

# CITY COUNCIL AGENDA

**SEPTEMBER 27, 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](http://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, 2<sup>nd</sup> 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](mailto: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**  
**9:04 a.m.** - Closed Session, Call to Order in Council Chambers  
**Absent Council Members: All Present.**  
  
**1:33 p.m.** - Regular Session, Council Chambers, City Hall  
**Absent Council Members: All Present.**  
  
**7:03 p.m.** - Public Hearings, Council Chambers, City Hall  
**Absent Council Members: All Present.**
- **Invocation (District 8)**  
**The Ocala Middle School Band 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, with Items 3.5 and 3.7 heard together, and Item 11.1(b) was heard and dropped to be renoticed.**
- **Closed Session Report**  
**No Report.**

# 1. CEREMONIAL ITEMS

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- 1.1 Presentation of a proclamation declaring the month of September 2011 as “Histiocytosis Awareness Month” in the City of San José. (Constant)  
**Heard in the Evening.**  
**Mayor Reed and Council Member Constant recognized the month of September 2011 as “Histiocytosis Awareness Month” in the City of San José.**
- 1.2 Presentation of a commendation to the Housing Industry Foundation for their efforts to help individuals and families remain in or return to stable housing and to assist with special housing projects and renovations in Santa Clara and San Mateo Counties. (Constant)  
**Mayor Reed and Council Member Constant recognized and commended the Housing Industry Foundation.**
- 1.3 Presentation of a commendation to the Hispanic Association of City Employees in recognition and appreciation of their 38 years of service and commitment to the City of San José. (Campos)  
**Mayor Reed and Council Member Campos recognized and commended the Hispanic Association of City Employees.**
- 1.4 Presentation of a proclamation recognizing September 26-October 2, 2011 as “Astronaut Week” in the City of San José. (Mayor)  
**Heard in the Evening.**  
**Mayor Reed, Council Members Herrera and Constant recognized September 26, 2011 through October 2, 2011 as “Astronaut Week” in the City of San José.**
- 1.5 Presentation of a commendation to members of the San José Police Department and the Santa Clara County District Attorney’s Office for the successful investigation, prosecution and incarceration of a dozen gang members in the El Hoyo Palmas street gang for multiple violent and heinous crimes in San José. (Mayor)  
**Heard in the Evening.**  
**Mayor Reed and Council Member Liccardo recognized and commended members of the San José Police Department and the Santa Clara County District Attorney’s Office.**
- 1.6 Administer Oaths of Office to District 3 Youth Commissioner Esmeralda Valerio, District 7 Youth Commissioner Kenneth Huynh, and District 9 Youth Commissioner Nicole Lim. (City Clerk)  
**Heard in the Evening.**  
**City Clerk Dennis D. Hawkins, CMC, administered the Oaths of Office to the new Youth Commissioners. Mayor Reed, Vice Mayor Nguyen and Council Members Liccardo and Rocha congratulated the Youth Commissioners.**

## 2. CONSENT CALENDAR

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### 2.1 Approval of Minutes.

There were none.

### 2.2 Final adoption of ordinances.

**Recommendation:** Final adoption of ordinances.

- (a) ORD. NO. 28958 – Amending Title 20 of the San José Municipal Code by amending Section 20.10.040 of Chapter 20.10, amending Section 20.40.100 of Chapter 20.40; amending Section 20.50.100 of Chapter 20.50, amending Section 20.70.100 of Chapter 20.70, adding a new Part 9.5 to Chapter 20.80, adding a new Part 13 to Chapter 20.100, and amending Section 20.100.200 of Chapter 20.100, all to establish land use regulations pertaining to Medical Marijuana Collectives and to establish a related zoning verification certificate process.

**Ordinance No. 28958 adopted.**

**Noes: Campos, Kalra, Rocha.**

- (b) ORD. NO. 28960 - Amending Title 6 of the San José Municipal Code to add a new Chapter 6.88 to establish regulations pertaining to Medical Marijuana Collectives and to the individual cultivation and use of medical marijuana.

**Ordinance No. 28960 adopted.**

**Noes: Campos, Kalra, Rocha.**

### 2.3 Approval of Council Committee Reports.

**Recommendation:**

- (a) Neighborhood Services and Education Committee Report of September 8, 2011.  
(Pyle)
- (b) Revised Rules and Open Government Committee Report of September 7, 2011.  
(Mayor)

**Approved.**

### 2.4 Mayor and Council Excused Absence Requests.

There were none.

### 2.5 City Council Travel Reports.

Mayor Reed presented details about the Silicon Valley Leadership Group's Annual Advocacy Trip Meeting in Washington, D.C. Council Members Herrera and Constant provided highlights of their trip to the League of California Cities Annual Conference in San Francisco, California.

