

CITY COUNCIL AGENDA

JANUARY 11, 2011

SYNOPSIS

PETE CONSTANT
ASH KALRA
SAM LICCARDO
KANSEN CHU
XAVIER E. CAMPOS

DISTRICT 1
DISTRICT 2
DISTRICT 3
DISTRICT 4
DISTRICT 5

CHUCK REED MAYOR

PIERLUIGI OLIVERIO
MADISON P. NGUYEN
ROSE HERRERA
DONALD ROCHA
NANCY PYLE

DISTRICT 6
DISTRICT 7
DISTRICT 8
DISTRICT 9
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 Tuesday at 7 p.m. as needed, 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
Absent Council Members: All Present.

1:32 p.m. - Regular Session, Council Chambers, City Hall
Absent Council Members: All Present.
- **Invocation (District 1)**
Father Soterios Rousakis from St. Nicholas Greek Orthodox Church presented the Invocation.
- **Pledge of Allegiance**
Mayor Reed and the 3rd Graders from Country Lane Elementary School led the Pledge of Allegiance.
- **Orders of the Day**
The Orders of the Day and the Amended Agenda were approved, with Item 4.1 deferred to 01/25/11.
- **Closed Session Report**
No Report.

1. CEREMONIAL ITEMS

- 1.1 Presentation of a commendation to Martha's Kitchen in recognition of their 30 years of providing the immeasurable service of feeding hungry men, women and children in the San José area. (Liccardo)
(Rules Committee referral 1/5/11)
Mayor Reed and Council Member Liccardo recognized and commended Martha's Kitchen in recognition of their 30 years of service.

1. CEREMONIAL ITEMS

- 1.2 Presentation of the environmental Hall of Fame Award to the City of San José for its achievements in clean tech innovation, sustainability, and green mobility through its Green Vision goals. (Mayor)
(Rules Committee referral 1/5/11)
Mayor Reed, accepted the environmental Hall of Fame Award, on behalf of the City of San José, from Stephen Tsu, President/CEO, K2 Solar, Inc.
- 1.3 Presentation of a proclamation declaring the month of January 2011 as “National Blood Donor Month” in the City of San José. (Mayor)
(Rules Committee referral 1/5/11)
Mayor Reed recognized the month of January 2011 as “National Blood Donor Month” in the City of San José.
- 1.4 Administer Oaths of Office for newly elected Council Members. (City Clerk)
(Rules Committee referral 1/5/11)
The Oaths of Office were administered to Mayor Chuck Reed, Vice Mayor Madison Nguyen and Council Members Sam Liccardo, Pete Constant, Xavier Campos and Donald Rocha.

2. CONSENT CALENDAR

- 2.1 **Approval of Minutes.**
There were none.
- 2.2 **Final adoption of ordinances.**

Recommendation: Final adoption of ordinances.

- (a) ORD. NO. 28866 – Rezoning certain real property situated at 405 North Third Street from the R-M Multiple Residence Zoning District to the A(PD) Planned Development Zoning District to allow up to *three* residential units (total) on a 0.17 gross acre site. PDC08-033
[Deferred from 12/14/10 – Item 2.2(h)]
Deferred to 01/25/11 per Administration.
- (b) ORD. NO. 28875 – Amending Title 6 of the San José Municipal Code by adding a new Chapter 6.87 to require Tobacco Retailers to be licensed prior to engaging in the sale of Tobacco Products or Tobacco Paraphernalia.
Ordinance No. 28875 adopted.
- (c) ORD. NO. 28876 – Rezoning certain real property, situated at the southwest corner of East Brokaw Road and Old Oakland Road, from the IP Industrial Park Zoning District and the HI Heavy Industrial Zoning District to A(PD) Planned Development Zoning District. PDC07-010
Ordinance No. 28876 adopted.

2. CONSENT CALENDAR

2.2 Final Adoption of Ordinances (Cont'd.)

- (d) ORD. NO. 28877 – Amending Chapter 9.10 of Title 9 of the San José Municipal Code to add a new Part 13 to ban Single-Use Carryout Bags, and prohibit the free distribution of recycled paper bags, by retail establishments, to be effective January 1, 2012.

Ordinance No. 28877 adopted.

2.3 Approval of Council Committee Reports.

Recommendation: Approval of Council Committee Reports.

- (a) Community and Economic Development Committee Report of November 29, 2010. (Pyle)
- (b) Rules and Open Government Committee Report of December 1, 2010. (Mayor)
- (e) Neighborhood Services and Education Committee Report of December 9, 2010. (Campos)
- (g) Public Safety, Finance and Strategic Support Committee Report of December 16, 2010. (Nguyen)

Approved.

