

CITY COUNCIL AGENDA

NOVEMBER 1, 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 discussion item that is on the agenda, and you may also speak during Open Forum on items that are not on the agenda and are within the subject matter jurisdiction of the City Council or Redevelopment Agency Board. If you wish to speak to the City Council, please refer to the following guidelines:

- **Fill out a Yellow Speaker's Card and submit it to the City Clerk seated at the front table. Do this before the meeting or before the item is heard.** This will ensure that your name is called for the item(s) that you wish to address, and it will help ensure the meeting runs smoothly for all participants.
- When the Council reaches your item on the agenda, Mayor Reed will open the public hearing and call your name. Please address the Council from the podium, which is located to the left of the City Clerk's table.
- Each speaker generally has two minutes to speak per item. The amount of time allotted to speakers may vary at the Mayor's discretion, depending on the number of speakers or the length of the agenda.
- To assist you in tracking your speaking time, there is a display on the podium. The green light turns on when you begin speaking; the yellow light turns on when you have 30 seconds left; and the red light turns on when your speaking time is up.

Please be advised that, by law, the City Council is unable to discuss or take action on issues presented during Open Forum. According to State Law (the Brown Act) items must first be noticed on the agenda before any discussion or action.

The San José City Council meets every Tuesday at 1:30 p.m. and Tuesday at 7 p.m. as needed, unless otherwise noted. If you have any questions, please direct them to the City Clerk's staff seated at the tables just below the dais. Thank you for taking the time to attend today's meeting. We look forward to seeing you at future meetings.

Agendas, Staff Reports and some associated documents for City Council items may be viewed on the Internet at www.sanjoseca.gov/clerk/agenda.asp. Council Meetings are televised live and rebroadcast on Channel 26.

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the Office of the City Clerk at San José City Hall, 200 E. Santa Clara Street, Council Wing, 2nd Floor, San José, CA 95113 at the same time that the public records are distributed or made available to the legislative body. Any draft contracts, ordinances and resolutions posted on the Internet site or distributed in advance of the Council meeting may not be the final documents approved by the City Council. Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for the final document.

To request an accommodation or alternative format under the Americans with Disabilities Act for City-sponsored meetings, events or printed materials, please call (408) 535-1260 or (408) 294-9337 as soon as possible, but at least three business days before the meeting.

On occasion the City Council may consider agenda items out of order.

- **Call to Order and Roll Call**
9:00 a.m. - Closed Session, Call to Order in Council Chambers
Absent Council Members: Chu, Constant, Oliverio. (Excused)

1:32 p.m. - Regular Session, Council Chambers, City Hall
Absent Council Members: Chu, Constant. (Excused)

7:05 p.m. - General Plan/Public Hearings, Council Chambers, City Hall
Absent Council Members: Chu, Constant. (Excused)
- **Invocation (District 10)**
Deputy Director Jon Cicirelli and the San José Animal Care and Services Staff Members brought a rabbit, dogs and kittens to share and encouraged everyone to visit the animal care center to adopt a pet.
- **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 2.3(a)-(c) and 4.2 deferred to November 8, 2011.
- **Closed Session Report**
City Attorney Doyle disclosed the following Closed Session actions of November 1, 2011:

CLOSED SESSION REPORT (Cont'd.)

A. Authority to Seek Review by the California Supreme Court in a Litigation Case:

Case Name: Michael Kerkeles v. City of San José, et al.

Adverse Party or Parties: Michael Kerkeles aka Michael Kerk

Substance of Litigation: Due Process

Council Vote: Ayes: Campos, Herrera, Kalra, Liccardo, Nguyen, Oliverio, Pyle, Rocha; Reed.

Noes: None.

Abstain: None.

