



MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, OCTOBER 5, 2010

The Council of the City of San José convened in regular session at 9:30 a.m. in the Council Chambers at City Hall.

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

Absent: Council Members - None.

Upon motion unanimously adopted, Council recessed at 9:32 a.m. to a Closed Session in Room W133 (A) to confer with Legal Counsel pursuant to Government Code subsection (a) of Section 54956.9 with respect to existing litigation: (1) in re: Padilla; Amount of Money or Other Relief Sought: Administrative Appeal; (B) to confer with Legal Counsel pursuant to Government Code subsection (c) of Section 54956.9 with respect to anticipated litigation in one (1) matter. (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP; (2) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters; How to obtain a copy of existing contract or MOA: web: http://www.sanjoseca.gov/employee_relations/moa.asp; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 10:50 a.m. and reconvened to Regular Session at 1:30 p.m. in the Council Chambers.

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

Absent: Council Members - None.

INVOCATION

Rev. Rob Kirk of Cambrian Park United Methodist Church presented the Invocation. (District 9)

PLEDGE OF ALLEGIANCE

Mayor Reed led the Pledge of Allegiance accompanied by Troop 290 Boy Scouts from Almaden Valley. (District 10)

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Item 2.14 added to the Agenda, and Item 1.4 dropped. (11-0.)

CEREMONIAL ITEMS

1.1 Presentation of a proclamation declaring October 7, 2010 “Disability Awareness Day” in the City of San José. (Constant)

Action: Mayor Reed and Council Member Constant recognized October 7, 2010 as “Disability Awareness Day” in the City of San José.

1.2 Presentation of a proclamation declaring the Month of October 2010 “Domestic Violence Awareness Month” in the City of San José. (Constant/Campos)

Action: Mayor Reed and Council Members Campos and Constant recognized the Month of October as “Domestic Violence Awareness Month” in the City of San José.

1.4 Presentation of a gift from the Mayor of the Chinese City of Dezhou to Mayor Reed and the City Council by Mary Tucker, who as a representative of the City of San José attended the International Solar Cities Congress held in Dezhou on September 15-17, 2010. (Environmental Services) (Rules Committee referral 9/29/10)

Action: Dropped per Orders of the Day.

CONSENT CALENDAR

2.2 Final adoption of ordinances.

- (a) **ORD. NO. 28814 – Rezoning certain real property situated on the south side of Wabash Avenue, approximately 550 feet west of Archer Street to R-2 Two-Family Residence Zoning District. C09-034**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28814 executed on September 28, 2010, submitted by the City Clerk.

Action: Ordinance No. 28814 was adopted. (11-0.)

- (b) **ORD. NO. 28815 – Rezoning certain real property situated on the east side of Senter Road, approximately 610 feet southerly of Tully Road (2500 Senter Road) to A(PD) Planned Development Zoning District. PDC09-033**

Documents Filed: Proof of Publication of the Title of Ordinance No. 28815 executed on September 28, 2010, submitted by the City Clerk.

Action: Ordinance No. 28815 was adopted. (11-0.)

2.3 Approval of Council Committee Reports.

- (a) **Rules and Open Government Committee Report of September 15, 2010. (Mayor)**
- (b) **Rules and Open Government Committee Report of September 8, 2010. (Mayor)**
[Deferred from 9/28/10 – Item 2.3(a)]
- (c) **Public Safety, Finance and Strategic Support Committee of September 16, 2010. (Nguyen)**
[Deferred from 9/28/10 – Item 2.3(c)]

Documents Filed: (1) The Rules and Open Government Committee Reports September 15 and September 8, 2010. (2) Public Safety, Finance and Strategic Support Committee Report dated September 16, 2010.

Public Comments: David Wall alleged material misrepresentation of fact in reference to the Consortium for Police Leadership in Equity's report and requested deferral of the Public Safety, Finance and Strategic Support Committee report.

Action: The Council Committee Reports were approved. (11-0.)

- 2.4 (a) **Request for an excused absence for Council Member Constant from the Joint City Council/Redevelopment Agency/Santa Clara County Board of Supervisors Meeting on October 15, 2010 due to Authorized City Business: American Leadership Forum Silicon Valley in San José, CA. (Constant) (Rules Committee referral 9/29/10)**
- (b) **Request for an excused absence for Mayor Reed from the Regular Meeting of the Rules and Open Government Committee on September 29, 2010 due to Authorized City Business: Silicon Valley Leadership Group’s CEO/Senior Officer Advocacy Trip to Washington, D.C. (Mayor) (Rules Committee referral 9/29/10)**

Documents Filed: (1) Memorandum from Council Member Constant, dated September 24, 2010, requesting an excused absence due to authorized City business. (2) Memorandum from Mayor Reed, dated September 24, 2010, requesting an excused absence due to authorized City business.

Action: The absences for Council Member Constant and Mayor Reed were excused. (11-0.)

