



CITY COUNCIL AGENDA

AUGUST 16, 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 NGUYEN, VICE MAYOR
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**
3:02 p.m. - Closed Session, Call to Order in Council Chambers
Absent Council Members: All Present.

1:31 p.m. - Regular Session, Council Chambers, City Hall
Absent Council Members: All Present.
- **Invocation (District 7)**
Sister Mary Becker, Santee Mission, presented the Invocation.
- **Pledge of Allegiance**
Mayor Reed led the Pledge of Allegiance.
- **Orders of the Day**
The Orders of the Day and the Amended Agenda were approved.
- **Closed Session Report**
No Report.

1. CEREMONIAL ITEMS

- 1.1 Presentation of a commendation to the San José Police Department Crime Prevention Unit for their hard work to mobilize and educate our communities to become active leaders on crime and drug prevention. (Chu)
Mayor Reed and Council Members Chu and Campos recognized and commended the San José Police Department Crime Prevention Unit.

1. CEREMONIAL ITEMS

- 1.2 Presentation of a commendation to Lenora Porcella for being instrumental in the development of the Hensley Historic District in San José. (Liccardo)
Mayor Reed and Council Member Liccardo recognized and commended Leona Porcella for her achievements.
- 1.3 Presentation of a commendation to Eddie Gale for his many contributions of fine music and devotion to selflessly create meaningful community partnerships in San José. (Liccardo)
Mayor Reed and Council Member Liccardo recognized and commended Eddie Gale for his numerous contributions.

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. 28942 – Amending Ordinance No. 26136, which ordinance approved a Development Agreement with Cisco Technology, Inc. relative to the development of real property in North San José, and amending Ordinance No. 28339 and Ordinance No. 28446, which ordinances amended said Development Agreement, in order to further amend the original Development Agreement, as amended, to modify and find compliance with a certain construction condition contained at Section 1.(c)2 of the original Development Agreement and authorizing the City Clerk to execute the Third Amendment to Development Agreement.

Ordinance No. 28942 adopted.

Abstained: Herrera, Liccardo, Oliverio.

- (b) ORD. NO. 28943 – Amending Ordinance Nos. 28154 and 28662, which ordinances approved a Development Agreement, and a First Amendment thereto, respectively, with Novellus Systems, Inc. relative to the development of real property in North San José, to amend provisions contained in the Development Agreement in connection with certain parkland obligations and to authorize the City Clerk to execute a Second Amendment to the Development Agreement.

Ordinance No. 28943 adopted.

- (c) ORD. NO. 28945 – Rezoning certain real property situated on the northwesterly corner of Vista Montana and West Tasman Drive from A(PD) Planned Development Zoning District to IP(PD) Planned Development Zoning District. PDC11-006

Ordinance No. 28945 adopted.

2. CONSENT CALENDAR

2.2 Final adoption of ordinances (Cont'd.)

- (d) ORD. NO. 28946 – Rezoning certain real property situated on the westerly and southerly corners of North First Street and Vista Montana from the A(PD) Planned Development Zoning District to IP(PD) Planned Development Zoning District. PDC11-007

Ordinance No. 28946 adopted.

2.3 Approval of Council Committee Reports.

Recommendation: Approval of Council Committee Reports.

- (a) Ad Hoc Committee on Airport Competitiveness Report of May 5, 2011. (Mayor)
(b) Ad Hoc Committee on Airport Competitiveness Report of June 16, 2011. (Mayor)
(c) Rules and Open Government Committee Report of July 27, 2011. (Mayor)

Approved.

2.4 Mayor and Council Excused Absence Requests.

There were none.

2.5 City Council Travel Reports.

There were none.

2.6 Report from the Council Liaison to the Retirement Boards.

There were none.

2.7 Agreement with Clear Channel for Advertising at the Airport.

Recommendation: Approve a third Amendment to the Advertising Concession Agreement between the City and Clear Channel Outdoor, Inc. d/b/a Clear Channel Airports at the Norman Y. Mineta San José International Airport to combine the minimum capital investment requirements of the various advertising categories. CEQA: Not a Project, File No. PP10-066(e); Services that involve no physical changes to the environment. (Airport)

Deferred to August 30, 2011 per Administration.

