. The appeal will be heard in advance of Council's consideration of the recommendations in this report.

### **State Legislation and Local Government Efforts**

The Council directed the Administration to collaborate with other jurisdictions on state legislation that would significantly reduce the use of single-use carryout bags. Assembly Bill (AB) 1998, introduced by Assemblymember Brownley in February 2010, would have banned plastic carryout bags and imposed a five cent fee on paper carryout bags made with 40% postconsumer recycled content at large grocery stores and pharmacies, and at convenience stores. AB 1998 passed the Assembly with widespread support, including various California cities and counties, the California Grocers Association, the Silicon Valley Leadership Group, and the Governor. The bill failed to pass the Senate on the last day of the session. A number of California cities continue to discuss bringing proposed ordinances similar to AB 1998 before their legislative bodies for consideration. The Clean Seas Coalition is leading this effort with support from Green Cities California and the California Grocers Association.

The Santa Clara County Cities Association and the Santa Clara County Recycling and Waste Reduction Commission expressed their support for the City of San José's proposed ordinance to ban single-use carryout plastic bags and require a minimum store charge for certain paper bags. Other jurisdictions at the local level have taken action, and are at various stages of adopting regulations. Santa Clara County released the Initial Study and Notice of Intent to adopt a Negative Declaration for their bag ordinance on October 8, 2010. On November 16, 2010, the Sunnyvale City Council voted to develop an EIR and ordinance to ban plastic bags at large retail stores and set a store charge of 15 cents for recycled content paper bags. Also on November 16, the Los Angeles County Board of Supervisors certified a Final EIR and passed an ordinance to ban single-use plastic carryout bags at retail stores in the County's unincorporated areas and to establish a store charge of 10 cents on paper bags. The 88 cities in Los Angeles County will be able to use the Final EIR to adopt similar ordinances in their jurisdictions. The City of Santa Monica has completed their Final EIR and will present their bag ban ordinance for Council action in January 2011.

### **Stakeholder Engagement**

The Administration engaged over 350 interested stakeholders to develop the specifics of the proposed ordinance. These stakeholders included plastic and paper bag manufacturers, grocery and retail industry representatives, environmental advocates, and representatives from neighboring cities. Since September 2009, the Administration also conducted an intense

outreach campaign focused on informing businesses and residents of a potential prohibition of single-use carryout bags. Businesses received information through various media including, but not limited to, direct mail, in-person canvassing, business association newsletters, news outlet calendars, Council district communications, and other free media outlets. Staff attended thirty-six community events and nine business workshops; met with the chambers of commerce, business associations, and neighborhood groups; and distributed over 8,000 reusable bags. Several large grocery stores (PW Market, Hai Thanh Market, and Mi Pueblo Food Center) hosted press events on the importance of shopping with reusable bags. Five citywide community meetings have been held with 50 people attending the most recent event on November 18, 2010.

## **ANALYSIS**

### **Single-Use Carryout Bags**

The proposed ordinance would ban all single-use carryout bags with certain exceptions. A single-use carryout bag would be a bag other than a reusable bag provided at the check stand, cash register, point of sale, or other point of departure for the purpose of transporting food or merchandise out of the store. Single use carryout bags do not include bags provided solely to transport produce, bulk food, or meat from a produce, bulk food, or meat department within a store to the point of sale. The ban would not include reusable bags specifically designed and manufactured for multiple uses and made of cloth or other machine washable fabric with handles, or a durable plastic bag with handles of at least 2.25 mils thick (0.00225 inches). Sale of plastic or paper bags such as trash or lunch bags would not be covered by this regulation.

### **Exceptions to the Ban**

The proposed ordinance to ban single-use carryout bags would apply to all retail establishments. Retail establishments would include any commercial establishment that sells perishable or nonperishable goods including, but not limited to, clothing, food, and personal items. Public eating establishments such as restaurants or areas where food or beverage is prepared on the premises to be eaten on or off its premises would be exempt. The recommendation to exempt public eating establishments acknowledges the practical difficulties of transporting take-out as food may become wet or messy.