- 2.6 **Adopt a resolution authorizing the City Manager to negotiate and execute a Focus City Agreement with Alaska Air Group, with a retroactive commencement date of March 10, 2010, to implement the terms and conditions of the Focus City Promotional Fee Waiver Incentive Program for new air service at Mineta San José International Airport. CEQA: Resolution Nos. 67380 and 71451, File No. PP10-152. (Airport)**

Documents Filed: Memorandum from Director of Aviation William F. Sherry, dated September 13, 2010, recommending adoption of a resolution.

Item 2.6 was pulled by Council Member Liccardo to question Staff on potential participation of other airlines.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Herrera, and carried unanimous, Resolution No. 75579, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Focus City Agreement with Alaska Air Group, with a Retroactive Commencement Date of March 10, 2010, to Implement the Terms and Conditions of the Focus City Promotional Fee Waiver Incentive Program for New Air Service at Mineta San José International Airport”, was adopted. (11-0.)

- 2.7 (a) **Adopt a resolution authorizing the City Manager to accept the OJT National Emergency Grant (NEG) Grant award in the amount of \$725,462.**
- (b) **Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the Workforce Investment Act Fund (290) for 2010-2011 for the initial grant awards received as follows:**
- (1) **Increase the estimate for Earned Revenue by \$478,000 and**
 - (2) **Establish an appropriation to the Office of Economic Development for the OJT NEG grant award in the amount of \$478,000.**

CEQA: Not a Project; File No. PP10-067(b), Appropriation Ordinance. (Economic Development/City Manager's Office)

Documents Filed: Memorandum from Chief Development Officer Paul Krutko and Budget Director Jennifer Maguire, dated September 13, 2010, recommending adoption of a resolution and appropriation ordinance and funding sources resolution amendments.

Action: Ordinance No. 28820, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28765 to Appropriate Monies in the Workforce Investment Act Fund for the On-the-Job Training (OJT) National Emergency Grant (NEG) Award through the American Recovery & Investment Act (ARRA); and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; Resolution No. 75580, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Accept an On-the-Job Training National Emergency Program Grant Award in An Amount Not To Exceed \$725,462"; and Resolution No. 75581, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 75447 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2010-2011 to Adjust Revenues in the Workforce Investment Act Fund", were adopted. (11-0.)

- 2.8 (a) **Adopt a resolution authorizing the City Manager to:**
- (1) **Negotiate and execute an Agreement with Fringe Benefits Management Company (FBMC) to provide compliance management services for the City's medical and childcare flexible spending accounts, including Internal Revenue Code (IRC) Section 125 plan administration, for the period of January 1, 2011 to December 31, 2011, and to exercise up to three one-year options to renew the Agreement through December 31, 2014, for costs not to exceed \$1,000 for calendar year 2011 and with annual cost adjustments for each subsequent year based on a pre-funding requirement in the flexible spending account program and collective bargaining agreements where applicable, for a total amount not to exceed \$4,000 for a potential four-year term, subject to the appropriation of funds by the City Council and collective bargaining agreements where applicable;**
 - (2) **Negotiate and execute any group plan documents, adoption agreements, Business Associate Agreements, or other ancillary agreements with FBMC that are necessary to facilitate the above Agreement for the period of January 1, 2011 through December 31, 2014.**

2.8 (Cont'd.)

- (b) **Adopt a resolution authorizing the City Manager to:**
- (1) **Negotiate and execute an Agreement with Fringe Benefits Management Company (FBMC) to provide enrollment, administration and customer services (broker services) in support of the City's voluntary insurance benefits program for employees, retirees, dependents and beneficiaries for the period of January 1, 2011 to December 31, 2011, and to exercise up to three one-year options to renew the Agreement through December 31, 2014, for no cost to City for the potential four-year term; and**
 - (2) **Negotiate and execute any group plan documents, adoption agreements, Business Associate Agreements, or other ancillary agreements with FBMC that are necessary to facilitate the Agreement for voluntary insurance support services, for the period of January 1, 2011 through December 31, 2014; and**
 - (3) **Negotiate and execute, through FBMC, any group insurance plan contracts, Business Associate Agreements, or other Agreements with Trustmark Insurance Company (Trustmark) that are necessary to provide voluntary (participant-paid) insurance benefits, including Critical Illness Insurance (with Cancer Rider) group plans and Accident Insurance group plans, for City's employees, retirees, dependents and beneficiaries for the period of January 1, 2011 through December 31, 2014, for no cost to City for the potential four-year term.**
- (c) **Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the Benefit Fund (Fund 160) for 2010-2011;**
- (1) **Establish an estimate for Earned Revenue to the Benefit Fund in the amount of \$1,000.**
 - (2) **Establish an appropriation to the Human Resources Department for Flexible Spending Accounts in the amount of \$1,000.**
- (Human Resources/City Manager's Office)**

Documents Filed: Joint memorandum from Director of Human Resources Mark Danaj and Budget Director Jennifer Maguire, dated September 16, 2010, recommending adoption of resolutions and appropriation ordinance and funding sources resolution amendments.