2.8 Lease with American Airlines for Hanger and Ramp Space.

Recommendation: Adopt a resolution authorizing the Director of Aviation to negotiate and execute:

- (a) Lease of Airport Premises with American Airlines, Inc., for hangar and ramp space located at 1253 Airport Boulevard, effective September 1, 2011 through June 30, 2012, with monthly revenue to the City of approximately \$12,758.
(b) Amendments to extend the term for a period up to June 30, 2017.

CEQA: Not a Project, File No. PP10-066(f); Lease of existing space for same use. (Airport)

Resolution No. 75949 adopted.

2. CONSENT CALENDAR

2.9 Actions Related to Airline Lease and Operating Agreements.

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

- (a) Negotiate and execute amendments to Signatory Airline-Airport Lease and Operating Agreements and Airline-Airport Cargo Operating Agreements to extend the term for five years, from July 1, 2012 through June 30, 2017.
- (b) Negotiate and execute amendments to Non-Signatory Airline-Airport Operating Agreements to extend the term for five years, from July 1, 2012 through June 30, 2017.
- (c) Negotiate and execute new Signatory Airline-Airport Lease and Operating Agreements, Airline-Airport Cargo Operating Agreements and Non-Signatory Airline-Airport Operating Agreements through June 30, 2017.
- (d) Negotiate and execute agreements and amendments with airlines for leases of premises through June 30, 2017, that adhere to standard rates and charges.

CEQA: Resolution Nos. 67380 and 71451, File No. PP11-052. (Airport)

Resolution No. 75950 adopted.

2.10 Development Principles Associated with Development of Lands on the West Side of the Airport.

Recommendation: Adopt a resolution to establish development principles associated with development of lands on the west side of the Airport, including new facilities serving general aviation and options for the future of Runway 11-29. CEQA: Statutorily Exempt, File No. PP10-066(d), CEQA Guidelines Section 15262, Feasibility and Planning Studies. (Airport)

The memorandum from Mayor Reed and Council Members Pyle and Herrera, dated August 12, 2011, was approved, accepting the Staff recommendations, including the additional Principal:

- (1) **To ensure that any potential development maximizes return to the Airport and City, development on the site beyond aviation use will be considered and evaluated.**

While not a Development Principle, Airport Staff was also directed to:

- (1) **Meet with existing businesses and tenants located adjacent to the site to discuss with them their concerns with and priorities for development of this site and potential impacts to their operations.**
- (2) **Ensure the existing businesses are informed of any public information and plans for the development of the West Side property in a timely manner.**
- (3) **Make periodic program reports to the Council through the Airport Ad Hoc Committee or Community and Economic Development Committee.**

Resolution No. 75951 adopted, as amended.

2. CONSENT CALENDAR

2.11 Agreement with VTA for Airport Bus Service.

Recommendation: Approve the Seventh Amendment to the Agreement for Airport Bus Service with the Santa Clara County Valley Transportation Authority (VTA), modifying compensation payable by the City to VTA to a flat annual cost of \$625,000 per year effective July 1, 2011, and extending the term of the Agreement through June 30, 2014, subject to appropriation of funds for each fiscal year. CEQA: Resolution Nos. 67380 and 71451, File No. PP11-053. (Airport)

Approved.

2.12 Master Agreements for Environmental Health and Safety Consulting.

Recommendation: Approve consultant master agreements with the following firms for Environmental Health and Safety support for the Environmental Services Department:

- (a) BenTyler Enterprises, Inc. for a variety of on-call Environmental Health & Safety consulting services from the date of execution through June 30, 2014, in an amount not to exceed \$250,000 annually.
- (b) Environmental Resources Management-West, Inc. for a variety of on-call Environmental Health & Safety consulting services from the date of execution through June 30, 2014 in an amount not to exceed \$250,000 annually.

CEQA: Not a Project, File No. PP10-066(a), Agreements and Contracts for purchase of professional services. (Environmental Services)

Approved.