Council Member Herrera noted that last year she was lead on starting a Woman's Caucus as part of League of California Cities, one of the League's Diversity Caucuses, offering a non-partisan opportunity for women elected officials throughout the State to join, support and take positions on policies of interest to women.

## 2. CONSENT CALENDAR

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### 2.6 Report from the Council Liaison to the Retirement Boards. There were none.

### 2.7 Agreement with Wayport for Wi-Fi Services at the Airport.

**Recommendation:** Adopt a resolution authorizing the City Manager to:

- (a) Negotiate and execute a Second Amendment to the Non-Exclusive Installation and Property Use Agreement (“Agreement”) with Wayport, Inc. (“Wayport”) to extend the term of the Agreement through October 31, 2015, require a security deposit, and modify the calculation of the use charge.
- (b) Negotiate and execute a Third Amendment to the Agreement with Wayport to revise the licensed use area to include Terminal B.
- (c) Negotiate and execute additional amendments to extend the term of the Agreement for up to 5 years commencing on November 1, 2015.

CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Airport)

(Deferred from 8/30/11 – Item 2.8)

**Dropped.**

### 2.8 City Manager’s Travel to Dublin, Ireland.

**Recommendation:** Authorize travel for City Manager Debra Figone to Dublin, Ireland on October 5-11, 2011, to participate in the 25th Anniversary Sister City Trip. Source of Funds: Personally paying for airline and hotel. CEQA: Not a Project, File No. PP10-069, administrative activities. (City Manager’s Office)

**Approved.**

### 2.9 Agreement with the National Aeronautics and Space Administration Ames Research Center for Utilization of Moffett Federal Airfield.

**Recommendation:** 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 \$50,000 over the two year term of the agreement and fuel cost in the amount of federal government cost plus 14.7%. CEQA: Not a project, File No. PP10-066(f), lease of equipment or existing Space for the same use. (Economic Development)

**Resolution No. 76000 adopted.**

## 2. CONSENT CALENDAR

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### 2.10 Actions Related to Mayor Reed's Travel to Washington, D.C.

**Recommendation:**

- (a) Approve travel by Mayor Reed to Washington, D.C. on September 20-22, 2011 to participate in the Silicon Valley Leadership Group's Annual Washington, D.C. Advocacy Trip. Source of Funds: Mayor's Office Budget. (Mayor)
- (b) Request for an excused absence for Mayor Reed from the Regular Meeting of the Rules and Open Government Committee on September 21, 2011 due to Authorized City Business: Silicon Valley Leadership Group Annual Washington, D.C. Advocacy Trip. (Mayor)

**Approved.**

### 2.11 Nomination of McDonnell Hall as a Historic Landmark.

**Recommendation:** As recommended by the Rules and Open Government Committee on September 21 2011, adopt a resolution to direct the Director of Planning, Building and Code Enforcement to nominate McDonnell Hall at Our Lady of Guadalupe Church, 2020 San Antonio Road, as a San Jose Historic Landmark pursuant to Chapter 13.48 of the San José Municipal Code and to set a public hearing on that proposed nomination of a historic landmark. (Mayor)

**Resolution No. 76001 adopted.**

### 2.12 District 4 Spooky Halloween and Haunted House.

**Recommendation:** As recommended by the Rules and Open Government Committee on September 21, 2011:

- (a) Approve the District 4 Spooky Halloween and Haunted House as a City sponsored Special Event.
- (b) Approve and accept donations from various individuals, businesses or community groups to support the event.

CEQA: Not a Project. (City Clerk)

**Approved.**

### 2.13 District 8 Day in the Park Festival.

**Recommendation:** As recommended by the Rules and Open Government Committee on September 21, 2011:

- (a) Approve the District 8 Day in the Park Festival as a City sponsored Special Event.
- (b) Approve and accept donations from various individuals, businesses or community groups to support the event.

CEQA: Not a Project. (City Clerk)

**Approved.**

## 2. CONSENT CALENDAR

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### 2.14 Waiver of Revolving Door Restrictions.

