



CITY COUNCIL AGENDA

DECEMBER 6, 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**
9:06 a.m. - Closed Session, Call to Order in Council Chambers
Absent Council Members: Herrera, Kalra, Oliverio. (Excused)

1:31 p.m. - Regular Session, Council Chambers, City Hall
Absent Council Members: All Present.
- **Invocation (Mayor)**
Danny Sanchez, Calvary Chapel, 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 2.3(b)(c)(d) deferred to December 13, 2011, and discussion was held on Item 3.3.
Noes: Chu, Kalra, Pyle, Oliverio, Rocha.
- **Closed Session Report**
No Report.

1. CEREMONIAL ITEMS

- 1.1 Presentation of a commendation to Peter's Bakery in celebrating 75 years of outstanding service as a small and successful business in providing memorable experiences through their products of baked good and desserts. (Campos)
Mayor Reed and Council Members Campos and Chu recognized and commended Peter's Bakery in celebration of 75 years of outstanding service.
- 1.2 Presentation of a commendation to the South Bay Yacht Club for their representation of the Alviso historical traditions and camaraderie of enjoying boating and boating related activities. (Chu)
Mayor Reed and Council Member Chu recognized and commended the South Bay Yacht Club.
- 1.3 Presentation of a commendation to the San José Silicon Valley Chamber of Commerce in recognition of 125 years of promoting business prosperity in the San José region. (Herrera)
Mayor Reed and Council Member Herrera recognized and commended the San José/Silicon Valley Chamber of Commerce in recognition of 125 years of promoting business prosperity
- 1.4 Presentation of a commendation to the San José Toys for Tots program for its efforts to help needy children experience the joy of Christmas, and to unite all members of the community in a common cause for three months each year during the annual toy collection and distribution campaign in order to contribute to better communities in the future. (Mayor)
Mayor Reed recognized and commended the San José Toys for Tots program for its exceptional efforts.

2. CONSENT CALENDAR

- 2.1 **Approval of Minutes.**
There were none.
- 2.2 **Final Adoption of Ordinances.**
There were none.
- 2.3 **Approval of Council Committee Reports.**

Recommendation: Approval of Council Committee Reports.

- (a) Rules and Open Government Committee Report of November 16, 2011.
 - (e) Rules and Open Government Committee Report of November 2, 2011.
 - (f) Rules and Open Government Committee Report of November 9, 2011.
- (Mayor)

Deferred per the Orders of the Day to December 13, 2011

2. CONSENT CALENDAR

2.3 Approval of Council Committee Reports. (Cont'd.)

- (b) Public Safety, Finance and Strategic Support Committee Report of November 17, 2011. (Constant)
 - (c) Ad Hoc Committee on Airport Competitiveness Report of August 18, 2011.
 - (d) Ad Hoc Committee on Airport Competitiveness Report of September 15, 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 Lease of Airport Premises with G2 Secure Staff.

Recommendation: Approve a Third Amendment to Lease of Airport Premises with G2 Secure Staff, LLC to extend the term for five years, from January 1, 2012 through December 31, 2016, with annual revenue to the City of approximately \$36,293. CEQA: Not a Project, File No. PP10-066(f), Lease of existing space for same use. (Airport)

Approved.

2.8 Master Agreement with Brown and Caldwell for Consultant Services for Storm Drainage Studies and General Engineering Services.

Recommendation: Approve a master agreement with Brown and Caldwell for consultant services for Storm Drainage Studies and General Engineering Services from the date of execution to December 31, 2015, in an amount not to exceed \$500,000. CEQA: Not a Project, File No. PP10-066(d). (Public Works)

Approved.

2.9 Downtown San José Property-Based Business Improvement District Financial Report.

Recommendation: Accept the Downtown San José Property-Based Business Improvement District (PBID) Financial Report for FY 2010-2011, which includes a full audit report by an independent Certified Public Accountant as required by the agreement between the City of San José and the PBID. CEQA: Exempt, File No. PP08-095. (Transportation)

Accepted.

2. CONSENT CALENDAR

2.10 Public Records Fees Waiver.

Recommendation: As recommended by the Rules and Open Government Committee on November 16, 2011:

- (a) Approve an ordinance adding Section 1.17.015 of Chapter 1.17 of Title 1 of the San José Municipal Code to permit waiver of costs associated with requests for records pursuant to the California Public Records Act.

Ordinance No. 29002 passed for publication.

- (b) Adopt a resolution amending the FY 2011-2012 Schedule of Fees and Charges (Resolution No. 72737, as amended) to allow the waiver of certain costs associated with Requests for Public Records, to be effective as specified in the ordinance listed in subsection (a).