Action: Ordinance No. 28821, entitled: "An Ordinance of the City of San José Amending Ordinance No. 28765 to Appropriate Monies in the Benefit Fund for Flexible Spending Accounts; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; Resolution No. 75582, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute

2.8 (Cont'd.)

an Agreement with Fringe Benefits Management Company for Flexible Spending Accounts and IRC Section 125 Compliance Services in an Amount Not to Exceed \$4,000 for the Period of January 1, 2011 to December 31, 2014”, Resolution No. 75583, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with Fringe Benefits Management Company for Voluntary Insurance Support Services at No Cost to City and Agreements with Trustmark Insurance Company for Voluntary Critical Illness and Accident Group Insurance Products at No Cost to the City”; and Resolution No. 75584, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 75547 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2010-2011 to Adjust Revenues in the Benefit Fund”, were adopted. (11-0.)

2.9 **Approve a Transportation Fund for Clean Air grant agreement with the Santa Clara Valley Transportation Authority in the amount of \$635,000 for the retiming of 164 traffic signals. CEQA: File No. PP10-158. (Transportation)**

Documents Filed: (1) Joint memorandum from Director of Human Resources Mark Danaj and Budget Director Jennifer Maguire, dated September 16, 2010, recommending approval of a grant agreement. (2) TFCA Grant Funding Agreement: City Council Action Request, dated September 13, 2010.

Action: A Transportation Fund for a Clean Air grant agreement with the Santa Clara Valley Transportation Authority in the amount of \$635,000 for the retiming of 164 traffic signals was approved. (11-0.)

2.10 **Approve travel for City Manager Debra Figone to Seattle, Washington on October 27-29, 2010 to participate in the annual San José-Silicon Valley Chamber of Commerce City-to-City trip as one of the City’s designated representatives. (City Manager’s Office) (Rules Committee referral 9/22/10)**

Documents Filed: Memorandum from City Manager Debra Figone, dated September 23, 2010, requesting approval of a travel request.

Action: The travel request was approved. (11-0.)

2.11 **As recommended by the Rules and Open Government Committee on September 29, 2010, approve the recommended City positions for Propositions on the November 2, 2010 California General Election ballot:**

Documents Filed: Memorandum from City Clerk Lee Price, dated September 29, 2010, transmitting the recommendations of the Rules and Open Government Committee.

2.11 (Cont'd.)

Mayor Reed pulled item 2.11 to question staff on specific regulations should Proposition 19 and 26 pass.

Deputy City Manager Deanna J. Santana presented a policy framework that is being developed by the League of California Cities and offered to bring back potential policy options to Council as appropriate.

Director of Intergovernmental Relations Betsy Shotwell advised that she is in the process of taking the legislative guiding principles to the four Council Committees, the Rules and Open Government Committee and the full Council in early December to allow opportunities for further discussion.

Council discussion continued.

Motion: Vice Mayor Chirco moved approval to vote on each item separately. Council Member Liccardo seconded the motion. The motion passed unanimously.

- (a) **Adopt an Oppose Position for Proposition 19. Legalizes Marijuana Under California But Not Federal Law, Permits Local Governments To Regulate And Tax Commercial Production, Distribution, And Sale Of Marijuana. Initiative Statute.**

Action: A position of Opposition was adopted. (9-2. Noes: Kalra, Oliverio.)

- (b) **Adopt an Oppose Position for Proposition 23. Suspends Implementation of Air Pollution Control Law (AB 32) Requiring Major Source of Emissions to Report and Reduce Greenhouse Gas emissions that Cause Global Warming Until Unemployment Drops to 5.5 Percent or Less for Full Year. Initiative Statute.**

Action: A position of Opposition was adopted. (9-2. Noes: Constant, Oliverio.)

- (c) **Adopt an Oppose Position for Proposition 26. Requires that Certain State and Local Fees be Approved by Two-Thirds Vote. Fees Include Those That Address Adverse Impacts on Society or the Environment Caused by the Fee-Payer's Business. Initiative Constitutional.**

(City Manager's Office)

[Rules Committee referral 9/29/10 – Item H(3)]

Action: A position of Opposition was adopted. (9-2. Noes: Constant, Oliverio.)

- 2.12 As recommended by the Rules and Open Government Committee on September 29, 2010, approve the application for appointment of public members to the Boards of Administration of the Police and Fire Department Retirement Plan (Police and Fire Retirement Board) and the Federated City Employees' Retirement System (Federated Board) as amended. (City Clerk)
[Rules Committee referral 9/29/10 – Item H(4)]**

Documents Filed: Memorandum from City Clerk Lee Price, dated September 30, 2010, transmitting the recommendations of the Rules and Open Government Committee.