**Recommendation:** As recommended by the Rules and Open Government Committee on August 31, 2011 and September 21, 2011:

- (a) Approve a request for a Waiver of the Revolving Door Restriction under San José Municipal Code Section 12.10.030 (A). for Edith Ramirez, former Redevelopment Agency employee, to allow her to work on legislative or administrative matters which she worked on during the twelve months prior to her termination of service, or which was within her area of job responsibility as defined in Section 12.10.030 A. The Committee recommends a finding that a Waiver of the Revolving Door Restriction under San José Municipal Code Section 12.10.070 for Ms. Ramirez, is in the best interest of the City.
- (b) Approve a request for a Waiver of the Revolving Door Restriction under San José Municipal Code Section 12.10.030 (B) for Ms. Ramirez only for the purpose of representing before City commissions or City staff, businesses or persons that, within the last 12 months of Ms. Ramirez's employment with the Agency (1) did not receive any subsidy from the Agency or (2) were not involved with any project Ms. Ramirez worked on. The Committee recommends a finding that a Waiver of the Revolving Door Restriction under San José Municipal Code Section 12.10.070 for Ms. Ramirez, is in the best interest of the City.
- (c) A waiver of Municipal Code Sections 12.10.030 (C). is not granted. Ms. Ramirez remains subject to the Revolving Door Restrictions under that section and may not receive any gift or payment as defined in 12.10.030 (C).

**Approved.**

**A review of the Revolving Door ordinance was referred to the Rules and Open Government Committee for discussion on October 5, 2011 with recommendation for potential revisions to be brought back to the full Council.**

## 3. STRATEGIC SUPPORT SERVICES

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

**City Manager Debra Figone reported that the City was selected as the first recipient of the Robert C. Larson Workforce Housing Public Policy Award which recognized the City for implementing successful public policies to address workforce housing needs of working families. Director of Housing Leslye Corsiglia accepted the award on behalf of the City in Washington D.C. on September 21, 2011.**

### 3.2 Labor Negotiations Update.

**Recommendation:** Accept Labor Negotiations Update.

**Heard at 9:00 a.m.**

**Accepted.**

### 3. STRATEGIC SUPPORT SERVICES

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#### 3.3 Ordinance to Implement New Health Care Trusts for Police and Fire Retirement Plan.

**Recommendation:** Consider an ordinance amending Title 3 of the San José Municipal Code to add new Chapter 3.54 and 3.56, and to amend Sections 3.36.575, 3.36.1925, 3.36.1930, 3.36.2030 and 3.36.2050 for the purposes of establishing a new trust pursuant to Section 115 of the Internal Revenue Code related to retiree health care benefit funding and payment of retiree health care benefits. CEQA: Not a Project; File No. PP10-068(b), Municipal Code or Policy. (City Attorney's Office)  
(Deferred from 8/30/11 – Item 3.3)

**Deferred to November 1, 2011 per Administration.**

#### 3.4 Agreement with Magellan Health Services for the Employee Assistance Program, Critical Incident Stress Management and Substance Abuse Treatment.

**Recommendation:** Adopt a resolution authorizing the City Manager or designee to execute an agreement between the City and Magellan Health Services of California, Inc. Employer Services for the period of January 1, 2012, through December 31, 2016, for Employee Assistance Program, Critical Incident Stress Management and Substance Abuse Treatment for a total cost that will not exceed \$3,251,140 for the period of January 1, 2012 to December 31, 2016. CEQA: Not a Project, File PP10-066(e), services that involve no physical changes to the environment. (Human Resources)

**Resolution No. 76002 adopted.**

#### 3.5 Ordinance Clarifying Role of Nonvoting Member of Retirement Boards and Board Stipends.

**Recommendation:** Consider an ordinance amending Section 2.08.160 of Chapter 2.08 of Title 2 of San José Municipal Code and adding a new section 2.08.170 to provide for the appointment of a Council member as nonvoting member of the Board of Administration of the Federated City Employees Retirement System and the Board of Administration for the Police and Fire Department Retirement Plan, and correcting Section 2.08.1270 of the Code to correct a drafting error related to the stipends payable to certain members Board of Administration of the Police and Fire Department Retirement Plan. CEQA: Not a Project; File No. PP10-068(b), Municipal Code or Policy. (City Attorney's Office)

**Note: Items 3.5 and 3.7 were heard together, per Orders of the Day.**

**Ordinance No. 28970 passed for publication.**

**Noes: Campos, Chu, Kalra, Pyle, Rocha.**

#### 3.6 Ethics Update.

**Recommendation:** Accept staff's presentation to the City Council on ethical issues related to gifts. (City Attorney's Office)

**Accepted.**

### 3. STRATEGIC SUPPORT SERVICES

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#### 3.7 Retirement Board Liaison.