CEQA: Not a Project, File No. PP10-067(a). (City Manager's Office)

Resolution No. 76085 adopted.

2.11 Audit of Annual Form 700 Filers.

Recommendation: As recommended by the Public Safety, Finance and Strategic Support Committee on November 17, 2011, accept the audit of Annual Form 700 Filers.

CEQA: Not a Project, File No. PP10-069. (City Auditor)

Accepted.

2.12 Follow-up Report on Supplemental Military Pay.

Recommendation: As recommended by the Public Safety, Finance and Strategic Support Committee on November 17, 2011, accept the Follow-up Report on Supplemental Military Pay.

CEQA: Not a Project, File No. PP10-069. (City Manager's Office)

Accepted.

2.13 Agreement with Mobizent LLC for Mobile Identification Interface Services.

Recommendation: Adopt a resolution authorizing the City Manager to negotiate and execute an amendment to the agreement with Mobizent LLC, (located in Edison New Jersey previously 3i Infotech Corporation) to update the scope, extend the term of the agreement through June 30, 2014, and execute additional amendments to extend the agreement as required in the event that additional time is needed to complete Phases Three and Four of the project as previously approved by Council. CEQA: Not a Project, File No. PP10-066(a), Agreements and Contracts. (Finance)

(Deferred from 11/29/11 – Item 2.8)

Resolution No. 76086 adopted.

2. CONSENT CALENDAR

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

Recommendation: Approve travel by Council Member Campos to Los Angeles, California on January 13 – 15, 2012 to attend the League of California Cities – Latino Caucus Board Retreat. Source of Funds: Mayor/Council Travel Fund. (Campos)

Approved.

2.15 Police and Fire Retirement Plan Board of Administration and Federated City Employees Retirement System Board of Administration Interviews.

Recommendation:

- (a) The City Council acknowledges receipt of the following:
 - (1) The Certification by the City Clerk of results of elections conducted among active Police and Fire Department employees for the nomination of a Fire Department employee representative to the Board of Administration of the Police and Fire Department Retirement Plan.
 - (2) The Certification by the City Clerk of results of elections conducted among employee members of the Federated Retirement System for the nomination of an employee representative to the Board of Administration of the Federated City Employees' Retirement System.
- (b) The City Council:
 - (1) Appoint the applicant with the highest vote count, Matt Loesch, as an active employee member of the Board of Administration of the Federated City Employees' Retirement System (FCERS) to a term expiring November 30, 2015.
 - (2) Appoint the applicant with the highest vote count, Sean Kaldor, as the active Fire Department employee member of the Board of Administration of the Police and Fire Department Retirement Plan to a term expiring November 30, 2015.

(City Clerk)

Note: Item 3.6 was renumbered to Item 2.15.

Approved.

2.16 Appointment to the Silicon Valley Workforce Investment Network Board of Directors.

Recommendation: As recommended by the Rules and Open Government Committee on November 30, 2011, appoint Mitch Schoch, President and CEO of Bentek, Inc., in San José, California to serve as a private-sector representative on the Silicon Valley Work Force Investment Network Board of Directors. (Mayor)

Approved.

3. STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone congratulated City employees for raising \$110,000 through the 2011 Combined Charitable Giving Campaign, including those employees who donated 1,452 hours to the social service and non profit agencies who participating in this year's campaign by dedicating their time to volunteerism.

3.2 Labor Negotiations Update

Recommendation: Accept Labor Negotiations Update.

Heard at 9:00 a.m.

Accepted.

3.3 Declaration of Fiscal and Service Level Emergency.

Recommendation:

- (a) Accept the attached City of San José Fiscal & Service Level Emergency Report.
- (b) Adopt a Resolution declaring a Fiscal and Service Level Emergency based on the City of San José Fiscal & Service Level Emergency Report, including the findings set forth in the Resolution.

(Mayor)

Dropped to be renoticed; Deferred to 2012.