2.13 Award of Construction Contract to Andy's Roofing Company for the Facilities Roof Replacement Project.

Recommendation:

- (a) Award the construction contract for the Facilities Roof Replacement Project, Phase I to the low bidder, Andy's Roofing Company Inc., in the amount of \$600,770.
- (b) Approve a contingency in the amount of \$60,000.

CEQA: Exempt, File No. PP11-004. (Environmental Services/Public Works)

Approved.

2.14 Report on Bids and Award of Contract for the Residual Sludge Management, Supernatant Ammonia Management Project.

Recommendation:

- (a) Report on bids and award of contract for the Residual Sludge Management Supernatant Ammonia Management Project to the sole bidder, Anderson Pacific Engineering Construction, Inc., in the amount of \$298,900.
- (b) Approve a contingency in the amount of \$44,000.

CEQA: Exempt, File No. PP10-183. (Environmental Services/Public Works)

Approved.

2. CONSENT CALENDAR

2.15 Rejection of Bids for the San Jose/Santa Clara Water Pollution Control Plant, Handrail Replacement Project.

Recommendation:

(a) Reject all bids received for the San José/Santa Clara Water Pollution Control Plant, Handrail Replacement, Phase IV Project.

All bids rejected.

(b) Authorize the Director of Public Works to re-advertise and re-bid the project. CEQA: Exempt, File No. PP11-020. (Environmental Services/Public Works)

Approved.

2.16 Rejection of Bids for the Secondary Air Plenum Filtration Project at the San Jose/Santa Clara Water Pollution Control Plant.

Recommendation:

(a) Reject all bids received for the San José/Santa Clara Water Pollution Control Plant, Secondary Air Plenum Filtration Project; and

All bids rejected.

(b) Authorize the Director of Public Works to re-advertise and re-bid the project. CEQA: Exempt, File No. PP11-020. (Environmental Services/Public Works)

Approved.

2.17 Cybersecurity Week.

Recommendation: As recommended by the Rules and Open Government Committee on August 10, 2011:

(a) Approve Cybersecurity Week as a City Council sponsored Special Event.

(b) Approve and accept donations from various individuals, businesses, or community groups to support Cybersecurity Week activities.

CEQA: Not a Project. (City Clerk)

Approved.

3. STRATEGIC SUPPORT SERVICES

3.1 Report of the City Manager, Debra Figone (Verbal Report) City Manager Debra Figone reported that the San José Jazz Festival was a great success with over 100,000 people in attendance. Council Members Herrera and Liccardo presented comments about the success of the Festival.

3. STRATEGIC SUPPORT SERVICES

3.2 Labor Negotiations Update

Recommendation: Accept Labor Negotiations Update.
Dropped.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Annexation/Reorganization of Downer No. 11.

Recommendation: Conduct a Public Hearing and consider adoption of a resolution ordering the reorganization of territory designated as Downer No. 11 which involves the annexation to the City of San José of approximately 8.6 gross acres of land generally located west at the northwest corner of Blossom Hill Road and Southcrest Way, and the detachment of the same from the appropriate special districts including Central Fire Protection and Area No. 01 (Library Services) County Service. CEQA: Mitigated Negative Declaration (Related approved Rezoning File No. PDC10-007). Council District 10. (Planning, Building and Code Enforcement)

Continued to August 23, 2011 per Administration

4.2 Consideration of an Appeal of the Planning Commission's Decision to Deny Off-Sale of Alcohol.

Recommendation: Consideration of an Appeal of the Planning Commission's decision to deny off-sale of alcohol in conjunction with a new approximately 17,000 square-foot retail store/pharmacy with a drive-through use and 24-hour use. The proposal was approved to allow a drive-through and 24-hour use on an approximately 0.788 gross-acre parcel in the CG-Commercial General Zoning District, located in an approximately 38.7-acre shopping center on the northeast side of North 1st Street 210 feet northwesterly of Headquarters Drive (4110 North 1st Street) (TSA @ First LLC, Owner). Council District 4. CEQA: North San José Environmental Impact Report (Resolution No. 72768 and Addenda thereto). The Director of Planning, Building and Code Enforcement recommends the Council deny the appeal and uphold the Planning Commission's decision to approve the construction of an approximately 17,000 square foot retail store/pharmacy with a drive-through use and 24-hour operation without the off-sale of alcohol.