**Recommendation:**

- (a) Appoint Council Member Herrera to be the alternate non-voting member of the Federated Retirement Board and of the Police and Fire Retirement Board;

**Approved.**

**Noes: Campos, Chu, Kalra, Pyle, Rocha.**

- (b) Approve revisions to City Council Policy 0-36 adding a new Section F, “Council Members Sitting as Members of Boards or Commissions”; and

**Resolution No. 76037 adopted.**

**Noes: Campos, Chu, Kalra, Pyle, Rocha.**

- (c) Approve the ordinance as recommended by the City Attorney.  
(Mayor/Constant/Herrera)

*Note: Items 3.5 and 3.7 were heard together, per Orders of the Day.*

**Approved.**

**Noes: Campos, Chu, Kalra, Pyle, Rocha.**

#### 3.8 Appointment to the Police and Fire Department Board of Administration.

**Recommendation:** As recommended by the Rules and Open Government Committee on September 21 2011, appoint Elizabeth “Bettina” Rounds to the Public Member vacancy on the Board of Administration for the Police and Fire Department Retirement Plan.

(Mayor)

**Approved.**

### 4. COMMUNITY & ECONOMIC DEVELOPMENT

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#### 4.1 Habitat Conservation Plan.

**Recommendation:**

- (a) Discuss refinements to the draft Habitat Conservation Plan and alignment to the June 2011 Budget Message.

- (b) Refer questions and concerns to staff for response.

CEQA: Not a Project, File No. PP10-069. (Planning, Building and Code Enforcement)

(Continued from 9/20/11 – Item 4.3)

**Heard following Item 4.3.**

**No Council Action. Staff directed to return to Council on October 18, 2011.**

## 4. COMMUNITY & ECONOMIC DEVELOPMENT

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### 4.2 Actions Related to the Purchase and Sale Agreement with Union Pacific Railroad for Three Creeks Trail Development.

#### **Recommendation:**

- (a) Adopt a resolution authorizing the City Manager or designee to:
- (1) Negotiate and execute the purchase agreement with Union Pacific Railroad Company, in the amount of \$6,000,000 for the purchase of land located from Lonus Street to Minnesota Avenue in San José, CA, (APN No. 264-11-100, 264-11-101, 264-54-067, 264-56-108, 434-01-059) for the future Three Creeks Trail.
  - (2) Negotiate and execute all other documents and take such further actions as are necessary to complete the transaction.
  - (3) Settle any claims related to the removal of the existing billboard from this property up to a maximum of \$120,000.

#### **Resolution No. 76003 adopted.**

- (b) Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Construction and Conveyance Tax Fund: City-Wide Parks Purposes (Fund 391):
- (1) Increase the Beginning Fund Balance by \$1,165,000.
  - (2) Increase the TRAIL: Three Creeks Land Acquisition appropriation to the Parks, Recreation and Neighborhood Services Department by \$992,000.
  - (3) Establish the Reserve: TRAIL: Three Creeks appropriation to the Parks, Recreation and Neighborhood Services Department for \$173,000.

#### **Ordinance No. 28971 adopted.**

#### **Resolution No. 76004 adopted.**

- (c) Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District #6 (Fund 384):
- (1) Increase the Beginning Fund Balance by \$1,260,000.
  - (2) Increase the TRAIL: Three Creeks Land Acquisition appropriation to the Parks, Recreation and Neighborhood Services Department by \$1,260,000.

#### **Ordinance No. 28972 adopted.**

#### **Resolution No. 76005 adopted.**

- (d) Adoption of the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Subdivision Park Trust Fund (Fund 375):
- (1) Increase the Beginning Fund Balance by \$621,000.
  - (2) Establish the Reserve: TRAIL: Three Creeks appropriation to the Parks, Recreation and Neighborhood Services Department for \$621,000.

#### **Ordinance No. 28973 adopted.**

#### **Resolution No. 76006 adopted.**

*(Item continued on the next page)*

## **4. COMMUNITY & ECONOMIC DEVELOPMENT**

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### **4.2 Actions Related to the Purchase and Sale Agreement with Union Pacific Railroad for Three Creeks Trail Development. (Cont'd.)**

- (e) Adopt a resolution authorizing the City Manager or designee to:
  - (1) Negotiate and execute an amended and restated funding agreement with Santa Clara County in the amount of \$3,000,000 for use in the acquisition of real property for the Three Creeks Trail.
  - (2) Execute and record a conservation easement on any land owned by City for the Three Creeks Trail as required by Santa Clara County and the Open Space Authority.