3.4 Consideration of Action on a Ballot Measure on Pension Reform.

Recommendation:

- (a) Discussion and consideration of a Retirement Reform ballot measure for a March 6, 2012 election.
- (b) If Council wishes to proceed, adopt a resolution of the Council calling a special municipal election to be held on March 6, 2012, and, on its own motion, giving notice of the submission to the electors of the City of San José, the following measure at that election:

<p>To maintain essential City services, shall the Charter be amended to reform retirement benefits of City employees and retirees by, among others: (1) increasing current employees' contributions; (2) establishing a voluntary reduced pension plan for current employees; (3) establishing pension cost and benefit limitations for new employees; (4) limiting disability retirements; (5) temporarily suspending retiree Cost of Living adjustments; and (6) requiring voter approval to increase future pension benefits?</p>
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- (c) Council discussion and consideration of permitting rebuttal arguments in the March 6, 2012 Voter's Sample Ballot, pursuant to Elections Code Section 9285, to be incorporated in the resolution calling the election

(Action continued on the next page)

3. STRATEGIC SUPPORT SERVICES

3.4 Consideration of Action on a Ballot Measure on Pension Reform. (*Action Cont'd.*)

- (d) Council discussion and consideration of a resolution authorizing an individual member or members of the City Council to submit an argument in favor of the City measure on the March 6, 2012 Voter's Sample Ballot, pursuant to Elections Code Section 9282, to be incorporated in the resolution calling the election.

(Mayor)

The revised memorandum from Mayor Reed, Vice Mayor Nguyen and Council Members Constant, Herrera and Liccardo, dated December 1, 2011, was approved:

- (1) **Consideration of the declaration of a Fiscal and Service Level Emergency until after Cheiron has provided an update of their five year projections and other questions have been answered was deferred.**
- (2) **Resolution No. 76087 was adopted calling a Municipal election on June 5, 2012 and giving notice of the submission to the electors of the City of San José, the following measure at that election, modified as follows:**
 - (a) **PENSION REFORM. To protect essential services: neighborhood police patrols, fire stations, libraries, community centers, streets and parks, shall the Charter be amended to reform retirement benefits of City employees and retirees by: increasing employees' contributions, establishing a voluntary reduced pension plan for current employees and pension cost and benefit limitations for new employees, reforming disability retirements to prevent abuses, temporarily suspending retiree COLAs (Cost of Living Adjustments) during *emergencies* and requiring voter approval for increases in future pension benefits.**
- (3) **The Mayor was authorized to prepare and submit an argument in favor of the City Measure on the June 5, 2012 Voter's Sample Ballot.**
- (4) **Council Members were authorized to prepare, submit and/or sign "in favor of" and "in opposition to" ballot arguments and rebuttals on the June 5, 2012 Voter's Sample Ballot.**

The supplemental memorandum from Mayor Reed, dated December 5, 2011, was approved:

- (1) **The proposed ballot measure language with the changes noted in the attached draft was approved.**
- (2) **Staff directed to delay transmitting the ballot measure resolution and related documents to the registrar to allow time for continued mediation, if requested by the bargaining units.**
- (3) **Staff directed to invite all bargaining units to waive all other impasse procedures and engage in mediation over the ballot measure and other retirement issues with two separate mediations, one for Police and Fire and one for all bargaining units representing employees in the Federated City Employees' Retirement System.**

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

- (1) **Information related to fees, costs and financial risks will be discussed in Closed Session first and the Council will vote on what is released to the public.**

Noes: Campos, Chu, Kalra, Pyle.

3. STRATEGIC SUPPORT SERVICES

3.5 Discussion and Consideration of Council Action to Either Repeal Ordinance No. 28960 relating to Medical Marijuana or Call an Election.

Recommendation: Discussion and consideration of Council action to either repeal Ordinance No. 28960, which establishes regulations pertaining to medical marijuana collectives and to individual cultivation and use of medical marijuana, or to submit the Ordinance to the voters at a Municipal Election. (City Clerk)

Dropped.

3.6 Police and Fire Retirement Plan Board of Administration and Federated City Employees Retirement System Board of Administration Interviews.

Recommendation:

- (a) The City Council acknowledges receipt of the following:
 - (1) The Certification by the City Clerk of results of elections conducted among active Police and Fire Department employees for the nomination of a Fire Department employee representative to the Board of Administration of the Police and Fire Department Retirement Plan.
 - (2) The Certification by the City Clerk of results of elections conducted among employee members of the Federated Retirement System for the nomination of an employee representative to the Board of Administration of the Federated City Employees' Retirement System.
- (b) The City Council:
 - (1) Appoint the applicant with the highest vote count, Matt Loesch, as an active employee member of the Board of Administration of the Federated City Employees' Retirement System (FCERS) to a term expiring November 30, 2015.
 - (2) Appoint the applicant with the highest vote count, Sean Kaldor, as the active Fire Department employee member of the Board of Administration of the Police and Fire Department Retirement Plan to a term expiring November 30, 2015.

(City Clerk)

Item 3.6 was renumbered to Item 2.15. See Item 2.15 for Action.