Item 2.12 was pulled by Council Member Herrera with the recommendation that this item be deferred so the language could be re-worked. Director of Employee Relations Alex Gurza offered background information on the proposal, and expressed concerns regarding a deferral since it would delay seating of a new Board.

City Attorney Richard Doyle discussed options in changing the wording of the application.

Motion: Council Member Herrera moved approval to accept the application with removal of the wording “*or work*” from the applicant’s requirement and to modify the ordinance accordingly. The motion was seconded by Council Member Nguyen.

Substitute Motion: Council Member Constant moved approval that the recommendation go forward with the application and ordinance as it stands. The substitute motion was seconded by Council Member Oliverio. The substitute motion failed. (5-6. Noes: Campos, Chu, Herrera, Kalra, Nguyen, Pyle.)

Action: On a call for the question, the original motion carried, and the application for appointment of public members to the Boards of Administration of the Police and Fire Department Retirement Plan (Police and Fire Retirement Board) and the Federated City Employees' Retirement System (Federated Board) was approved, with direction to Staff to: (1) Modify the application to read “...*must live ~~or work~~ within 50 miles of San José City Hall...*”; and (2) Return with a modification to the ordinance to reflect this change. (6-5. Noes: Chirco, Constant, Liccardo, Oliverio; Reed.)

- 2.13 As recommended by the Rules and Open Government Committee on September 29, 2010:**

- (a) Approve the District 8 “Day in the Park” as a City Sponsored Special Event;**
- (b) Approve and accept donations from various individuals, businesses, or community groups to support the event. (City Clerk)**

[Rules Committee referral 9/29/10 – Item H(5)]

Documents Filed: Memorandum from City Clerk Lee Price, dated September 29, 2010, transmitting the recommendations of the Rules and Open Government Committee.

Action: The District 8 “Day in the Park” as a City Council Sponsored Special Event was approved, and approval to accept donations from various individuals, businesses or community groups to support the event, was authorized. (11-0.)

- 2.14 (a) Council by motion waive the 10-day noticing requirement for the following item, approve its placement on the agenda, and consider the following recommendation.
- (b) Adopt a resolution authorizing the City Manager to negotiate and execute an extension to the Reimbursable Space Act Agreement with NASA Ames Research Center for Utilization of Moffett Federal Airfield for Enforcement and Emergency Response Capabilities, for an extension period not to exceed two years, with a space fee *not to exceed \$32,600 over two years* and fuel cost in the amount of federal government cost plus 14.7%.

(General Services/Police)
(Orders of the Day)

Documents Filed: Memorandum from Director of General Services Peter Jensen, dated October 5, 2010, recommending adoption of a resolution with the waiver of a 10-day noticing requirement.

Assistant City Manager Ed Shikada pulled item 2.14 to modify the wording as it appears on the Agenda, whereby the space fee is “*not to exceed \$32,600 over two years*”, as shown above.

Action: Upon motion by Council Member Pyle, seconded by Council Member Herrera and carried unanimously, Resolution No. 75585, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Extension to the Reimbursable Space Act Agreement with NASA Ames Research Center for Utilization of Moffett Federal Airfield by the Police Helicopter Unit”, was adopted, as modified above. (11-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

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

The City Manager reported that the Violent Crime Enforcement Team (VCET) and Metro Unit have been combined under one new “Metro Unit”, and eighty-nine sworn vacant positions have been eliminated in the Police Department during the most recent budget cycle. She noted that the City is eligible to receive a 7.2 million COPS Hiring Program Grant, but added that Staff is evaluating the grant requirements for conditions.

- 3.2 **Approve the response to the Santa Clara County Civil Grand Jury Report entitled “Should the City Council Continue to Subsidize Team San José’s Increasing Losses?”**
CEQA: Not a Project, File No.PP10-069(a), Staff Reports/Assessments/Annual Reports/Information Memos. Council District 3. (Economic Development)
(Deferred from 8/24/10 – Item 3.2 and 9/14/10 – Item 3.2)

Action: Deferred to October 19, 2010 per Administration.

3.3 Approve the response to the 2009-2010 Santa Clara County Civil Grand Jury Report entitled “Cities Must Rein in Unsustainable Employee Costs.” CEQA: Not a Project, File No.PP10-069(a), Staff Reports/Assessments/Annual Reports/Information Memos. (City Manager’s Office)

Documents Filed: Memorandum from City Manager Debra Figone, dated September 21, 2010, recommending approval of the response to the 2009-2010 Santa Clara County Grand Jury Report.

Mayor Reed recommended changes to Staff’s response as indicated below in action.

City Manager Debra Figone provided an overview of the City’s response to the Grand Jury Report. Council discussion followed with additional information provided by Director of Employee Relations Alex Gurza and Staff.