CEQA: Exempt, File No. PP03-143. Council District 6. (Economic Development/Parks, Recreation and Neighborhood Services/City Manager's Office)

**Resolution No. 76007 adopted.**

### **4.3 Actions Related to the Issuance of a Tax-Exempt Multifamily Housing Revenue Note for the First and Rosemary Family Apartments.**

**Recommendation:** Adopt a resolution:

- (a) Authorizing the issuance of a tax-exempt multifamily housing revenue note designated as "City of San José Multifamily Housing Revenue Note (First and Rosemary Family Apartments), Series 2011B" in an aggregate principal amount not to exceed \$30,700,000 (the "Governmental Lender Note" or "Note");
- (b) Approving a loan of Note proceeds to 1st and Rosemary Family Housing, L.P., a California limited partnership created by ROEM Apartments Communities, LLC to finance the construction of the First and Rosemary Apartments located at 34, 66, 80 East Rosemary Street in San José.
- (c) Approving in substantially final form the Borrower Loan Agreement, Funding Loan Agreement, and Regulatory Agreement and Declaration of Restrictive Covenants (the "Documents").
- (d) Authorizing and directing the City Manager, Acting Director of Finance, Assistant Director of Finance, Treasury Division Manager, Debt Administrator, and Director of Housing, or their designees, to execute and, deliver these Documents and other related Note documents as necessary.
- (e) Declaring its intent to use the proceeds of the notes to reimburse project expenditures.

CEQA: EIR Resolution 72768, adopted June 21, 2005, File No. PDC07-101. Council District 3. SNI: Rincon De Los Esteros. (Finance/Housing)

**Resolution No. 76008 adopted.**

## **5. NEIGHBORHOOD SERVICES**

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## **6. TRANSPORTATION & AVIATION SERVICES**

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## **7. ENVIRONMENTAL & UTILITY SERVICES**

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## **8. PUBLIC SAFETY SERVICES**

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## **9. JOINT COUNCIL/REDEVELOPMENT AGENCY**

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**The Joint Council/Redevelopment Agency Meeting was convened at 4:33 p.m. to consider Items 9.1 and 9.2 in a Joint Session.**

### **9.1 Citywide Insurance Renewals.**

**Recommendation:** Adopt a resolution authorizing the City Manager or designee to select and purchase certain City and Redevelopment Agency insurance policies (property and liability for the City; property only for the Redevelopment Agency) for the period October 1, 2011 to October 1, 2012, at a total cost not to exceed \$1,500,000 for all policies, with the following insurance carriers:

- (a) Lexington Insurance Company, (Boston, MA) for Property, including Boiler & Machinery.
- (b) National Union Fire Insurance Company (New York, NY) to provide the following coverage:
  - (1) Airport Owners and Operators Liability including War Risks & Extended Perils Coverage (Primary and Excess).
  - (2) Police Aircraft Hull & Liability including War Risks & Extended Perils.
- (c) St Paul/Travelers Insurance Company, (Hartford, CT) for Automobile Liability (Airport fleet vehicles and Shuttle Buses physical damage only/WPCP fleet vehicles).
- (d) Indian Harbor Insurance Company, (Stamford, CT) for Secondary Employment Law Enforcement Professional Liability.

CEQA: Not a Project, File No. PP 10-066(a), agreements and contracts for purchase of insurance. (City Manager's Office/Redevelopment Agency)

**Resolution No. 76009 adopted.**

## **9. JOINT COUNCIL/REDEVELOPMENT AGENCY**

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### **9.2 Amended Enforceable Obligation Payment Schedule.**

**Recommendation:** Adopt resolutions by the City Council and Redevelopment Agency Board approving the Amended Enforceable Obligation Payment Schedule detailing the obligations of the Redevelopment Agency, and the City related to the Low and Moderate Income Housing Fund in order to comply with the provisions of Section 34169 of the Health and Safety Code. CEQA: Not a Project, File No. PP10-069, City Organizational and Administrative Activities. (City Manager's Office/Redevelopment Agency)

**Resolution No. 76010 adopted.**

**Redevelopment Agency Resolution No. 6030 adopted.**

The Joint Council/Redevelopment Agency Meeting was adjourned at 4:41 p.m.

- **Open Forum**

- (1) **Reyna Burns and Danielle Sattle, Holistic Pain Management Institute, expressed their desire to Adopt-a- Park on behalf of their place of employment, however they were rejected due to the type of industry they represent, and complained that it was unjustified.**
- (2) **Mark Trout expressed his concerns about forced vaccinations.**
- (3) **Jose Francisco Medeiros complained that the Police Department did not notify him first before towing his car following the Labor Day holiday weekend.**
- (4) **David Wall expressed his opinions about the Habitat Plan and other incubators at the City.**

- **Adjournment**

The Council of the City of San José adjourned the afternoon session at 5:14 p.m.

## **10. GENERAL PLAN PUBLIC HEARINGS**

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No General Plan Public Hearing at this time.

