



CITY COUNCIL AGENDA

APRIL 17, 2012

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 the City Council acting as the Successor Agency to the Redevelopment Agency.

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. 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**
 - 9:36 a.m.** - Closed Session, Call to Order in Council Chambers
Absent Council Members: Herrera, Kalra, Liccardo, Oliverio. (Excused)
 - 1:33 p.m.** - Regular Session, Council Chambers, City Hall
Absent Council Members: Reed. (Excused)
 - 7:01 p.m.** - Public Hearings, Council Chambers, City Hall
Absent Council Members: Reed. (Excused)
- **Invocation (District 4)**
Reverend Ralph Su, Canaan Taiwanese Christian Church, Alviso, California, offered the Invocation.
- **Pledge of Allegiance**
Vice Mayor Nguyen and the Students from Anderson Elementary School (District 1) led the Pledge of Allegiance
- **Orders of the Day**
The Orders of the Day and the Amended Agenda were approved, Item 1.7 was dropped and Item 8.1 was heard.
- **Closed Session Report**
No Report.

1. CEREMONIAL ITEMS

- 1.1 Presentation of a proclamation recognizing April 22, 2012 as “Earth Day” in the City of San José. (Chu)
Vice Mayor Nguyen and Council Member Chu recognized April 22, 2012 as “Earth Day” in the City of San José.
- 1.2 Presentation of a commendation to the Junior Sharks Girls 12AA and 16AA Teams for capturing the USA Hockey’s Pacific District Championships Titles, held March 27-April 1, 2012, in Irving, Texas and the Junior Sharks Girls 10U Team for being the first ever all girls team to play in the Northern California Junior Hockey Association Championships, held March 23-25, 2012, in Oakland, California. (Chu)
Heard in the Evening.
Vice Mayor Nguyen and Council Member Chu recognized and commended the exemplary efforts of the Junior Sharks Girls 12AA and 16AA Teams for capturing the USA Hockey’s Pacific District Championships Titles and the Junior Sharks Girls 10U Team for being the first all girls team to play in Northern California Championships.
- 1.3 Presentation of a proclamation declaring the month of April 2012 as “National Volunteer Month” in the City of San José. (Herrera)
Vice Mayor Nguyen and Council Member Herrera recognized the month of April 2012 as “National Volunteer Month” in the City of San José.
- 1.4 Presentation of a commendation to Cosme Fagundo for his dedication and support of local communities and organizations which work to keep San José safe and vibrant. (Nguyen)
Vice Mayor Nguyen recognized and commended Cosme Fagundo for his commitment and support to the community.
- 1.5 Presentation of commendations for Sally Ashton and Joe Miller for their work initiating and bringing to fruition Poetry on the Move during National Poetry Month. (Liccardo)
Vice Mayor Nguyen and Council Member Liccardo recognized and commended Sally Ashton and Joe Miller.
- 1.6 Presentation of commendations to the 2012 Outstanding Contributors to Early Childhood Education. (Pyle)
Heard in the Evening.
Vice Mayor Nguyen and Council Members Pyle, Liccardo, Chu and Kalra recognized and commended the 2012 Outstanding Contributors to Early Childhood Education.
- 1.7 Presentation of a proclamation to recognize the month of April as “Child Abuse Prevention Month”. (Oliverio)
Dropped per Orders of the Day.

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.

There were none.

2.4 Mayor and Council Excused Absence Requests.

Recommendation:

- (a) Request for an excused absence for Council Member Constant from the Regular Meeting of the Neighborhood Services and Education Committee on March 8, 2012 due to Authorized City Business: Guest Speaker at American Leadership Forum – Silicon Valley. (Constant)

Excused.

2.5 City Council Travel Reports.

There were none.

2.6 Report from the Council Liaison to the Retirement Boards.

There were none.

2.7 Agreement with the San Jose Sports Authority.

Recommendation: Approve an agreement with the San Jose Sports Authority for the period July 1, 2011 to June 30, 2015, in the amount of \$ 338,073 in FY 2011-2012 and subject to City Council appropriation of funds thereafter. CEQA: Not a Project, File No. PP10-066(e), Agreements/Contracts. (Economic Development)

Approved.