- (c) Transportation and Environment Committee Report of December 6, 2010. (Liccardo)
- (d) Rules and Open Government Committee Report of December 8, 2010. (Mayor)
- (f) Rules and Open Government Committee Report of December 15, 2010. (Mayor)

Deferred to 01/25/10 per City Clerk.

2.4 Mayor and Council Excused Absence Requests.

Recommendation:

- (a) Request for an excused absence for Council Member Chu from the Special Meeting of the City Council on December 13, 2010 due to a family emergency. (Chu)
(Rules Committee referral 12/15/10)
- (b) Request for excused absences for Council Member Constant from the Regular Meetings of the Rules and Open Government Committee on February 2, 2011, April 20, 2011, June 1, 2011, August 3, 2011, October 5, 2011 and December 7, 2011 due to Authorized City Business: Santa Clara County LAFCO Meetings. (Constant)
- (c) Request for excused absences for Council Member Nguyen from the Regular Meeting of the Rules and Open Government Committee on January 5, 2011, due to a prior engagement. (Nguyen)
(Rules Committee referral 1/5/11)

Excused.

2. CONSENT CALENDAR

2.5 City Council Travel Reports.

There were none.

2.6 Agreement with Schindler Elevator Corporation for Elevator Maintenance and Repair Services.

Recommendation: Adopt a resolution authorizing the Director of Finance to:

- (a) Execute the second amendment to the Agreement with Schindler Elevator Corporation for elevator maintenance and repair services at citywide facilities to reduce monthly service costs by 10%, and exercise five additional one-year options for a total of eight remaining options to renew the Agreement, subject to the appropriation of funds.
- (b) Execute the second amendment to the Agreement with Schindler Elevator Corporation for elevator and escalator maintenance and repair services at the Norman Mineta San José International Airport to reduce monthly service costs by 10% and reduce time and material rates for unscheduled on-call services, and exercise five additional one-year options for a total of six remaining options to renew the Agreement, subject to the appropriation of funds.

CEQA: Not a Project, File No. PP10-066(a), Agreements and Contracts for Maintenance Service. (Finance)

Resolution No. 75690 adopted.

2.7 Deferred Payment of Parkland Fees for High-rise Multi-Family Residential Projects Located in the Downtown Core Area.

Recommendation: Adopt a resolution to amend the Schedule of Parkland Fees and Credits (Council Resolution No. 73587, as amended) authorizing the City Manager to negotiate and execute an amendment to agreements with developers of high-rise multi-family residential projects located in the Downtown Core Area who previously executed a deferment agreement with City to provide up to an additional 12 months for payment of parkland in-lieu fees and accrued interest owed to City. CEQA: Mitigated Negative Declaration, File No. PP07-130. (Parks, Recreation and Neighborhood Services)

Resolution No. 75691 adopted.

2.8 Deferment of Parkland Fees.

Recommendation: Adopt a resolution amending the Schedule of Parkland Fees and Credits (Resolution No. 73587 as amended) to provide an additional deferment of payment of parkland fees, interest and penalty until January 15, 2012, or the date of issuance of the first building permit for residential construction, whichever occurs earlier, for projects that currently have an approved parcel or final map by the City and have not been issued a building permit by the City for residential construction. CEQA: Statutorily Exempt, File No. PP10-067(a), CEQA Guidelines Section 15273, Rates, Tolls, Fares, and Charges. (Parks, Recreation and Neighborhood Services)

Resolution No. 75692 adopted.

2. CONSENT CALENDAR

2.9 Appointment to the Silicon Valley Workforce Investment Network Board.

Recommendation: Approve the appointment of Scott Green, Clean Tech and Regional Policy Officer for the City of San José Office of Economic Development, to serve as a public sector representative on the Silicon Valley Workforce Investment Network Board of Directors as required by law. (Mayor)
(Rules Committee referral 12/15/10)

Approved.

2.10 Re-appointments to Boards, Commissions and Committees.

Recommendation: As recommended by the Rules and Open Government Committee on December 15, 2010:

- (a) Re-appoint Vanessa Burbach and Clarence Madrilejos to the Human Rights Commission for terms ending December 31, 2013. (Chu)
- (b) Re-appoint Michael Fitzgerald and Elaine Coombs to the Advisory Commission on Rents for terms ending December 31, 2013. (Herrera)

[Rules Committee referral 12/15/10 – Items G(1)(a) and G(1)(b)]

Approved.

2.11 Redistricting Advisory Commission.

Recommendation: As recommended by the Rules and Open Government Committee on December 15, 2010 and pursuant to Charter Section 403, appoint members of the community to the Redistricting Advisory Commission. (Mayor)

[Rules Committee referral 12/15/10 – Items H(2)]

The memorandum from Mayor Reed, dated 01/07/11, was approved, including the suggestion that Staff review and consider the guidelines that have been approved by the voters from the two prior voting records.