## **11. PUBLIC HEARINGS ON CONSENT CALENDAR**

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### **11.1 Public Hearings on Consent Calendar.**

#### **Recommendation:**

- (a) Consideration of an ordinance zoning the real property located on the northeast corner of Highway 280 and Saratoga Avenue (500 Saratoga Avenue) for a private school master plan which includes the demolition of approximately 85,000 square feet of existing buildings and construction of approximately 316,440 gross square feet of new construction and a new turf field on a 15.9 gross acre site, with no proposed increase in student population (Harker Academy Foundation, Owner). CEQA: Mitigated Negative Declaration, Resolution Adopted.  
PDC10-017 – District 1  
**Ordinance No. 28974 passed for publication.**  
**CEQA Resolution No. 76013 adopted.**
- (b) Consideration of an ordinance rezoning the real property located at the southeast corner of Almaden Expressway and Chynoweth Avenue (14418 Almaden Road) to allow for the development of up to 400,000 square feet of commercial uses and modifications to a previously approved roadway network by extending Cherry Avenue through the site to Sanchez Avenue south of Highway 85 on a 43.5 gross acre site (Arcadia Homes, Inc, Brad Durga, Owner). CEQA: Almaden Ranch Environmental Impact Report (EIR).  
PDC10-006 – District 9  
**Opened for discussion per Orders of the Day.**  
**Dropped, to be renoticed.**

**END OF PUBLIC HEARINGS ON CONSENT CALENDAR**

## 11. PUBLIC HEARINGS

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### 11.2 Rezoning Real Property Located at the Northwest Corner of Jackson Street and North 19<sup>th</sup> Street.

**Recommendation:** Consideration of an ordinance rezoning the real property located at the northwest corner of Jackson Street and North 19<sup>th</sup> Street (897 Jackson Street) from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow the addition of a 2-story, accessory structure (consisting of a home office over a 2 car garage) to be constructed without a driveway adjacent to the North 19<sup>th</sup> Street property line on a .29 gross acre site currently zoned for single-family, duplex and bed and breakfast uses (Eric Thacker Trustee, et al., Owner). CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommends denial (4-0-2; Commissioner Cahan and Platten absent).

PDC10-027 – District 3

**The revised memorandum from Council Member Liccardo, dated September 27, 2011, was approved, and the application for rezoning was approved, with the following conditions:**

- (1) **The setback from the northern lot line be 5 feet or more.**
- (2) **The height of the structure be no more than 24 feet at its peak.**
- (3) **No deck may be constructed on the second floor on any side of the proposed structure other than the south.**
- (4) **Vegetation or an accessory (such as a trellis) be placed in between the structure and fence on the northern border, so as to obscure views into the neighbor's yard from the second floor of the structure.**
- (5) **The proposed structure not be used as a residence of any kind. Any attempt to do so will require application pursuant to the City's Secondary Unit Ordinance or other lawful process.**

**Ordinance No. 28975 passed for publication, as amended.**

### 11.3 Administrative Hearing and Consideration of an Appeal of the Planning Commission's Decision to Deny a Conditional Use Permit and Determination of Public Convenience or Necessity

**Recommendation:** Conduct an Administrative 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 alcoholic beverages at an existing grocery store on an approximately .74 gross-acre site in the CP Pedestrian Commercial Zoning District located on the southeast corner of Story Road and McGinness Avenue (2806 Story Road) (Ajuni Andrew Trustee & Et Al, Owner; Mi Rancho Supermarkets Inc., Applicant). CEQA: Exempt. Mandatory Denial by Planning Commission, but Director of Planning, Building and Code Enforcement and Planning Commission recommend uphold appeal (7-0-0).

CP11-007/ABC11-002 – District 5

**Resolution No. 76014 adopted to uphold the appeal and the Conditional Use Permit was approved.**

## 11. PUBLIC HEARINGS

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### 11.4 Administrative Hearing and 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 at a full service grocery store.

**Recommendation:** Conduct an Administrative 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 at a full service grocery store located within an existing approximately 19,200 square foot tenant space on a 2.55 gross acre site in the CP Commercial Pedestrian Zoning District located at the northwest corner of Foxworthy Avenue and Meridian Avenue (1665 Foxworthy Avenue) (Fremont Center Plaza, LLC, Owner). CEQA: Exempt. Mandatory Denial by Planning Commission, but Director of Planning, Building and Code Enforcement and Planning Commission recommend uphold appeal (4-0-2).

CP11-047/ABC11-009 – District 9

**Resolution No. 76015 adopted to uphold the appeal and the Conditional Use Permit was approved.**

### 11.5 Administrative Hearing and 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 at a full service grocery store.