2.8 Agreement with the County of Santa Clara for the Sublease of Space for the Household Hazardous Waste Collection Facility.

Recommendation: Adopt a resolution authorizing the City Manager or her designee to execute an agreement with the County of Santa Clara for the sublease of space in real property located at 1608 Las Plumas Avenue known as the San José Environmental Innovation Center for the purpose of operating a household hazardous waste (HHW) collection facility, resulting in rental revenue of approximately \$344,000 annually to the City. CEQA: Mitigated Negative Declaration for the San José Environmental Innovation Center, File No. PP09-138, adopted December 1, 2009. (Economic Development)

Resolution No. 76194 adopted.

2. CONSENT CALENDAR

2.9 Agreement with the County of Santa Clara for Countywide Household Hazardous Waste Collection Program.

Recommendation: Adopt a resolution authorizing the City Manager to execute the Agency Agreement with the County of Santa Clara for Countywide Household Hazardous Waste Collection Program for 2012—2015, at a cost of \$200,000 each year, subject to appropriation of funds, and the Agency Agreement with the County of Santa Clara for Countywide AB939 Implementation Fee for 2012—2015, contingent on and in conjunction with the execution of a Sublease between the City of San José and the County of Santa Clara for use of City property for the Household Hazardous Waste Collection Program. CEQA: Mitigated Negative Declaration for the San José Environmental Innovation Center, File No. PP09-138, adopted December 1, 2009. (Environmental Services)

Resolution No. 76195 adopted.

2.10 Status Report of the South Bay Water Recycling Program and Strategic Planning Effort.

Recommendation: Accept this report update on the status of the South Bay Water Recycling program and strategic planning effort. CEQA: Not a Project, File No. PP10-069(a), Staff Reports. (Environmental Services)

Accepted.

2.11 Amendments to the City's Pay Plan for Various Classifications.

Recommendation: Adopt a resolution to:

- (a) Amend the City of San José Pay Plan effective April 17, 2012 to create the following classification:
 - (1) Risk Manager (1265)
- (b) Amend the City of San José Pay Plan effective April 17, 2012, to delete the following obsolete classes:
 - (1) Airport Noise Abatement Manager (5245)
 - (2) Airport Police Officer (2414)
 - (3) Custodian (3211)
 - (4) Deputy City Attorney U (2150)
 - (5) Deputy Redevelopment Manager U (1684)
 - (6) Equipment Operator (3341)
 - (7) Gerontology Supervisor FT/PT (7125/7129)
 - (8) Metal Fabrication Mechanic (3172)
 - (9) Redevelopment Manager U (1687)
 - (10) Senior Deputy City Attorney U (2153)
 - (11) Therapeutic Supervisor (7126)
 - (12) Transportation Planning Systems Manager (1386)

CEQA: Not a Project, File No. PP10-068(b), Municipal Code, Title 3. (Human Resources)

Resolution No. 76196 adopted.

2. CONSENT CALENDAR

2.12 Agreement with VTA for the Route 101 De La Cruz Boulevard/Trimble Road Interchange Project.

Recommendation: Approve a Third Amendment to the Cooperative Agreement with the Santa Clara Valley Transportation Authority for the Route 101 De La Cruz Boulevard/Trimble Road interchange project extending the term of the agreement from April 30, 2012 to December 31, 2012, at no additional cost. CEQA: EIR Resolution 72768, adopted June 21, 2005. (Transportation)

Approved.

2.13 Actions Related to Vice Mayor Nguyen's Travel to Washington, D.C.

Recommendation:

- (a) Approve travel by Vice Mayor Nguyen to Washington, D.C. on May 7 – 9, 2012 to attend the National Leadership Academy for Elected and Appointed Officials as the City's designated representative. Source of Funds: Mayor & Council Travel Fund/Asian Pacific American Municipal Officials.
- (b) Request for an excused absence for Vice Mayor Nguyen from the Closed and Regular Sessions of the City Council on May 8, 2012 and the Regular Meeting of the Rules and Open Government Committee on May 9, 2012.