2.12 Council Labor Negotiation Guidelines.

Recommendation: As recommended by the Rules and Open Government Committee on December 15, 2010, adopt a resolution modifying Council Labor Negotiation Guidelines (Council Policy 0-39) to provide for more transparency in the negotiation process. (Mayor)

[Rules Committee referral 12/15/10 – Items H(3)]

Deferred to 01/25/11 per Rules and Open Government Committee.

2.13 Council Member Campos' Travel to Sacramento, CA.

Recommendation: Approve travel by Council Member Campos to Sacramento, California on January 19 – 21, 2011 to attend the League of California Cities New Mayors and Council Members Academy. Source of Funds: Mayor & Council Travel Fund. (Campos)

(Rules Committee referral 1/5/11)

Approved.

2. CONSENT CALENDAR

2.14 Council Member Campos' Travel to Los Angeles, CA.

Recommendation: Approve travel by Council Member Campos to Los Angeles, California on January 21 – 22, 2011 to attend the League of California Cities, Latino Caucus Board Retreat as a potential 2011 Board Member. Source of Funds: Mayor & Council Travel Fund and Council Member to pay for airfare with personal funds. (Campos)

Approved.

2.15 Actions Related to Council Member Constant's Travel to Washington, D.C.

Recommendation:

- (a) Approve travel by Council Member Constant to Washington, D.C. on March 12 – 16, 2011 to attend the Congressional City Conference as Vice-Chair of the National League of Cities' Public Safety and Crime Prevention Policy and Advocacy Committee. Source of Funds: Mayor & Council Travel Fund. (Constant)
- (b) Request for excused absences for Council Member Constant from the Closed Session and Regular City Council Meeting on March 15, 2011 and the Regular Meeting of the of the Rules and Open Government Committee on March 16, 2011 due to Authorized City Business: 2011 National League of Cities Congressional City Conference in Washington, D.C. (Constant)

(Rules Committee referral 1/5/11)

Approved.

3. STRATEGIC SUPPORT SERVICES

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

City Manager Figone reported that Manager's Office was currently in the process of the 2011 negotiations with all of the bargaining units, except MEF, CEO and ABMEI. City Manager Debra Figone also provided highlights of Governor Brown's proposal to address the 25.4 Billion dollar deficit for the 2011-2012 State Budget.

3.2 Airport Commercial Paper Program Letter of Credit Replacement.

Recommendation:

- (a) Adopt a resolution continuing the authorization of the issuance of City of San José, San José International Airport Subordinated Commercial Paper Notes in several series in an aggregate amount not to exceed \$600,000,000 outstanding at any one time and superseding Resolution No. 69200, as amended; and authorizing the City's designated officers to establish terms and conditions for the issuance and payment of such commercial paper notes and to take other necessary actions in connection therewith.

Resolution No. 75693 adopted.

3. STRATEGIC SUPPORT SERVICES

3.2 Airport Commercial Paper Program Letter of Credit Replacement (Cont'd.)

- (b) Adopt a resolution authorizing the City's designated officers to negotiate, execute and deliver the following agreements related to the City of San José, San José International Airport Subordinated Commercial Paper Notes: (1) letter of credit and reimbursement agreements with each of JPMorgan Chase Bank, N.A., Bank of America, N.A., Citibank, N.A. and Wells Fargo Bank, N.A. and the related fee agreements; (2) a Second Amended and Restated Issuing and Paying Agreement with Deutsche Bank Trust Company Americas; (3) amended and restated dealer agreements with each of Barclays Capital Inc., Citigroup Global Markets Inc., and Morgan Stanley & Co. Incorporated; and authorizing the City's designated officers to take other necessary actions in connection therewith.

CEQA: Not a Project, File No. PP10-066, Agreements/Contracts (New or Amended). (Finance)

Resolution No. 75694 adopted.

3.3 Service Efforts and Accomplishments Report 2009-10.

Recommendation: Accept the report on City Government Performance. CEQA: Not a Project. (City Auditor's Office)

Report Accepted.

