

CITY COUNCIL AGENDA

OCTOBER 2, 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.

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**
9:34 a.m. - Closed Session, Call to Order in Council Chambers
Absent Council Members: None.

1:32 p.m. - Regular Session, Council Chambers, City Hall
Absent Council Members: None.
- **Invocation (District 9)**
Judy Rickard, author of *Torn Apart: United by Love, Divided by Law*, 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 Item 2.2(h) and Item 2.3(a) deferred to October 16, 2012.
- **Closed Session Report**
Mayor Reed disclosed the following Closed Session actions of October 2, 2012:
Public Employment/Public Employee Appointment Pursuant to Government Code Section 54957: To negotiate a new term of office for the Independent Police Auditor Judge LaDoris H. Cordell (Retired).

1. CEREMONIAL ITEMS

- 1.1 Presentation of a proclamation declaring the week of October 20 – 27, 2012 as “National Protect Your Identity Week” in the City of San José. (Constant)
Mayor Reed and Council Member Constant recognized the week of October 20, 2012 through October 27, 2012 as “National Protect Your Indentify Week” in San José.
- 1.2 Presentation of a proclamation declaring the October 12, 2012 as “National Disability Awareness Day” in the City of San José. (Constant)
Mayor Reed and Council Member Constant recognized October 12, 2012 as “National Disability Awareness Day” in San José.
- 1.3 Presentation of a proclamation declaring October 3, 2012 as “International Walk to School Day” in the City of San José. (Herrera/Constant)
Mayor Reed and Council Members Herrera and Constant recognized October 3, 2012 as “International Walk to School Day” in San José.
- 1.4 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 09/26/12)
Mayor Reed and Council Member Liccardo recognized and commended Applied Materials “Silicon Valley Turkey Trot” for their dedication in raising money for local charities.

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. 29144 – Amending Chapter 6.64 of Title 6 of the San José Municipal Code to add new sections creating definitions of an accessible vehicle and clean fuel vehicle for police taxi permits and amending Sections 6.64.160, 6.64.180, 6.64.360 and 6.64.390 related to accessible and clean fuel vehicles and grounds for denial of applications.

Ordinance No. 29144 adopted.

2. CONSENT CALENDAR

2.2 Final Adoption of Ordinances. (Cont'd.)

Recommendation: Final adoption of ordinances.

- (b) ORD. NO. 29145 – Amending Chapter 1.08 of Title 1 of the San José Municipal Code to add a new Section 1.08.015.5 to provide for personal liability for unpaid city taxes by certain responsible parties; amending Section 2.04.2020 of Chapter 2.04 of Title 2 to provide, where not otherwise in conflict or specified in the municipal code, that the Director of Finance has the authority to promulgate and publish regulations related to the administration, collection and enforcement of city taxes, and amending and repealing various sections in Chapters 4.52, 4.68, 4.70, 4.72, 4.74 and 4.82 of Title 4 of the San José Municipal Code to (1) clarify the hotel operator’s and utility service supplier’s obligation to hold certain taxes collected on city’s behalf in trust for city’s benefit; (2) provide that the Director of Finance’s decision following a Tax Assessment Hearing conducted under the provisions of Chapters 4.68, 4.72 and 4.74 is final and conclusive; (3) set forth the responsibility of successor hotel operators for unpaid taxes; (4) clarify the definition of operator for purposes of the transient occupancy taxes; and (5) clarify that payment of a disputed city tax is required prior to filing a lawsuit to challenge the tax.

Ordinance No. 29145 adopted.

- (c) ORD. NO. 29146 – Rezoning certain real property situated on the north side of Summerside Drive between McLaughlin and Lucretia Avenues, from the R-M(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District. PDC08-067

Ordinance No. 29146 adopted.

- (d) ORD. NO. 29147 – Amending Section 4.46.036 of Chapter 4.46 and Section 4.47.089 of Chapter 4.47 of Title 4 to suspend the collection of a portion of construction taxes on downtown high rise developments.

Ordinance No. 29147 adopted.

- (e) ORD. NO. 29148 – Amending Sections 25.08.320, 25.08.330, 25.08.340 and 25.08.360 of Part 3 of Chapter 25.08 of Title 25 of the San José Municipal Code to establish minimum requirements, rates and charges for the operation at and use of the Norman Y. Mineta San José International Airport by certificated passenger and cargo air carriers that are not regularly scheduled to land at the Airport.

Ordinance No. 29148 adopted.

- (f) ORD. NO. 29149 – Amending Sections 25.10.010 and 25.10.030 of Chapter 25.10 of Title 25 of the San José Municipal Code to clarify the requirements for applications for ground transportation providers.

Ordinance No. 29149 adopted.

2. CONSENT CALENDAR

2.2 Final Adoption of Ordinances. (Cont'd.)

Recommendation: Final adoption of ordinances.

- (g) ORD. NO. 29150 – Amending Chapter 25.01 of Title 25 of the San José Municipal Code to add new sections creating definitions of an airport access permit and approved methodology for adjusting airport access permits and amending Section 25.08.750 of Part 7 of Chapter 25.08 and adding Sections 25.08.751, 25.08.752, 25.08.753, 25.08.754, 25.08.755, 25.08.756 and 25.08.757 creating a permit and other requirements for taxicabs in the on demand system at the airport.