Action: Upon motion by Council Member Oliverio, seconded by Council Member Constant and carried unanimously, the response to the 2009-2010 Santa Clara County Civil Grand Jury Report entitled “Cities Must Rein in Unsustainable Employee Costs” was accepted, as modified. Staff was directed to emphasize that statistical data regarding the average costs for employees is based on 2009-2010 data; and further, to refer the Grand Jury to the San José City Auditor’s Report for details. (10-0-1. Absent: Constant.)

COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Conduct a public hearing and consider an ordinance amending Title 20 of the San José Municipal Code to amend Chapter 20.50 to add a new Part 4 clarifying setback regulations for the Industrial Districts, to amend Sections 20.100.110 and 20.100.1210 of Chapter 20.100 to allow Utility Providers to sign Development Permit Applications for utility work occurring entirely within public services easements or public utility easements, to amend Section 20.200.700 of Chapter 20.200 to clarify the definition of Front Lot Line, and to make other related, technical and nonsubstantive conforming amendments to said Title 20. CEQA: Exempt, File No. PP10-150. Director of Planning, Building and Code Enforcement and Planning Commission recommends approval (6-0-1-0). Citywide

Documents Filed: (1) Memorandum from Planning Commission Secretary Joseph Horwedel, dated September 23, 2010, transmitting the Planning Commission recommendations of approval. (2) Proof of Publication of Notice of Public Hearings, executed on September 3, 2010, submitted by the City Clerk.

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

Director of Planning, Building and Code Enforcement Joseph Horwedel and Assistant Director of Public Works David Sykes responded to questions regarding the property notification process.

4.1 (Cont'd.)

Action: Upon motion by Council Member Nguyen, seconded by Council Member Liccardo and carried unanimously, Ordinance No. 28828, entitled: “An Ordinance of the City of San José Amending Title 20 of the San José Municipal Code to Amend Chapter 20.50 to Add a New Part 4 Clarifying Setback Regulations for the Industrial Districts, to Amend Sections 20.100.110 and 20.100.1210 of Chapter 20.100 to Allow Utility Providers to Sign Development Permit Applications for Utility Work Occurring Entirely Within Public Services Easements or Public Utility Easements, to Amend Section 20.200.700 of Chapter 20.200 to Clarify the Definition of Front Lot Line and Making Other Related, Technical and Nonsubstantive Conforming Amendments to Said Title 20”, was passed for publication. (10-0-1. Absent: Constant.)

- 4.2 **Conduct a public hearing and consider an ordinance rezoning the real property located on the northwest side of Saratoga Avenue, 900 feet northeasterly of Graves Avenue (1471 Saratoga Avenue), from the A(PD) Planned Development Zoning District to the CO(PD) Planned Development Zoning District to allow medical office uses in an existing office facility on a 2.36 gross acre site (Jack F. and Wilburta E. Taylor Trustee, Owner). CEQA: Exempt. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.**

PDC10-011 – District 1

Action: Dropped. To be Renoticed October 19, 2010.

- 4.3 (a) **Approving the final rankings of the five design-build entities that responded to the RFP for the San José McEnery Convention Center Expansion and Renovation Project; and;**
- (b) **Authorizing the Public Works Director to negotiate a design-build contract for the Project as follows:**
- (1) **Begin negotiating with the highest ranked contractor, Hunt Construction Group;**
 - (2) **Begin negotiating with the next highest ranked contractor, Turner Construction, if after having negotiated with Hunt, the Director determines that the City’s interests are best served by beginning negotiations with the next highest ranked contractor; and**
 - (3) **Begin negotiating with each of the other contractors in order of their ranking as the Director determines is appropriate.**

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

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated September 16, 2010, recommending adoption of a resolution.

4.3 (Cont'd.)

Director of Public Works Katy Allen offered a presentation on the San José McEnery Convention Center Expansion, and Assistant Director Public Works David Sykes, Assistant Director of Finance Julia H. Cooper and Deputy Director Public Works Harry Freitas offered additional information on the project. Chief Development Officer Paul Krutko responded to questions from Council.

Public Comments: Ray Zonino, Hunt Construction Group and Tod Voth from Populous expressed enthusiasm for their collaborative effort on the proposed renovation project.

Action: Upon motion by Council Member Nguyen, seconded by Council Member Liccardo and carried unanimously, Resolution No. 75586, entitled: "A Resolution of the Council of the City of San José Approving the Final Rankings for Design-Build Entities for the San José McEnery Convention Center Project and Authorizing the Director of Public Works to Begin Negotiating the Design-Build Contract", was adopted. (11-0.)

4.4 **Adopt a resolution delegating to the City Manager and the City Manager's authorized designees the authority to conduct a Tax Equity and Equality Act ("TEFRA") Hearing related to the revenue bonds proposed to be issued by the California Enterprise Development Authority to benefit SunPower Corporation and/or a related entity. CEQA: Not a Project, File No. PP10-068, General Procedure & Policy Making. (Economic Development) (Rules Committee referral 9/29/10)**

Documents Filed: Memorandum from Chief Development Officer Paul Krutko, dated October 5, 2010, recommending adoption of a resolution.