3.4 Statement of Policy and City Council Questions for the Selection of a New Chief of Police.

Recommendation: Adopt a Statement of Policy and City Council Questions related to the selection of a new Chief of Police as described in this memo, in compliance with City Charter Section 411.1. CEQA: Not a Project, File No. PP10-070(b), Personnel Related Decisions. (City Manager's Office)

The memorandum from Council Member Constant, dated 01/11/11 and the supplemental memorandum from City Manager Debra Figone, dated 01/10/11, were approved, adopting a Statement of Policy and City Council Questions, with two additional questions:

- (1) **Please describe how you would approach your relationship of the Office of the Independent Police Auditor, which is San José's model of police oversight. How will you ensure a proactive working relationship between the Department and the Independent Police Auditor?**
- (2) **The San José Police Department has a long tradition of maintaining and supporting a Police Reserve Unit. Please describe your experiences in working with Police Reserve Units. What are the best practices that you are aware of associated with the utilization and deployment of reserve police officers?**

Staff requested to respond to Council with an information memorandum/email addressing strategic support services and work force development training pertaining to the Statement of Policy.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Cultural Connection: San José's Cultural Plan for 2011-2020.

Recommendation: Adopt the Cultural Connection: San José's Cultural Plan for 2011-2020. CEQA: Not a Project, File No. PP10-066(e), Services that involved no physical changes to the environment. (Economic Development)

Deferred to 01/25/11 per Orders of the Day.

4.2 Actions Related to the 2010-2011 Hazardous Vegetation Commencement Report.

Recommendation: Conduct a Public Hearing and adopt a resolution:

- (a) Overruling any and all objections to the 2010-2011 Hazardous Vegetation Commencement Report.
- (b) Directing the Santa Clara County Department of Agriculture and Resource Management to abate the seasonal and/or recurrent public nuisances on those properties identified in the Report pursuant to Chapter 9.12 of Title 9 of the San José Municipal Code and the Weed Abatement Agreement between the City of San José and the County of Santa Clara.

CEQA: Exempt, File No. PP06-196. (Planning, Building and Code Enforcement)

The public hearing was held.

Resolution No. 75695 adopted.

4.3 Actions Related to the Environmental Impacts of the Montague Expressway Widening Improvement Project.

Recommendation: Adopt a resolution of California Environmental Quality Act (CEQA) findings that the Environmental Assessment/Initial Study/Negative Declaration prepared by the County of Santa Clara for the Montague Expressway Improvement project was completed in compliance with CEQA, reflects the City's independent judgment and analysis, and includes the adoption of a mitigation monitoring and reporting program.

CEQA: The environmental impacts of the Montague Expressway Widening Improvement project were addressed by a Negative Declaration approved by the Santa Clara County Board of Supervisors on December 10, 2002. CEQA resolution of findings are recommended for adoption by City Council. Council District 4. (Planning, Building and Code Enforcement)

Resolution No. 75696 adopted.

5. NEIGHBORHOOD SERVICES

6. TRANSPORTATION & AVIATION SERVICES

6.1 Public Hearing and Election on the Formation of Maintenance District 23.

Recommendation:

- (a) Adopt a resolution authorizing the City Manager, or her designee, to negotiate and execute an agreement for the City to pay the annual Maintenance District 23 assessment, if approved, on land owned by the County of Santa Clara and occupied by the City operated park and community center during the City's tenancy on the property.

No Action Taken. Majority Opposed. See Item 6.1(c).

Disqualified: Chu.

- (b) Conduct a public hearing regarding the formation of proposed Maintenance District 23 and at the close of the public hearing direct the City Clerk to tabulate the property owner ballots and report the results.

The public hearing was held.

- (c) If the majority of the votes tabulated are weighted in favor of the proposal:

- (1) Adopt a resolution:

- (a) Declaring the ballot tabulation results;
(b) Approving the engineer's report, base assessment and annual adjustments and forming Maintenance District 23; and
(c) Imposing the assessments on those properties within the district as proposed in the engineer's report.

Majority Opposed. No Action Taken.

Disqualified: Chu.

- (2) Establish a new fund in Maintenance District 23 (Berryessa Road from I-680 to Piedmont Road).

CEQA: Exempt, File No. PP10-090. Council District 4. (Public Works/Transportation)

Majority Opposed. No Action Taken.

Disqualified: Chu.

7. ENVIRONMENTAL & UTILITY SERVICES

8. PUBLIC SAFETY SERVICES

9. JOINT COUNCIL/REDEVELOPMENT AGENCY

- **Open Forum**

Michael McDuffie, resident of the Sleepy Hollow Trailer Park, presented complaints about the Capitol Flea Market on Capitol Expressway. The speaker was referred to Assistant City Manager Ed Shikada.

- **Adjournment**

The Council of the City of San José was adjourned at 3:30 p.m. in honor and memory of Jack Salois, retired San José Firefighter, former president of Local 1165 International Association of Firefighters, former staff to San José Council Member John DiQuisto, and a passionate community activist. He has served the community for many decades with passion, dedication and an earnest interest in improving the quality of life for the residents of San José. (Nguyen/Campos)