3.7 Comprehensive Annual Financial Report & Comprehensive Annual Debt Report.

Recommendation: Accept the following annual reports:

- (a) Comprehensive Annual Financial Report for the City of San José for Fiscal Year 2010-2011.
 - (b) Comprehensive Annual Debt Report for the City of San José for Fiscal Year 2010-2011.
- CEQA: Not a Project, File No. PP10-69 (a) Annual Reports. (Finance)

Deferred to December 13, 2011 per Administration.

3. STRATEGIC SUPPORT SERVICES

3.8 Ordinance Amending Title 16, Gaming Control.

Recommendation: As recommended by the Public Safety, Finance and Strategic Support Committee on November 17, 2011, approve an ordinance amending Section 16.18.030 of Chapter 16.18 and Section 16.30.200 of Chapter 16.30 of Title 16 of the San José Municipal Code, the Gaming Control Regulatory Program Ordinance, to: (1) confine gaming to the single ground floor level of a permitted cardroom or to such other areas of a permitted cardroom as may be approved pursuant to the cardroom permit amendment procedure, (2) make the location of gaming in a cardroom a term and condition of the cardroom permit, and (3) make the requirement to apply for a cardroom permit amendment in order to be allowed to have gaming outside the single ground floor level of a cardroom retroactive to any application for a cardroom permit amendment pending on or after April 1, 2011. CEQA: Not a Project; File No. PP10-068(b), Municipal Code or Policy.

Ordinance No. 29003 passed for publication.

3.9 Team San José Quarterly Performance Report First Quarter Results Ending September 30, 2011.

Recommendation: As recommended by the Public Safety, Finance and Strategic Support Committee on November 17, 2011, accept the Team San José Quarterly Performance Report First Quarter Results ending September 30, 2011. (Team San José)

Deferred to December 13, 2011 per Administration.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.1 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.

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 as mandated by Title 6 of the San José Municipal Code to allow the off-sale of alcohol at a full-service grocery store on a 6.48 gross-acre site in the CG Commercial General Zoning District, located on the northwest corner of Prospect Road and Saratoga Avenue (5205 Prospect Road, Suite 153)(West Valley Shopping Center, Inc. Owner/Sunflower Farmers Market, Applicant). CEQA: Exempt. The Director of Planning, Building and Code Enforcement recommends the Council uphold the appeal 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.

CP11-054/ABC11-013 – District 1

4. COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 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. (*Action Cont’d.*)**

The memorandum from Mayor Reed and Council Member Constant, dated December 2, 2011, was approved, approving the Staff recommendations. Resolution No. 76088 adopted.

- 4.2 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 Beer and Wine 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 as mandated by Title 6 of the San José Municipal Code to allow off-sale of beer and wine for a full-service grocery store in a 17,370 square-foot tenant space in a portion of a 35,000 square-foot existing building, on an approximately 2.30 gross-acre site in the CG Commercial General Zoning District, located on the southwest corner of East Santa Clara Street and South 7th Street (272 E. Santa Clara St.) (Carlos Oropeza Legorreta, Owner; Fresh & Easy Neighborhood Market Scott Whitney, Developer). Council SNI: 13th Street. CEQA: Exempt. The Director of Planning, Building and Code Enforcement recommends the City Council uphold the appeal 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.

CP11-040/ABC11-008 – District 3

The memorandum from Council Member Liccardo, dated December 2, 2011, recommending acceptance of the Staff recommendations with the following modification to condition 9.d. of the draft resolution to read:

“Uniformed security shall be present for whatever duration that the store operates and is open to the public beyond 10:00 p.m.”

Resolution No. 76089 adopted, as amended.

5. NEIGHBORHOOD SERVICES

6. TRANSPORTATION & AVIATION SERVICES

7. ENVIRONMENTAL & UTILITY SERVICES

8. PUBLIC SAFETY SERVICES

9. JOINT COUNCIL/REDEVELOPMENT AGENCY

- **Open Forum**
David Wall requested information on the procedure to appoint board members to the Environmental Innovation Center and expressed concern about a potential contract service agreement with the San José Downtown Association scheduled to be heard at Rules and Open Government Committee on December 7, 2011.
- **Adjournment**
The Council of the City of San José was adjourned at 5:41 p.m. in memory of Specialist Sean Walsh, 21, of San José, who was killed while on patrol in the Khost province in Eastern Afghanistan on November 16, 2011. Deployed in the California National Guard's 185th Military Police Battalion in December, 2010, Sean died during his courageous service to our country. (Herrera/Chu)