Mayor Reed offered an overview of the collaborative efforts the City has made with SunPower. Jim Parker, Tax Director with SunPower Corporation, spoke on behalf of SunPower to thank the City for consideration of the proposal.

Action: Upon motion by Vice Mayor Chirco, seconded by Council Member Oliverio and carried unanimously, Resolution No. 75587, entitled: "A Resolution of the Council of the City of San José Delegating Authority to the City Manager and the City Manager's Designees to Conduct a Public Hearing with Respect to the Proposed Issuance by the California Enterprise Development Authority of Its Revenue Bonds for the Benefit of SunPower Corporation and/or a related Entity for Purposes of Section 147(f) of the Internal Revenue Code of 1986", was adopted. (11-0.)

NEIGHBORHOOD SERVICES

5.1 (a) Adopt a resolution that:

- (1) Authorizes the City Manager, or designee, to submit a grant application in an amount not to exceed \$1,055,000 to the Metropolitan Transportation Commission (MTC) under the Community Design and Transportation (CDT) Capital Grant program for the Coyote Creek Trail (Highway 237 Bikeway to Tasman Drive) Project (Project);
- (2) Certifies that the City will have available, prior to commencement of any work on the Project included in the application, the required local match of \$350,000 and any additional sufficient funds required to complete the Project;
- (3) Certifies that the City has or will have sufficient funds to operate and maintain the Project;
- (4) Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines for the Project;
- (5) Delegates the authority to the City Manager, or designee, to conduct all negotiations, execute and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the Project; and
- (6) Once constructed, keeps the Coyote Creek trail segment between Highway 237 Bikeway and Tasman Drive open 24 hours a day, seven days a week, for the life of the trail, except during emergencies, maintenance, and unforeseeable circumstances, as required by the Valley Transportation Authority (VTA)/MTC for the receipt of the grant funds.

(b) Adopt a resolution that:

- (1) Authorizes the City Manager, or designee, to submit a grant application in an amount not to exceed \$350,000 to the State of California Natural Resources Agency under the Environmental Enhancement and Mitigation Program (EEMP) grant funding for the Project to be used as the local match for the grant in Recommendation A above;
- (2) Certifies that City agrees to comply with assurances in the EEMP application as set forth in this memorandum and the proposed resolution;
- (3) Certifies that the City has or will have sufficient funds to operate and maintain the Project; and
- (4) Subject to the City receiving the CDT grant set forth in Recommendation A above, delegates the authority to the City Manager, or designee, to conduct all negotiations, execute and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the Project.

5.1 (Cont'd.)

(c) Adopt a resolution that:

- (1) Subject to funding shortfall to complete the Project based on the combined grants set forth above, authorizes the City Manager, or designee, to submit a grant application in an amount up to \$300,000 to the Santa Clara County Open Space Authority under the 20% Funding Program for the Project; and
- (2) Delegates the authority to the City Manager, or designee, to conduct all negotiations and execute and submit all documents, including, but not limited to, applications, agreements, amendments, and payment requests, which may be necessary for the completion of the Project.

CEQA: Categorically Exempt, File No. PP10-144. (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated September 13, 2010, recommending adoption of resolutions.

Parks, Recreation and Neighborhood Services Division Manager Matt Cano responded to questions from Council.

Action: Upon motion by Council Member Constant, seconded by Council Member Oliverio and carried unanimously, Resolution No. 75588, entitled: "A Resolution of the Council of the City of San José Authorizing the Filing of an Application for Federal Surface Transportation Program (STP) and/or Congestion Mitigation and Air Quality Improvement (CMAQ) Funding and Committing the Necessary Non-Federal Match and Stating the Assurance to Complete the Project"; Resolution No. 75589, entitled: "A Resolution of the Council of the City of San José, Approving the Application for Grant Funds from the Environmental Enhancement and Mitigation Program Under Section 164.56 of the Streets and Highways Code for Coyote Creek Trail (Highway 237 Bikeway to Tasman Drive) (The Project)", and Resolution No. 75590, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager or Designee to Execute and Submit an Application to the Santa Clara County Open Space Authority for a Grant for the Coyote Creek Trail (Highway 237 Bikeway to Tasman Drive) In an Amount Not to Exceed \$300,000 Under the 20% Funding Program for the Project, to Accept the Grant if Awarded, and to Execute all Related Documents", were adopted. (11-0.)

TRANSPORTATION & AVIATION SERVICES

- 6.1 Approve a Cooperation Agreement with the California High Speed Rail Authority addressing the design of an aerial alignment in the Downtown San Jose area. CEQA: Not a Project, File No. PP10-066(e), agreement involving no physical change to the environment. The recommended actions are advisory to the CHSRA. The CHSRA is in the process of preparing an EIR for the High-Speed Train project. (Transportation)**

Action: Deferred to October 19, 2010 per September 22, 2010 Rules and Open Government Committee.