Not Present: Chu, Constant. (Excused)

1. CEREMONIAL ITEMS

- 1.1 Presentation of a proclamation declaring City of San José's participation in the 2011 Combined Giving Campaign from October 10 through November 11, 2011. (Transportation)
Mayor Reed and Director of Transportation Hans Larsen recognized the City of San José's participation in the 2011 Combined Giving Campaign from October 10, 2011 through November 11, 2011.
- 1.2 Presentation of commendation to Eros Correa of the San José Police Athletic League (PAL) for his representation in the AIBA World Boxing Championships, and victories at the US Olympic Boxing Trials and CAL PAL Championships. (Campos)
Mayor Reed and Council Members Campos and Herrera recognized and commended Eros Correa of the San José PAL.
- 1.3 Presentation of a proclamation declaring the Month of November 2011 as "Pancreatic Cancer Awareness Month" in the City of San José. (Pyle)
Mayor Reed and Council Member Pyle recognized the month of November 2011 as "Pancreatic Cancer Awareness Month" in the City of San José.
- 1.4 Presentation of gifts from Council Member Pyle's trip to Dublin, Ireland as part of the Sister City Delegation. (Mayor)
(Rules Committee referral 10/26/11)
Council Member Pyle presented the Book of Kells, Irish Roots and "The Dublin Door", among other gifts, from her trip to Dublin, Ireland to the Library Director Jane Light to display at the 5th Floor of the MLK Library for the community to view. Mayor Reed was also present.

1. CEREMONIAL ITEMS

- 1.5 Presentation of a commendation to the Applied Materials “Silicon Valley Turkey Trot” for their dedication to raising money for local charities. (Liccardo)
(Rules Committee referral 10/26/11)

Heard First.

Mayor Reed and Council Member Liccardo recognized and commended Applied Materials.

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. 28985 – Amending Section 12.04.160 of Chapter 12.04 of Title 12 of the San José Municipal Code to clarify enforcement of Title 12; amending Section 12.06.050 of Chapter 12.06 of Title 12 to clarify that volunteer personal services are not contributions; adding Section 12.06.140 to define late contribution; amending Section 12.06.210 and repealing Section 12.06.540 to delete alternative contribution limits; amending Sections 12.06.290 and 12.06.610 to revise the campaign contribution collection period; amending Section 12.06.295 to revise the deadline for a candidate to deposit personal funds; amending Section 12.06.530 to revise the current formula for calculating voluntary expenditure limits for Council Districts and to impose a method for adjusting the expenditure limits for Mayoral and Council District candidates in the future, if necessary; repealing Section 12.06.560 to delete the provision increasing expenditure limits during an election; amending 12.06.920 to revise the requirements of the report published by the City Clerk; and making other technical corrections.

Ordinance No. 28985 adopted.

- (b) ORD. NO. 28986 – Amending Title 18 (Local Planning) of the San José Municipal Code to add a new Chapter 18.02 to codify existing regulations of the City of San José pertaining to the consideration of development agreements and to amend criteria for developments eligible for a development agreement and rescinding Ordinance No. 24297 pertaining to development agreements.

Ordinance No. 28986 adopted.

2. CONSENT CALENDAR

2.3 Approval of Council Committee Reports.

Recommendation: Approval of Council Committee Reports.

- (a) Rules and Open Government Committee Report of October 12, 2011. (Mayor)
- (b) Public Safety, Finance and Strategic Support Committee Report of October 20, 2011. (Constant)
- (c) Rules and Open Government Committee Report of October 5, 2011. (Mayor)
[Deferred from 10/25/11 – Item 2.3(b)]

Deferred to November 8, 2011 per Orders of the Day.

2.4 Mayor and Council Excused Absence Requests.

There were none.

2.5 City Council Travel Reports.

Council Member Pyle presented highlights and photographs of her trip to Dublin, Ireland to celebrate the “25th Anniversary of San José and Dublin’s Sister City Board” and to further strengthen ties between the two cities. City Manager Debra Figone stated it was a tremendous experience, and the visit was one of open doors and creating opportunity.

Council Member Liccardo provided details of his travel to Hong Kong and Shenzhen with the Silicon Valley-China Business Connect delegation for a series of meetings with businesses in China seeking to expand overseas, a goal of creating jobs and tax revenue in San José.

2.6 Report from the Council Liaison to the Retirement Boards.

There were none.