(Nguyen)

[Rules Committee referral 4/11/12 – Item A(1)(a)(1)]

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 9:30 a.m.

No Report.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Economic Strategy Workplan Top Five Priorities.

Recommendation: As recommended by the Community and Economic Development Committee on March 26, 2012, accept the staff report on the progress implementing the Top 5 highest workplan priorities for the Economic Strategy. CEQA: Not a Project, File No. PP10-066(a), Staff Reports. (City Manager's Office)

Deferred to April 24, 2012 per Administration.

4.2 Outdoor Special Events Update.

Recommendation: As recommended by the Community and Economic Development Committee on March 26, 2012:

- (a) Accept staff's progress report on the implementation of Council direction to control City cost escalation for outdoor special events and support event revenue generation; transition of Christmas in the Park to a community-based model; and Council prioritized changes to the City's special events ordinances;
- (b) Direct staff to extend the suspension of the collection of gate fees for ticketed events effective July 1, 2012 through Fiscal Year 2013-2014.

(City Manager's Office)

[Community and Economic Development Committee referral 3/26/12 – Item D(3)]

Deferred to April 24, 2012 per Administration.

4.3 Amendments to Section 20.100.500 of Chapter 20.100 (Administration and Permits) of Title 20 of the San José Municipal Code (the Zoning Code).

Recommendation: Conduct a public hearing and consider an ordinance amending Section 20.100.500 of Chapter 20.100 (Administration and Permits) of Title 20 of the San José Municipal Code (the Zoning Code) to extend the period for the Director of Planning to reactivate certain expired Development Permits and to extend certain Development Permits for a discrete period of time and make other related clarifying changes. CEQA: Exempt. (Planning, Building and Code Enforcement)

(Continued from 4/3/12 – Item 4.2)

The Public Hearing was held.

Ordinance No. 29054 passed for publication.

5. NEIGHBORHOOD SERVICES

6. TRANSPORTATION & AVIATION SERVICES

7. ENVIRONMENTAL & UTILITY SERVICES

7.1 Actions Related to the Acceptance of Grant Funding under State Proposition 84 Bay Area Integrated Regional Water Management Program for South Bay Water Recycling Facility Improvements.

Recommendation:

- (a) Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with the Bay Area Clean Water Agencies to accept grant funding under State Proposition 84 Bay Area Integrated Regional Water Management Program in an amount up to \$2,485,000, for South Bay Water Recycling facility improvements, including a Bay Area recycled water outreach program component.
- (b) Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with the Santa Clara Valley Water District for the District to conduct the regional outreach program covered by the Proposition 84 grant at cost to the District of up to \$300,000, with a potential for reimbursement to the District of 45.2% of eligible project costs, up to a maximum amount of \$136,000 from the Proposition 84 grant funds District; and for the District to contribute funding up to \$400,000 for the South Bay Water Recycling Master Planning effort, with a reimbursement from the City of San José of up to \$200,000.
- (c) Adopt a resolution authorizing the City Manager to negotiate and execute the Ninth Amendment to the San José/Santa Clara Construction Services Agreement to revise the approved project list specified in the agreement, and extend the term of agreement by twenty-four months to December 31, 2014.
- (d) Adopt a resolution approving the Mitigated Negative Declaration and adopting the mitigation monitoring and reporting program prepared for the South Bay Water Recycling Northern Regional Connector Pipeline Project (File No. PP12-015) as having been completed in compliance with the California Environmental Quality Act and reflecting the City's independent judgment and analysis.

CEQA: Relevant environmental clearance completed by City of San José: Resolution No. 64667, Environmental Impact Report for the San José Nonpotable Reclamation Project, now known as the South Bay Water Recycling Program dated June 15, 1993; Resolution No. 67380 Reuse of the Airport Master Plan EIR/SEIR, PP08-071 dated June 17, 2008; Mitigated Negative Declaration for Potable Backup Supply, PP11-054; Mitigated Negative Declaration (pending) for Northern Regional Connector, PP12-015; and Relevant environmental clearance completed by City of Santa Clara: Santa Clara Industrial 3B: CEQ2010-01113. (Environmental Services)

(Deferred from 3/13/12 – Item 7.2)

Dropped.