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 Accept the report on the Request for Proposals for a Power Purchase and Site Lease Agreement for Fuel Cell System Power Production and adopt a resolution authorizing the Director of Finance to execute a Power Purchase Agreement, Site Lease and other necessary documents, with UTS Bio-Energy SJ-1, LLC (UTS) (Encinitas, CA) to purchase fuel cell energy at the San José/Santa Clara Water Pollution Control Plant for a 20 year term. CEQA: Exempt, File No. PP10-112. (Environmental Services/Finance)**

Action: Deferred to October 19, 2010 per Administration.

OPEN FORUM

Naomi Nakano-Matsumoto expressed concerns over the effects of budget cuts on social services.

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 5:05 p.m.

RECESS/RECONVENE

The City Council recessed at 5:05 p.m. from the afternoon Council Session and reconvened at 7:03 p.m. in the Council Chambers, City Hall.

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

Absent: Council Members - None.

CEREMONIAL ITEM

1.3 Presentation of a proclamation declaring the Month of October as “Filipino History Month” in the City of San José. (Chu/Liccardo) (Rules Committee referral 9/29/10)

Action: Mayor Reed and Council Members Chu and Liccardo recognized the Month of October as “Filipino History Month” in the City of San José.

PUBLIC HEARINGS ON CONSENT CALENDAR

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

- 11.1 (a) Consider an ordinance rezoning the real property generally bounded by Penitencia Creek Road to the north, Toyon Avenue to the east, Golf Drive to the south, and Gridley Street to the west from County of Santa Clara to R-1-8 Single Family Residence (approx. 106 gross acres) and A Agriculture zoning District (approx. 13 gross acres) on an approximately 119 gross acre unincorporated island consisting of approximately 630 parcels (Multiple Owners). CEQA: San José 2020 General Plan EIR, Resolution No. 65459. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.
C10-012 – District 5**
- (b) Consider an ordinance rezoning the real property generally bounded by Patt Avenue, McKee Road, North White Road, and a line 150 feet westerly of Francis Drive from County of Santa Clara to R-1-8 Single Family Residence Zoning District on an approximately 31 gross acre unincorporated County island consisting of approximately 115 parcels (Multiple Owners). CEQA: San José 2020 General Plan EIR, Resolution No. 65459. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.
C10-013 – District 5**

11.1 (Cont'd.)

- (c) Consider an ordinance rezoning the real property generally bounded by Gay Avenue to the north, North Capitol Avenue to the west, and Alum Rock Avenue to the south, and a line approximately 950 feet southwesterly of North White Road to the east from County of Santa Clara to R-1-8 Single Family Residence Zoning District for an approximately 64 gross acre unincorporated County island consisting of approximately 260 parcels (Multiple Owners). CEQA: San José 2020 General Plan EIR, Resolution No. 65459. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.
C10-014 – District 5
- (d) Consider an ordinance rezoning the real property generally bounded by Florence Avenue, South White Road, Story Road, Lower Silver Creek, and South Capitol Avenue from County of Santa Clara to R-1-8 Single Family Residence Zoning District (approximately 126 gross acres) and CN Commercial Neighborhood Zoning District (approximately 1 acre) on an approximately 127 gross acre unincorporated County island consisting of approximately 630 parcels (Multiple Owners). CEQA: San José 2020 General Plan EIR, Resolution No. 65459. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.
C10-015 – District 5

Documents Filed: (1) Reports of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C10-012 through C10-015, each dated September 13, 2010. (2) Proof of Publication of Notice of Public Hearings, each executed on September 10, 2010, submitted by the City Clerk.

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

Action: The recommendation of the Planning Director and Planning Commission was approved, Ordinance No. 28822, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated at the North Side of Penitencia Creek Road, Approximately 300 Feet West of Noble Avenue, from County of Santa Clara to a Agricultural Zoning District”; and Ordinance No. 28823, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated at the West Side of Noble Avenue, Approximately 100 Feet North of Penitencia Creek Road, from County of Santa Clara to R-1-8 Single Family Residence Zoning District”, Ordinance No. 28824, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Generally Bounded by Patt Avenue, Mckee Road, North White Road, and a Line 150 Feet Westerly of Francis Drive From County of Santa Clara to R-1-8 Single Family Residence Zoning District”; and Ordinance No. 28825, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Generally Bounded by Gay, North Capitol and Alum Rock Avenues, and a Line Approximately 950 Feet Southwesterly of North White Road From County of Santa Clara to R-1-8 Single Family Residence Zoning District”;

11.1 (Cont'd.)