Non-profit or social service organizations that provide food and other goods at no charge are not considered retail establishments and would not be impacted by the proposed ordinance. The Administration also recommends that thrift shops run by nonprofit charitable reusers, such as the Salvation Army or Goodwill of Silicon Valley, be exempt from the ban since these organizations support the City's landfill diversion goals by facilitating the reuse and recycling of donated goods and material.

In recognition of the potential hardship for certain customers, the proposed ordinance would permit retail establishments that provide recycled paper bags to continue to do so at no cost for food purchases paid for by the California Special Supplemental Food Program for Women, Infants, and Children (WIC) and the Supplemental Food Program (CalFresh or "Food Stamps"). These funds can only be used for food payments, and cannot be applied to non-food products.

This exemption would be for a period of two years through December 31, 2013. This exemption was also in the recent State legislation and the model local ordinance distributed by Green Cities California.

### **Minimum Store Charge**

The proposed ordinance would require a minimum store charge for the sale of recycled paper bags that contain a minimum 40% postconsumer recycled content. The recycled paper bag must be 100% recyclable and have printed in a highly visible manner on the outside of the bag the words "Reusable" and "Recyclable," the name and location of the manufacturer, and the percentage of postconsumer recycled content. The retail establishment must sell the recycled paper bag for a minimum charge of ten cents through December 31, 2013, and twenty-five cents thereafter. The Administration recommends a minimum charge for recycled paper bags to address any significant shift from use of plastic to paper bags, and to meet the goal of reducing overall usage of single-use carryout bags.

A fee or minimum store charge has proven effective in curbing the demand on paper and plastic bags in documented examples around the world. In Ireland in 2002, a fee on plastic bags of twenty cents (USD equivalent) resulted in a 91% decrease in their use. After four years, consumers became inured to the fee, and plastic bag usage increased. In 2007, the fee on plastic bags was increased to 30 cents, resulting in 92% plastic bag reduction. In January 2010, after a five cent fee was implemented for plastic and paper bags in Washington DC., plastic and paper bag use was significantly reduced. A recent Wall Street Journal article ("Capital takes bag tax in stride," 9/20/2010) reported that 75% of Washington DC customers have switched to either a reusable bag or no bag, while both total consumption of single-use bags and the number of bags collected in creek cleanups appear to have dropped by 50% or more. Carrying a reusable bag has become commonplace and customary.

These figures, along with bag switching behavior information from other countries, have been taken into account in determining the proposed store charge for paper bags. While it appears that combining a ban on plastic bags with a ten cent store charge on paper bags would be sufficient to avoid significant environmental impacts, the available data does not make it certain. It is clear the 25 cent store charge would avoid any significant impacts by reducing the amount of paper bags currently being used, estimated at 12% of all single-use bags.

Survey research conducted in San José also supports this outcome. A random digit-dial phone survey (available for download at the "Resources" section of [www.sjrecycles.org/bags](http://www.sjrecycles.org/bags)) was conducted for the City by Goodwin-Simon Strategic Research to determine consumer sensitivity to different store charge amounts for paper bags. Of the 601 Spanish- and English-speaking adults in San José who participated in the survey, 81% said they would bring a bag if paper bags were offered at a cost of ten cents each, indicating that a modest store charge could encourage reusable bag use. The responses to the other store charge amounts are given below.

Store charge for paper	10 cents	15 cents	25 cents
Bring my own bag	81%	86%	90%
Purchase paper	12%	11%	7%

Retailers were interviewed (see Resources at [www.sjrecycles.org/bags](http://www.sjrecycles.org/bags)) by Goodwin-Simon Strategic Research as part of the input process prior to ordinance adoption. Retailer input on the amount of store charge reflected differing opinions. Some retailers want to keep the charge low, five to ten cents, to avoid angering their customers. Other retailers suggested a higher bag charge to make sure they recoup the cost of purchasing the recycled content paper bag.