**Recommendation:** Conduct an Administrative Hearing and consider an Appeal of the Planning Commission's decision to deny a Conditional Use Permit and not grant a Determination of Public Convenience or Necessity to allow the off sale of alcohol at a retail store in an approximately 10,050 square foot portion of an existing approximately 43,000 square foot building on 6.15 gross acre site in the CG-Commercial General Zoning District, located at/on the northwest corner of Prospect Road and Saratoga Avenue (5205 Prospect Road, Unit B) (West Valley Shopping Center, Inc., Owner; BevMo, Applicant). CEQA: Exempt. Mandatory Denial by Planning Commission, but Planning Commission recommends uphold appeal (5-0-1). The Director of Planning, Building and Code Enforcement recommends the City Council deny the subject Conditional Use Permit and not make a Determination of Public Convenience or Necessity by finding that the required findings for a Determination of Public Convenience or Necessity cannot be made and that there is not a significant overriding public benefit served by the proposed off-sale of alcohol. Alternatively, the Council may adopt a resolution approving the subject Conditional Use Permit and Determination of Public Convenience or Necessity by finding that there is a significant overriding public benefit served by the proposed off-sale of alcohol as well as making other appropriate findings.

CP11-048/ABC11-010 – District 1

*(Action continued on the next page)*

## 11. PUBLIC HEARINGS

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### 11.5 Administrative Hearing and 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 at a full service grocery store. (Cont'd.)

(Action Cont'd.)

The memorandum from Mayor Reed and Council Member Constant, dated September 23, 2011, was approved, and the Conditional Use Permit and Determination of Public Convenience or Necessity was approved, by finding that there is a significant overriding public benefit served by the proposed off-sale of alcohol as well as making other appropriate findings as outlined below:

(a) **Conditional Use Permit (CUP) Determination:** A CUP may be issued to the provisions in 20.80.900.A.2 and 20.80.800.A.3 of the Municipal Code if the decision making body makes the following findings:

(1) *20.80.900.A.2: For uses closer than 500 feet to another off-sale use that results in more than 4 off-sale establishments within 1,000 feet, the excess concentration will not:*

- (a) Adversely affect the peace, health, safety morals or welfare of persons residing or working in the area.
- (b) Impair the utility or value of property of others in the area.
- (c) Be detrimental of public health, safety or general welfare.

The reasons for these are below:

- (1) This permit will allow the ownership transfer of an existing alcohol license used at the existing building.
- (2) The project is substantially surrounded by commercial uses.
- (3) No substantial adverse parking or traffic impacts have been identified relating to the project.
- (4) No police issues were identified by the Police Department.

(2) *20.80.800.A.3: For uses closer than 500 feet from listed sensitive uses or closer than 150 feet from residentially zoned property, that the building is situated and oriented in a manner that would not adversely affect such residential or other sensitive use:*

- (a) The project is located in an existing shopping center, oriented in a compatible manner with its other retail tenants and not towards residential uses.

(b) **Public Convenience and Necessity (PCN):**

*6.84.030.B – A PCN may be issued by finding that a significant and overriding public benefit will be served by the proposed project. These public benefits are outlined below:*

(Action continued on the next page)

## 11. PUBLIC HEARINGS

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### 11.5 Administrative Hearing and 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 at a full service grocery store. (Cont'd.)

(Action Cont'd.)

- (b) (1) This project will add 2-15 jobs and generate an estimated \$1 million in sales annually from this location.
- (2) This project will add a specialty goods retail establishment to the shopping center.
- (3) This project draws residents from other nearby cities to shop San José. Thus, increasing sales tax revenue from residents of nearby residents and preventing further tax leakage.
- (4) BevMo! maintains an excellent reputation as a good retail neighbor and high quality store at its existing stores in San José and adjacent communities.
- (5) BevMo! has a track record of being a responsible retailer in regard to the safe handling and sale of alcoholic beverages.
- (6) BevMo! has received a significant outpouring support from current customers, existing tenants, adjacent neighborhood associations and broader District 1 community.

*6.84.030.C.2: The proposed outlet for the off sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant impact on public health or safety.*

- (1) This project will occupy a currently vacant space in the West Valley Shopping Center with a reputable and popular specialty goods establishment.