CP11-003 – District 4

The memorandum from Mayor Reed and Council Member Chu, dated August 9, 2011, was approved, upholding the Planning Commission decision to approve the construction of an approximately 17,000 square foot retail store/pharmacy with a drive through use and 24 hour operation, to uphold the appeal and support a Determination of Public Convenience and Necessity, including a 5% cap on the square footage allocated to alcohol products.

Resolution No. 75952 adopted, as amended

Noes: Oliverio, Rocha.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.3 Consideration of an Appeal of the Planning Commission’s Decision to Deny a Conditional Use Permit and Determination of Public Convenience or Necessity to Allow the Off-Sale of Alcohol.

Recommendation: Conduct a public hearing and consider an Appeal of the Planning Commission’s decision to deny a Conditional Use Permit and Determination of Public Convenience or Necessity to allow the off-sale of alcohol, limited to beer and wine, at a full service grocery store in an existing 36,560 square-foot tenant space in a 4.11 gross acre shopping center, in the CN Commercial Neighborhood Zoning District, located at/on the southwest corner of Almaden Expressway and Branham Lane (1130 Branham Lane) (Branham Square LLC Thomas Biagini, Owner; Sunflower Farmers Market Scott Litchard, Developer). CEQA: Exempt. The Director of Planning, Building and Code Enforcement recommends the Council uphold the appeal of the of the Planning Commission’s decision and approve the subject Conditional Use Permit and make a Determination of Public Convenience or Necessity by finding that the required findings for a Conditional Use Permit can be made and find there is a significant overriding public benefit served by the proposed off-sale of alcohol and grant a Determination of Public Convenience or Necessity.

CP11-022/ABC11-005 – District 9

Resolution No. 75953 adopted to uphold the appeal.

5. NEIGHBORHOOD SERVICES

6. TRANSPORTATION & AVIATION SERVICES

7. ENVIRONMENTAL & UTILITY SERVICES

7.1 San José/Santa Clara Water Pollution Control Plant Odor Assessment.

Recommendation:

- (a) Accept the Plant’s odor assessment status report and direct staff to continue with the development of a regional odor assessment study:
 - (1) Develop a stakeholder process including the other possible odor generating facilities and the Plant’s tributary agencies.
 - (2) Develop a funding plan to include a portion of the funding from sources other than the Sewer Service and Use Charges.
 - (3) Complete development of a scope and engage consultant services.
 - (4) Provide a status report in the fall of 2011 on progress made.

(Item continued on the next page)

7. ENVIRONMENTAL & UTILITY SERVICES

- 7.1 San José/Santa Clara Water Pollution Control Plant Odor Assessment (Cont'd.)**
(b) Accept the analysis of the feasibility of implementing odor control projects in three to seven years and direct staff to continue to explore the possibility of accelerating biosolids projects and deliver a status report in fall 2011.
CEQA: Not a Project, File No. PP10-069 (a) Staff Reports. (Environmental Services/
Public Works)
Deferred to September 13, 2011 per Administration.

8. PUBLIC SAFETY SERVICES

9. JOINT COUNCIL/REDEVELOPMENT AGENCY

- **Open Forum**
Mark Trout expressed his own religious point of view.
- **Adjournment**
The Council of the City of San José was adjourned at 3:01 p.m. in memory of **Richard Chavez, a longtime civil rights activist and local hero who passed away on July 27, 2011. Richard dedicated his life to advocating for equality and justice for farm workers by improving their work conditions and the communities they resided in. As a result of Richards's on-going dedication, farm workers throughout California gained basic human rights owed to them such as the right to drinking water, access to restroom facilities, and evidently demanded a healthy work environment without exposure to agricultural chemicals that was the ultimate hazard to their health. (Campos)**

The Council of the City San José adjourned to Closed Session at 3:02 p.m. to reconvene in Regular Session on Tuesday, August 23, 2011, at 9:00 a.m.