2.7 Actions Related to the 2012 Municipal Election Cycle.

Recommendation: Adopt a resolution:

- (a) Setting the Voluntary Expenditure Limits for the 2012 Municipal Election Cycle based upon current population figures.
- (b) Calling for a Regular Municipal Election on June 5, 2012 and a Run-off Municipal Election on November 6, 2012, if necessary, for the purpose of electing Council Members for Districts 2, 4, 6, 8, and 10 and requesting consolidation with the County of Santa Clara.

(City Clerk)

(Rules Committee referral 10/12/11)

(Deferred from 10/25/11 – Item 2.9)

Resolution No. 76038 adopted.

2. CONSENT CALENDAR

2.8 Settlement of Claim from Areas USA SJC, LLC.

Recommendation: Approve settlement of the claim from Areas USA SJC, LLC, and authorize the City Attorney to execute an Addendum to First Amendment to Food and Beverage Concession Agreement in the amount of \$131,153.31. CEQA: Not a Project; File No. PP10-066(h), Settlement Agreement. (City Attorney's Office)

Approved.

2.9 Settlement in Jesus and Cristela Gomez v. City of San José.

Recommendation: Approve settlement in the case of Jesus and Cristela Gomez v. City of San José, et al. and authorize the City Attorney to execute a Settlement Agreement and Release with Jesus and Cristela Gomez, and their attorney, in the amount of \$100,000. CEQA: Not a Project; File No. PP10-066h, Settlement Agreements. (City Attorney's Office)

Approved.

2.10 Agreement with The Active Network, Inc. (Burnaby, BC Canada) for a Park Registration, Reservation and Electronic Commerce System.

Recommendation: Adopt a resolution authorizing the City Manager to execute an amendment to the agreement with The Active Network, Inc. (Burnaby, BC Canada) to extend the term of the agreement for a fully hosted Park Registration, Reservation and Electronic Commerce System by a maximum of six months, ending on April 30, 2012. CEQA: Not a Project, File No. PP10-066(e) Agreements and Contracts. (Finance)

Resolution No. 76039 adopted.

2.11 Actions Related to Council Member Chu's Travel to San Diego, CA.

Recommendation:

- (a) Approve travel by Council Member Chu to San Diego, CA on November 17-18, 2011 to attend the regularly scheduled League of California Cities Board of Director's meeting as the designated representative for the City of San José. Source of Funds: Council District 4 Budget, League of California Cities reimburses the City for related travel expenses. (Chu)
- (b) Request for an excused absence for Council Member Chu from the Regular Meeting of the Public Safety, Finance and Strategic Support Committee on November 17, 2011 due to Authorized City Business: Attending the regularly scheduled League of California Cities Board of Director's meeting in San Diego, CA as the designated representative for the City of San José. (Chu)

(Rules Committee referral 10/26/11)

Approved.

2. CONSENT CALENDAR

2.12 Actions Related to Council Member Constant's Travel to Phoenix, AZ.

Recommendation:

- (a) Approve travel by Council Member Constant to Phoenix, AZ on November 9 – 12, 2011 to represent the City of San José as Vice Chair of the National League of Cities' (NLC) Public Safety and Crime Prevention (PSCP) Steering Committee at the 2011 National League of Cities Congress of Cities and Exposition Conference. Source of Funds: Mayor & Council Travel Fund. (Constant)
- (b) Request for excused absences for Council Member Constant from the Regular Meeting of the Rules and Open Government Committee on November 9, 2011 and the Regular Meeting of the Neighborhood Services and Education Committee on November 10, 2011 due to Authorized City Business: Representing the City of San José as Vice Chair of the National League of Cities' (NLC) Public Safety and Crime Prevention (PSCP) Steering Committee at the 2011 National League of Cities Congress of Cities and Exposition Conference. (Constant)

(Rules Committee referral 10/26/11)

Approved.

2.13 District 6 Film Event.

Recommendation: As recommended by the Rules and Open Government Committee on October 26, 2011:

- (a) Approve the District 6 showing of the film, "Radiant City," as a City Council sponsored Special Event; and
- (b) Approve and accept donations from various individuals, businesses or community groups to support the event.

CEQA: Not a Project. (City Clerk)

[Rules Committee referral 10/26/11 – Item H(4)]

Approved.