**Implementation and Outreach**

The proposed ordinance would be effective January 1, 2012, in order to provide retail establishments the opportunity to use their current supplies of single-use carryout bags. The implementation plan includes a business education campaign through direct mail, media, and the internet to the approximately 5,000 businesses impacted by the regulation. The City would develop a retailer website to provide multi-lingual information and resources to help retailers with the transition.

Retailers would also receive a Tool Kit with posters, signage, stencils, and other items that the stores may use to educate and encourage their customers to shop with reusable bags. Staff will work with stakeholders including non-profit agencies, waste haulers, environmental groups, watershed protection agencies, food banks, churches, and senior organizations to maximize low-cost and effective opportunities for outreach. See the attached "Planned Ordinance Implementation Outreach Tactics" for more detail. The implementation plan also includes assisting businesses with educating their customers through free reusable bag distribution events at shopping locations throughout San José. During these events, consumers will be asked to take a written pledge, and make a personal commitment to shop with a reusable bag. As part of the outreach, the City would mail businesses a self-certification form and request that they submit the certification declaring their understanding and compliance with the regulation.

**Enforcement**

The Administration does not plan to increase staff to administer and enforce this program. Any enforcement would be in response to complaints of noncompliance. Consistent with other code enforcement programs, the Administration would prioritize education about the new regulation. If that fails to change behavior, the Administration will utilize escalated enforcement including issuing administrative citations in escalating fine amounts as needed to achieve compliance. The proposed resolution would establish the initial fine at \$500, with each subsequent violation within a 36-month period at \$750, and \$1,000, respectively.

**Costs Related To Proposed Ordinance**

*Retailers*

The proposed store charge is intended to motivate consumers to shop with their own reusable bags. Based on the City of San José Bag Fee Fiscal Analysis Report, the Administration anticipates that the proposed ordinance could result in a projected aggregate savings of \$4,400,707 to approximately 5,000 retailers. See Appendix Table C-8 “Net revenues for Stores due to ban on plastic, ban on paper, store charge option” available in the “Resources” section of [www.sjrecycles.org/bags](http://www.sjrecycles.org/bags). This conclusion is based on an analysis of the current bag usage and costs, estimated bag switching behaviors, and estimated future costs of transition, including costs of reusable and recycled content bags, and staff training time.

*Consumers*

In response to concerns that a minimum store charge on bags would have a disproportionate impact on low-income communities, the proposed ordinance would exempt retail establishments that choose to provide recycled paper bags from imposing a minimum store charge for food purchases by WIC and food stamp recipients through January 1, 2014. Additionally, efforts are underway to use food bank distribution points, affordable housing sites, and general retail sites for distributing reusable bags. Some food bank sites already have their clients “bring a bag” for packaging their goods. During the transition period, the Administration would continue outreach in partnership with charitable organizations and community service agencies to inform residents that they can avoid the cost of a paper bag by bringing their own reusable bag.

**EVALUATION AND FOLLOW-UP**

Baseline data have already been gathered as part of the Bay Area Recycling Outreach Coalition (BayROC) regional media campaign. Based on preliminary studies, only 3% 4 % of shoppers use a reusable bag at retail and grocery store locations. Reusable bag use at selected grocery and retail locations would be monitored to determine the number of plastic, paper, and reusable shopping bags used. In addition, staff intends to monitor the following areas to determine the effectiveness and success of the ordinance:

Metric	Data Source
Reduction in number of plastic bags found in creeks and rivers	Characterization of materials collected at select in creek Trash Hot Spots
Reduction in number of plastic bags found on land	Data from targeted litter surveys conducted in San José, and characterization of materials collected at Great American Litter Pick-up Event and in select storm drain catch basins.
Reduction in number of bags distributed at retail establishments	Retailer Survey
Increase in use of reusable bags	Residential surveys, observational surveys at retail stores, and reusable bag distribution and pledges.
Decrease in cost and resources used to recycle, store and sort plastic bags at City processing facilities.	Hauler and processing facility reports and information.

## POLICY ALTERNATIVES

### *Alternative #1:* Ban on all single use carryout bags.

This option is essentially the same as the current ordinance being considered, but there would be no exemption allowance for paper bags made of 40% postconsumer recycled content.