8. PUBLIC SAFETY SERVICES

8.1 Audit of Police Department Secondary Employment.

Recommendation: As recommended by the Public Safety, Finance and Strategic Support Committee on March 15, 2012, accept the Audit of Police Department Secondary Employment. (City Auditor)

[Public Safety, Finance and Strategic Support referral 3/15/12 – Item D(5)]
(Deferred from 4/3/12 – Item 8.1 and 4/10/12 – Item 8.1)

Heard per Orders of the Day. Motion to defer failed. (5-5-1. Noes: Campos, Chu, Kalra, Pyle, Rocha. Absent: Reed.)

Report from the Auditor was accepted, the Police Chief was directed to implement the Secondary Employment Policy.

The Police Department Staff was directed to:

- (1) **Return to Council in six months to provide status on the policy and audit recommendations.**
- (2) **Provide copies of the Secondary Employment Policy to Council.**
- (3) **Include Secondary Employee Coordinators in the biannual Conflict of Interest code review.**

8.2 Acceptance of 2011 Assistance to Firefighters Grant Program Award to Replace the Fire Department's Cardiac Monitor/Defibrillator Inventory.

Recommendation:

- (a) Adopt a resolution authorizing the City Manager to accept the Federal Emergency Management Agency's 2011 Assistance to Firefighters Grant Program award of \$1,246,538 to replace the Fire Department's Cardiac Monitor/Defibrillator inventory.

Resolution No. 76197 adopted.

- (b) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund for 2011-2012:
 - (1) Increase the city-wide appropriation to the Fire Department for Cardiac Monitors/Defibrillators in the amount of \$1,246,538; and
 - (2) Increase the Estimate for Earned Revenue from the Federal Government in the amount of \$1,246,538.

CEQA: Not a Project, PP10-066(a), Purchase of supplies and equipments with no changes in the physical environment. (Fire/City Manager's Office)

Ordinance No. 29055 adopted.

Resolution No. 76198 adopted.

9. REDEVELOPMENT – SUCCESSOR AGENCY

9.1 2011-2012 Budget Actions Related to the Successor Agency to the Redevelopment Agency.

Recommendation: It is recommended that the City Council, the City Council acting as the Successor Agency to the Redevelopment Agency take the following actions:

- (a) Adopt 2011-2012 Appropriation Ordinance and Funding Sources Resolution amendments of the City Council, in its capacity as the Successor Agency, in the Redevelopment Obligation Retirement Fund as outlined in Attachment A, subject to the pending Successor Agency Oversight Board approval of the 2011-2012 Successor Agency to the Redevelopment Agency budget to be reviewed April 12th.
- (b) Adopt 2011-2012 Appropriation Ordinance and Funding Sources Resolution amendments of the City Council in the Low and Moderate Income Housing Fund as outlined in Attachment B.

(Successor Agency to the Redevelopment Agency)

(Deferred from 4/10/12 – Item 9.1)

Dropped.

- **Open Forum**

Tom Sawyer requested clarification about whether the City co-signs or lends its credit to revenue bonds for soccer and/or stadium construction.

- **Adjournment**

The Council of the City of San José adjourned the afternoon session at 4:10 p.m.

10. GENERAL PLAN PUBLIC HEARINGS

No General Plan Public Hearings at this time.

11. PUBLIC HEARINGS

11.1 Public Hearings on Consent Calendar.

No Public Hearings on Consent Calendar at this time.

11.2 Rezoning Real Property Located at the Southwest Corner of Miller Street and Asbury Street.

Recommendation: Consideration of an ordinance rezoning the real property located at the southwest corner of Miller Street and Asbury Street from the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District to 1) add 100 units to the already approved 400 unit development for a total of 500 multi-family attached residential units, and 2) increase in building height from 150 to 200 feet on the 2.80 gross acre site (Green Valley Corporation, Owner; Barry Swenson Builder, Developer). CEQA: Mitigated Negative Declaration. The Director of Planning and the Planning Commission (6-0-1, Commissioner Cahan absent) recommend approval.