Other approved conditions were:

- (c) Add the self imposed conditions by BevMo! to the CUP:
  - (1) No cigarettes, malt liquor or fortified wines, Lotto tickets or adult magazines allowed.
  - (2) Store will close early: 9:00 p.m. regularly and 10:00 p.m. during holidays.
  - (3) Pay phones not permitted outside the store.
  - (4) No customers under 21 allowed.
  - (5) No Staff under 21 years of age employed.
  - (6) All employees subject to drug test prior to employment.
  - (7) Store will solicit customer feedback via surveys.
  - (8) BevMo! to operate a minor decoy program.
- (d) Proposed Amendment to Condition 3 was approved: This Conditional Use Permit authorizes the off sale of a full range of alcoholic beverages and on site beer and wine tastings, to be implemented only in conjunction with a specialty alcohol retailer on the property subject to the terms of this permit.
- (e) Store will include a dedicated area, the percentage of floor area and/or shelf space to be determined and agreed upon by City Staff and BevMo!, for food and ancillary products.

Resolution No. 76016 adopted, as amended, to uphold the appeal.

Noes: Oliverio.

- **Open Forum**  
**Mark Trout reiterated his concerns about forced vaccinations.**
- **Adjournment**  
**The Council of the City of San José was adjourned at 8:58 p.m.**

**JOINT CITY OF SAN JOSÉ CITY COUNCIL/  
FINANCING AUTHORITY AGENDA**

**4:42 P.M.**

**TUESDAY, SEPTEMBER 27, 2011**

**CHAMBERS**

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- 1. Call to Order and Roll Call**  
**Absent Council Members: All Present.**
  
- 2. Actions Related to the Request for Proposals for a Power Purchase Agreement for Solar Energy Installations on City Facilities and Lands.**

**Recommendation:**

- (a) It is recommended that the City Council take the following actions:
  - (1) Accept the report on the Request for Proposals for a Power Purchase Agreement for Solar Energy Installations on City Facilities and Lands; and  
**Accepted.**
  
  - (2) Adopt a resolution approving a form Power Purchase Agreement and authorizing the City Manager or designee to execute Power Purchase Agreements in such form and all related documents with SolarCity Corporation by December 31, 2012, for the following City facilities and subject to the limitations outlined in the staff memorandum to the Council.
    - (a) Almaden Community Center and Library
    - (b) Alum Rock Library
    - (c) Bascom Community Center/Library
    - (d) Berryessa Community Center
    - (e) Berryessa Library
    - (f) Cambrian Library
    - (g) Camden Community Center
    - (h) East San Jose Carnegie Library
    - (i) Edenvale Community Center
    - (j) Edenvale Library
    - (k) Evergreen Library
    - (l) Evergreen Community Center
    - (m) Hillview Library
    - (n) Joyce Ellington Library
    - (o) Kelley Park (Senter Road Lot)
    - (p) Mayfair Community Center
    - (q) Municipal Water Office

# **JOINT COUNCIL/SAN JOSÉ FINANCING AUTHORITY**

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## **2. Actions Related to the Request for Proposals for a Power Purchase Agreement for Solar Energy Installations on City Facilities and Lands. (Cont'd.)**

- (a) (2) (r) Pal Sports Centre
- (s) Pearl Library
- (t) Prusch Park
- (u) Roosevelt Community Center
- (v) Santa Teresa Library
- (w) Seven Trees Community Center/ Library
- (x) South Service Yard
- (y) Tully Library
- (z) Vineland Library
- (aa) Willow Glen Community Center
- (bb) Willow Glen Library

**Resolution No. 76011 adopted.**

**Abstain: Chu. Items 2(a)(2)(d): Berryessa Community Center.**

- (b) Adopt a resolution authorizing the City Manager or designee to negotiate and execute, by June 30, 2013, additional Power Purchase Agreements with SolarCity Corporation at alternative or additional City facilities in the form approved by Council and subject to the limitations (cash flow positive, private activity analysis, financing and landlord consent, parkland and CEQA clearance) outlined in this staff memorandum to Council.

**Resolution No. 76012 adopted.**

- (c) It is recommended that the City of San José Financing Authority Board take the following actions:
  - (1) Adopt a resolution to authorize the Executive Director or the Executive Director's authorized designee to consent to the license or sublicense of Evergreen Library, Edenvale Library and Vineland Library and other City facilities that are pledged assets of outstanding City of San José Financing Authority lease revenue bonds or commercial paper program to SolarCity Corporation for the installation of solar photovoltaic systems and to execute a letter acknowledging SolarCity Corporation's ownership and financing interests in the solar photovoltaic systems, subject to the requirements of the applicable governing documents.

CEQA: Exempt, Files No. PP11-064, PP11-065, PP11-066, PP11-067, PP11-068, PP11-069, PP11-070, PP11-071, PP11-072, PP11-073, PP11-074, PP11-075, and PP11-079.  
(Environmental Services/Finance)

**San José Financing Authority Resolution No. 113 adopted.**

## **3. Open Forum**

There were none.

## **4. Adjourn the San José Financing Authority.**

The meeting was adjourned at 5:04 p.m.