3. STRATEGIC SUPPORT SERVICES

3.1 Report of the City Manager, Debra Figone (Verbal Report) No Report.

3.2 Labor Negotiations Update

Recommendation: Accept Labor Negotiations Update.

Heard at 9:00 a.m.

Accepted.

3. STRATEGIC SUPPORT SERVICES

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)

(Rules Committee referral 05/25/11)

(Deferred from 6/7/11 – Item 3.6, et al and 9/27/11 – Item 3.3)

Deferred to November 29, 2011 per Administration.

3.4 Agreement with Standard Insurance Company for Life Insurance, Voluntary Supplemental Life Insurance, Dependent Life Insurance, and Accidental Death and Dismemberment Insurance to Employees and Retirees.

Recommendation: Adopt a resolution authorizing the City Manager to negotiate and execute an agreement between the City and Standard Insurance Company to provide life insurance, voluntary supplemental life insurance, dependent life insurance and accidental death & dismemberment insurance to employees and retirees at a total cost not to exceed \$5,354,106 for the period of January 1, 2012 to December 31, 2016. CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment.

(Human Resources)

Resolution No. 76040 adopted.

3.5 Legislative Update by Assemblymember Luis Alejo.

Recommendation: Receive legislative update by Assemblymember Luis Alejo. (Mayor)
[Rules Committee referral 10/19/11 – Item A(2)(a)(1)]

Heard following Ceremonial Items.

Received.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Envision San José 2040 General Plan Update.

Recommendation:

(a) Discuss the Major Strategies and implementation elements of the Draft Envision San José 2040 General Plan.

(b) Continue the discussion to 7:00 p.m. for action.

CEQA: Envision San José 2040 General Plan Program Environmental Impact Report, EIR Resolution to be adopted. (Planning, Building and Code Enforcement)

Discussion was continued to 7:00 p.m. See Item 10.2 for action.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.2 Urgency Ordinance Amending Zoning Code Regulations Pertaining to Medical Marijuana Collectives.

Recommendation:

- (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) Council consideration of adoption of an urgency ordinance amending Ordinance No. 28958, adopted by the City Council on September 27, 2011 to establish land use regulations pertaining to medical marijuana collectives, to provide that Ordinance No. 28958 shall become effective only if and when Ordinance No. 28960, establishing health and safety regulations for medical marijuana collectives, first becomes effective and setting forth the facts constituting such urgency.

CEQA: Resolution No. 75984 (City Attorney's Office/City Manager's Office)

Please note: Approval of this item requires 8 or more affirmative votes (2/3).

Deferred to November 8, 2011 per Orders of the Day.

5. NEIGHBORHOOD SERVICES

6. TRANSPORTATION & AVIATION SERVICES

7. ENVIRONMENTAL & UTILITY SERVICES

8. PUBLIC SAFETY SERVICES

9. JOINT COUNCIL/REDEVELOPMENT AGENCY

- **Open Forum**
There were none.

- **Adjournment**
The Council adjourned the afternoon Council Session at 4:22 p.m.

10. GENERAL PLAN PUBLIC HEARINGS

10.1 Tentative approval of General Plan Consent Calendar items.

No General Plan Public Hearings on Consent Calendar at this time.

10.2 Actions Related to Envision General Plan Update.

Recommendation: Adopt a resolution to approve the Envision San José 2040 General Plan and Land Use/Transportation Diagram which is a comprehensive update of the current Focus on the Future San José 2020 General Plan, adopted by the City Council in 1994. The City's General Plan is a long-term plan that describes the amount, type and phasing of development needed to achieve the City's social, economic and environmental goals. The General Plan is the policy framework which creates a blueprint for future development and addresses all geographic areas contained within San José's Sphere of Influence and also incorporates goals and policies for a wide variety of municipal services provided by the City. Director of Planning, Building and Code Enforcement and Planning Commission (5-0-1, Platten absent) recommend approval of the Envision General Plan as recommended by the Envision Task Force with minor land use and text changes, but do not recommend any of the following options:

- **The Planning Commission report, Staff report/supplemental reports and Staff verbal clarifications of the Primary Truck Routes diagram and an addendum that incorporates minor text revisions incorporated in the draft plan and the Program Environmental Impact Report for the General Plan, were approved.**
- **EIR Resolution No. 76041 adopted, making certain findings concerning mitigation measures and making findings concerning alternatives in accordance with the California Quality Act in connection with the Envision San José General Plan Program Environmental Impact Report.**
- **Envision San José 2040, Resolution No. 76042 adopted, including the Mabury action noted below.**

(9-0-2. Absent: Chu, Constant.)