**Pros:** This option meets the goals of single-use carryout bag reduction.

**Cons:** Potential customer service issues during transition to reusable bags, and for the long term, with visitors, travelers passing through the City, and new residents who are not aware of the ordinance until the first time they reach a cash register to complete a sale.

**Reason for not recommending:** Due to difficulty of transition and customer service issues at check-out counters, this option is considered impractical.

### *Alternative #2:* Store charge or fee on paper and plastic bags.

**Pros:** This option would result in a decrease in single-use carryout bags, and would provide the most options for consumers and retailers. With a fee, there would be a large initial revenue stream for the City.

**Cons:** Some increased administration for stores, and potential customer service issues during transition. With a fee, there would be substantial reporting and administration costs for the City and for retailers.

**Reason for not recommending:** This alternative was under consideration in 2009 as a result of the stakeholder process at the regional level. However the current proposed recommendation will have a greater impact on plastic and paper bag litter, and is therefore considered a superior option.

### *Alternative #3:* Allow exemption for degradable plastic bags.

This option would ban paper and plastic bags, but allow biodegradable plastic bags.

**Pros:** Transition would be easier as retailers and consumers are already accustomed to non-degradable plastic bags.

**Cons:** Issues of litter, recycling, resource consumption, and potential toxic residues with degradation may be created.

**Reason for not recommending:** Degradable plastic bags are not considered a better option over reusable bags.

### *Alternative #4:* Start date of ordinance would be July 1, 2011.

**Pros:** This option would provide earlier benefits of reduced trash and litter. Retailer input was that six to nine months would be needed to use current supplies of carryout bags.

**Cons:** There would be less time for stakeholder education.

**Reason for not recommending:** Administration recommends longer period in order to provide more opportunities for public education.

### **PUBLIC OUTREACH/INTEREST**

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

### **COORDINATION**

This memorandum has been coordinated with the Office of Economic Development, the Department of Planning, Building, and Code Enforcement, the Office of Intergovernmental Relations, the City Manager's Budget Office, and the City Attorney's Office.

### **FISCAL/POLICY ALIGNMENT**

This recommendation is in alignment with the Council approved Green Vision, and the Zero Waste and Urban Environmental Accords goals. This project is also consistent with the budget strategy principle of focusing on protecting our vital core services, especially the core service of "Managing Urban Runoff Quality" by protecting "the health of the South Bay Watershed through regulating programs that prevent pollution from entering the storm sewer system and waterways."

### **COST SUMMARY/IMPLICATIONS**

The total cost for outreach to retailers and consumers described in the attachment to this report through early 2012 is estimated to be \$186,000. Of this \$50,000 is available in multi-year communications-related creative service contracts that were encumbered in 2009-2010. An estimated \$96,000 of the total will be needed in 2010-2011 for notification to businesses, retailer tool-kit, and community engagement expenses. This 2010-2011 funding is available in the Environmental Services Department's existing Non-Personal/Equipment appropriation in the Integrated Waste Management Fund (Fund 423). The remaining \$40,000 would cover the costs of a self-certification letter to be sent to all businesses in November 2011. If the base budget remains at its current level for 2011-2012, no additional budget actions will be required to fund

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the needs currently anticipated for 2011-2012. The cost of ordinance-related outreach would be offset by AB939 Fee revenue in Fund 423, which may be used for planning, outreach, and other program costs related to achieving the City's source reduction and recycling goals. Ongoing outreach, technical assistance, and enforcement will be performed by existing staff positions, with no change in service levels anticipated.

**CEQA**

Environmental Impact Report File No. PP09-193.

/s/

JOHN STUFFLEBEAN

Director, Environmental Services

Attachment: Planned Ordinance Implementation Outreach Tactics

For questions please contact Jo Zientek, Deputy Director, at (408) 535-8557.