Ordinance No. 28826, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Generally Bounded by Florence Avenue, South White Road, Story Road, Lower Silver Creek, and South Capitol Avenue from County of Santa Clara to R-1-8 Single Family Residence Zoning District”; and Ordinance No. 28827, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Located at the Southwest Side of South White Road, Approximately 130 Feet South of Westboro Drive, from County of Santa Clara to CN Commercial Neighborhood Zoning District”, were passed for publication. (11-0)

11.2 Adopt resolutions initiating proceedings and setting November 9, 2010 at 7:00 p.m. for public hearings on the reorganizations of the following territories:

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

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

11.2 (Cont'd.)

Documents Filed: (1) Reports of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C10-012, C10-013, C10-014, and C10-014, each dated September 13, 2010, recommending approval. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated September 13, 2010, transmitting the Planning Commission recommendation. (3) Three Proof of Publication of Notice of Public Hearings, executed on September 10, 2010 submitted by the City Clerk.

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

Action: Upon motion by Council Member Herrera, seconded by Council Member Nguyen, and carried unanimously, the recommendations of the Planning Commission and the Planning Director were approved, and Resolution No. 75596, entitled: "A Resolution of the Council of the City of San José Initiating Reorganization Proceedings for the Annexation and Detachment of Certain Inhabited Territory Designated as Penitencia No. 77, Described More Particularly Herein, and Setting the Date, Time and Place for Consideration of Such Reorganization", Resolution No. 75597, entitled: "A Resolution of the Council of the City of San José Initiating Reorganization Proceedings for the Annexation and Detachment of Certain Inhabited Territory Designated as McKee No. 136, Described More Particularly Herein, and Setting the Date, Time and Place for Consideration of Such Reorganization", Resolution No. 75598, entitled: "A Resolution of the Council of the City of San José Initiating Reorganization Proceedings for the Annexation and Detachment of Certain Inhabited Territory Designated as McKee No. 135, Described More Particularly Herein, and Setting the Date, Time and Place for Consideration of Such Reorganization"; and Resolution No. 75599, entitled: "A Resolution of the Council of the City of San José Initiating Reorganization Proceedings for the Annexation and Detachment of Certain Inhabited Territory Designated as Capitol No. 57, Described More Particularly Herein, and Setting the Date, Time and Place for Consideration of Such Reorganization", were adopted. (11-0.)

END OF PUBLIC HEARINGS ON CONSENT CALENDAR

- 11.3 (a) Consideration of and vote on a Majority Protest to Prezoning C10-010 filed pursuant to Part 5 of Chapter 20.120 of the City’s Zoning Code to protest a rezoning to the R-1-5 Single-Family Residence Zoning District as to approximately 94.5 acres and CN Commercial Neighborhood Zoning District as to approximately 8.5 acres for an approximately 103 gross acre County pocket.**
- (b) Consider an ordinance rezoning the real property generally bounded by Central Park Way, Union Avenue, and Camden Avenue from County of Santa Clara to R-1-5 Single Family Residence Zoning District as to approximately 94.75 acres and CN Commercial Neighborhood Zoning District as to approximately 8.24 acres for an approximately 103 gross acre unincorporated County of Santa Clara pocket consisting of approximately 330 parcels (Owners: Multiple). CEQA: San José 2020 General Plan EIR, Resolution No. 65459. Director of Planning, Building and Code Enforcement and Planning Commission recommends approval (5-0-1-1).
C10-010 – District 9
[Continued from 9/21/10 – Item 11.1(b)]**

Action: Continued to October 26,,2010 per Administration.

- 11.4 Adopt a resolution initiating proceedings and setting December 7, 2010 at 7:00 p.m. for a public hearing on the reorganization of territory designated as Cambrian No. 36 which involves the annexation to the City of San José of approximately 103 gross acres of land generally bounded by Central Park Drive to the north, State Highway 17 to the west, Camden Avenue to the south and Union Avenue to the east, and the detachment of the same from the appropriate special districts, County Lighting, West Valley Sanitation, and Area No. 01 (Library Services) County Service and maintain the area within the Central Fire District with the Santa Clara County Fire Department providing first response as currently occurs. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required. CEQA: The environmental impacts of this project were addressed by a Final EIR entitled, “San José 2020 General Plan,” and certified on August 16, 1994, by the City of San José City Council. Council District 9. (Planning, Building and Code Enforcement)**

Action: Continued to October 26,, 2010 per Administration.

OPEN FORUM

R.J. Castro spoke for continued funding of the Police Activities League (P.A.L.) Mayor Reed referred Mr. Castro to the City Manager for clarification on recent changes in staffing in the Police Department.

ADJOURNMENT

The Council of the City of San José was adjourned at 8:20 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

rmk/10-05-10.MIN

Access the video, the agenda and related reports for this meeting by visiting the City's website at <http://www.sanjoseca.gov/clerk/agenda.asp> or <http://www.sanjoseca.gov/clerk/MeetingArchive.asp>. For information on any ordinance that is not hyperlinked to this document, please contact the Office of the City Clerk at (408) 535-1266.