PDC05-101 – District 3

(Deferred from 3/20/12 – Item 11.2)

The amended memorandum from Council Member Liccardo, dated April 16, 2012, was approved, approving the Staff recommendations, including modifications that the Applicant and City agreed upon:

- (1) **The Applicant shall increase the total amount of the remaining “traffic improvement contributions” by \$125,000 (representing the proportionate increase of 100 units to the 400 unit project) for a total of \$425,000 to be disbursed as follows:**
 - (a) **\$250,000 to be paid upon 50% occupancy of the building constructed during Phase 2.**
 - (b) **\$175,000 to be paid upon 50% occupancy of the building constructed during Phase 4.**
- (2) **The Applicant has committed to offer deeply discounted Eco Passes (or their functional equivalent) to up to two residents of each unit of Phase 2 for a period of 40 years; and as to the remaining phases, per Council direction on May 7, 2002, “require the Developer to utilize VTA’s Eco Pass Program as part of the transit demand management program associated with the proposal.**

(Action continued on the next page)

11. PUBLIC HEARINGS

11.2 Rezoning Real Property Located at the Southwest Corner of Miller Street and Asbury Street. (Cont'd.)

- (3) The Department of Transportation (DOT) will commit to two on-street “car share” spaces directly adjacent to the development, additionally:
 - (a) The City shall be responsible for the selection, procurement and monitoring of any car sharing service at that location and the service will be available to any member of the public who wishes to subscribe.
 - (b) Up to \$75,000 of the traffic improvement contributions in Phase II can be used to off-set any subscription revenue shortfall to incentivize the provision of car sharing services by a private or non-profit vendor at that site *for a period of up to three years. Any unused amount to be returned to base amount of traffic improvement contribution pool.*
- (4) The DOT Staff shall work with the surrounding community to identify appropriate pedestrian safety and traffic improvements for each phase, such that:
 - (a) DOT will minimize expenditures required for studies and surveys, to the extent possible, to maximize resources devoted to streetscape improvements.
 - (b) DOT will identify at least four pedestrian improvements/safety projects to be implemented during Phase 2, *such as: additional traffic calming devices and LED lighting at relevant locations in the neighborhoods adjacent to the development.*
 - (c) Particular attention shall be paid to the increase in “cut-through” traffic from those seeking to avoid congestion on Taylor and First Street, to use streets through the Vendome neighborhood to reach the Market Center on Coleman.

Ordinance No. 29056 passed for publication.

11.3 Rezoning Real Property Located on the Northwest Side of East Gish Road.

Recommendation: Consideration of an ordinance rezoning the real property located on the northwest side of East Gish Road, 500 feet southerly of Oakland Road (721 East Gish Road), from the A(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District or CIC(PD) Planned Development Zoning District to allow an increase in student enrollment by 160 student for a total of 935 students and approximately 7,500 square feet of additional classroom buildings and office space and conversion of a basement from storage space to office space for an existing private school (Challenger School) on a 7.23 gross-acre site (Emerald Isle LLC, Owner). CEQA: Mitigated Negative Declaration.

PDC11-023 – District 3

(Action continued on the next page)

11. PUBLIC HEARINGS

**11.3 Rezoning Real Property Located on the Northwest Side of East Gish Road. (Cont'd.)
Ordinance No. 29057 passed for publication.**

CEQA Resolution No. 76199 adopted.

Additional Staff modification was approved: The zoning standard for the traffic mitigation measure describes the required payment of the Traffic Impact Fee consistent with the 101/Oakland/Mabury Transportation Development Policy without mentioning a specific dollar amount or other quantified information. This level of detail is more appropriate for the project's Planned Development Permit.

- **Open Forum**

There were none presented.

- **Adjournment**

The Council of the City of San José was adjourned at 7:34 p.m.