- (a) Land use and policy options submitted by community stakeholders as part of the Envision San José 2040 General Plan update process, such as but not limited to:
- (1) Open Hillside Development: an option forwarded by the Envision Task Force for City Council consideration to modify the text of the Envision San José 2040 General Plan, Policy Goal LU-19 to add further restrictions on the allowable intensity of development for lands with the Open Hillside designation. Director of Planning, Building and Code Enforcement and Planning Commission (4-1-1, Cahan opposed, Platten absent) recommend not to include policy option.

Approved, with no further changes regarding Open Hillside Development.

(8-1-2. Noes: Kalra. Absent: Chu, Constant.)

10. GENERAL PLAN PUBLIC HEARINGS

10.2 Actions Related to Envision General Plan Update. (Cont'd.)

- (a) (2) 1506 Hamilton Avenue: a privately requested option for Envision Land Use/Transportation Diagram designation of Mixed-Use Neighborhood (up to 30 DU, FAR 0.25 to 2.0) to allow attached residential units instead of Neighborhood Community/Commercial to for the 0.92-acre property located at 1506 Hamilton Avenue. Director of Planning, Building and Code Enforcement and Planning Commission (5-0-1, Platten absent) recommend not to include policy option.
Not included in the Envision Plan. (9-0-2. Absent: Chu, Constant.)
- (3) 12750 and 12751 Mabury Road: a privately requested option for Envision Land Use/Transportation Diagram designation of Mixed-Use Neighborhood (up to 30 DU, FAR 0.25 to 2.0) to allow attached residential units instead of Residential Neighborhood (up to for the 3.1-acre property located at 12750 and 12751 Mabury Road. Director of Planning, Building and Code Enforcement and Planning Commission (5-0-1, Platten absent) recommend not to include policy option.
The memorandum from Council Member Chu, dated October 31, 2011, was approved, approving a land use designation of Mixed Use Neighborhood at 12750 and 12751 Mabury Road in the Envision 2040. (6-3-2. Noes: Kalra, Liccardo; Reed. Absent: Chu, Constant.)
- (b) Rancho del Pueblo Residential Option (GP10-05-01): an option for Envision Land Use/Transportation Diagram designation of Mixed Use Neighborhood (up to 30 DU, FAR 0.25 to 2.0) to allow approximately 570 attached residential units, instead of the Task Force, staff, and Planning Commission recommended Open Space, Parklands and Habitat on the approximately 31-acre site(City-owned Ranch del Pueblo golf course) located at the northwest corner of King Road and Hermocilla Way (City of San José, Owner). Council District 5. SNI/RDA: Gateway East SNI area. Director of Planning, Building and Code Enforcement and Planning Commission (5-0-1, Platten absent) recommend not to include.
Dropped, to be renoticed.
- (c) iStar Residential Option (GP07-02-01): an option for Envision Land Use/Transportation Diagram designation of Mixed Use Neighborhood (up to 30 DU, FAR 0.25 to 2.0) to allow approximately 700 attached residential units instead of the Task Force, staff, and Planning Commission recommended Combined Industrial/Commercial on a 51.7-acre portion of the approximately 76-acre site (iStar site) located north of State Route 85, west of Monterey Highway (iStar, Owner). Council District 2. SNI/RDA: Edenvale RDA area. Director of Planning, Building and Code Enforcement and Planning Commission (4-1-1, Bit-Badal opposed, Platten absent) recommend not to include policy option.
CEQA: Envision San José 2040 General Plan Program Environmental Impact Report, EIR Resolution to be adopted
Dropped, to be renoticed.

11. PUBLIC HEARINGS

No Public Hearings at this time.

- **Open Forum**
There were none.

- **Adjournment**
The Council of the City of San José was adjourned at 8:18 p.m.