Attachment – Planned Ordinance Implementation Outreach Tactics

<b>Pre- Regulation</b>		
<b>Activity/Description</b>	<b>Audience</b>	<b>Timeline</b>
<b>Final citywide community engagement meeting</b> - To present the proposed regulation and answer question prior to City Council Consideration	Business Residents	November 2010
<b>Adoption</b>		
<b>Activity/Description</b>	<b>Audience</b>	<b>Timeline</b>
<b>Initial direct mail notification</b> - All retail and grocery stores will receive a mailer informing them of the City's adopted ordinance. A fact sheet will be included with details about the proposed ordinance, City contacts, and other resources.	Business	January 2011
<b>Chambers of commerce letter</b> – The letter will request that the Chambers inform their affected membership of the adopted ordinance.	Business	January 2011
<b>E-lists/newsletters</b> – A request to City Council and partners to include information on the City's adopted ordinance in their respective newsletters and list serves.	Business Residents	January 2011
<b>Civic Center TV</b> – Slides will be developed with information on the City's adopted ordinance.	Business Residents	January 2011
<b>Free Media</b> – Will work with various partners to publicize milestones as they relate to the City's adopted ordinance: Radio public service announcements, KBAY Mix 106.5 "Green Tips", internal and external stakeholder websites, newsletters and list serves, the Neighborhood Development Center's e-blast, Council newsletters, etc.	Business Residents	January 2011, on-going
<b>Website/Social media</b> – Postings on the City's and ESD's site will announce the City's adopted ordinance. A similar message will be posted on Facebook and Twitter.	Business Residents	January 2011
<b>Retailer website:</b> Launch a retailer website that will provide ordinance information, resources, a request form for the retailer tool kit, etc.	Business	January 2011
<b>Reusable shopping bag distribution:</b> Provide shopping bags as a starter bag at retail locations, food banks, and community events to prepare the public for a "reusable bag world."	Business Residents	January 2011- March 2012
<b>Press event:</b> Organize local leaders and community members to shop with reusable bags at a designated store, at a designated time to announce start date of ordinance.	Business Residents	September 2011

Activity/Description	Audience	Timeline
<p><b>Second Direct Mail</b> - This notice will remind businesses of the effective date of the ordinance, details of the ordinance, and that they should use up their supply of plastic bags. It will also inform them to look for more information on self certification and how to obtain a retailer toolkit.</p>	Business	September 2011
<p><b>Second chambers of commerce letter</b> – see item description above.</p>	Business	September 2011
<p><b>Website/Social Media</b> – see item description above.</p>	Business Residents	September 2011
<p><b>Newsletter release</b> – A short newsletter release will be sent to all local business associations, stakeholders, Council and other free media for publication.</p>	Business	September 2011
<p><b>Retailer tool kit</b> – Information on ordering items will be posted on the City’s website, included in the direct mail pieces, and distributed via stakeholders such as the California Grocers Association, California Retailers Association, Neighborhood Business Districts &amp; Associations, etc. The tool kit will include: Store posters, parking lot stencils, cash register tent cards.</p>	Business	September 2011
<p><b>Speaking Engagements</b> – Environmental Services staff will collaborate with the Housing Department to identify and secure presentations to low-income and senior housing developments. Other community group presentations will occur upon request.</p>	Residents	September 2011
<p><b>Shopping cart promotional placards</b> – To serve as a reminder to customers to shop with a reusable bag.</p>	Residents	September 2011
<p><b>Bill Insert</b> – Distribute to all single family dwellings in San José to remind them of the effective date of the ordinance, and provide details.</p>	Residents	September 2011
<p><b>Consumer prompts (reminders)</b> – These will be provided as part of the bag distribution and community events, and include: Rear window decals, small window decals, shopping list pads.</p>	Residents	September 2011-March 2012
<p><b>Make it a Habit and Grab-it Regional Campaign</b> – Partner with the Bay Area Recycling Outreach Coalition (BayROC) to conduct a print and broadcast media campaign in the south bay</p>	Residents	On-going
<p><b>Business self-certification certified letter</b> – Self-certification forms and instructions will be mailed to all affected businesses. Forms are required to be returned as part of the enforcement process.</p>	Business	November 2011