Ordinance No. 29150 adopted.

- (h) ORD. NO. 29139 – Amend Chapters 3.28, the 1975 Federated Employees Retirement Plan, and 3.36, the 1961 Police and Fire Department Retirement Plan, of the San José Municipal Code to add Sections 3.28.115 and 3.36.325, respectively, regarding the role of the boards of administration in personnel matters.

[Deferred from 09/11/12 – Item 2.2(f) et. al. and 09/25/12 – Item 2.2(d)]

Deferred to October 16, 2012 per Orders of the Day.

2.3 Approval of Council Committee Reports.

Recommendation: Approval of Council Committee Reports.

- (a) Transportation and Environment Report of September 10, 2012. (Liccardo)

Deferred to October 16, 2012 per Orders of the Day.

- (b) Neighborhood Services and Education Committee Report of September 13, 2012. (Pyle)

Approved.

2.4 Mayor and Council Excused Absence Requests.

There were none.

2.5 City Council Travel Reports.

Council Member Constant presented highlights of his attendance at the League of California Cities Crime Prevention and Public Safety Committee meeting in Sacramento.

2.6 Report from the Council Liaison to the Retirement Boards.

There was none.

2. CONSENT CALENDAR

2.7 Agreement with Roy Buis Consulting for Construction Management Assistance on Affordable Housing Projects.

Recommendation: Approve a Sixth Amendment to the Agreement with Roy Buis Consulting for construction management assistance on affordable housing projects, increasing the amount of the agreement by \$120,000 from \$341,000 to \$461,000 and extending the term of the agreement to June 30, 2013. CEQA: Not a Project, File No. PP10-066(d), Consultant Services. (Housing)
(Deferred from 9/25/12 – Item 2.8)

Approved.

2.8 Modification of Pawnbroker Ordinance.

Recommendation: As recommended by the Rules and Open Government Committee on September 19, 2012, approve an ordinance modifying Section 6.52.050 of Chapter 6.52 of the San Jose Municipal Code to enable one person to hold more than one pawnbrokers' permit, and/or to operate at multiple locations. CEQA: Not a Project; File No. PP10-068c, Municipal Code amendment involving no changes in the physical environment.
(Liccardo/City Attorney's Office)

Ordinance No. 29154 passed for publication.

Noes: Campos, Kalra.

2.9 Actions Related to the San José Environmental Innovation Center Project Rebid Project.

Recommendation: Adopt a resolution authorizing the Director of Public Works to utilize up to \$250,000 in existing project construction contingency funding for the San José Environmental Innovation Center Project Rebid (Project) to execute a work order with Asbestos Management Group of California, Inc. to perform needed hazardous material abatement work for the Project. CEQA: Negative Declaration for the renovation of the SJEIC was adopted on December 1, 2009; File No. PP09-138. (Public Works)
(Rules Committee Referral 09/26/12)

Resolution No. 76443 adopted.

Noes: Oliverio.

2.10 Accept City Positions on November 6, 2012 California General Election Ballot.

Recommendation: As recommended by Rules and Open Government Committee on September 26, 2012, accept the recommended City positions on the November 6, 2012 California General Election ballot – Propositions 30, 31, and 35. (City Manager)

Support Proposition 30: (9-2. Noes: Constant, Oliverio.)

FAILED. Support Proposition 31: (4-4-0-3. Noes: Campos, Chu, Pyle, Rocha. Abstain: Herrera, Kalra, Oliverio. No position taken.

Proposition 35 continued to October 16, 2012 with Staff directed to return to Council with supporting and opposing arguments. (6-4-0-1. Noes: Constant, Liccardo, Nguyen; Reed. Abstain: Oliverio.)

2. CONSENT CALENDAR

2.11 Approve support for the Santa Clara Valley Water District's Measure B.

Recommendation: As recommended by Rules and Open Government Committee on September 26, 2012, approve support for the Santa Clara Valley Water District's Measure B on the November 6, 2012 General Election. (City Manager)

Support Measure B (9-1-0-1. Noes: Oliverio. Abstain: Constant.)

2.12 Approve Staff's recommendation on Measure A – County of Santa Clara Sales Tax.

Recommendation: As recommended by Rules and Open Government Committee on September 26, 2012, approve Staff's recommendation on Measure A – County of Santa Clara Sales Tax – on the November 6, 2012 General Election. (City Manager)

Support Measure A (6-5. Noes: Constant, Herrera, Liccardo, Oliverio; Reed.)

Staff directed to return October 16, 2012 meeting with the following for Council discussion:

- (1) **Proposition 39. (10-1. Noes: Reed.)**
- (2) **Proposition 36. (8-2-1-0. Noes: Constant; Reed. Absent: Oliverio.)**
- (3) **Measures D and E. (7-3-1-0. Noes: Campos, Chu, Kalra. Absent: Oliverio.)**
- (4) **Proposition 34. (8-3. Noes: Constant, Oliverio; Reed.)**
- (5) **Proposition 32. (8-3. Noes: Constant, Oliverio; Reed.)**

2.13 District 1 Disability Awareness Day.

Recommendation: As recommended by the Rules and Open Government Committee on September 26, 2012 and outlined in the memorandum submitted to the Rules and Open Government Committee:

- (a) Approve the District 1 Disability Awareness Day as a City Council sponsored Special Event.
- (b) Approve expending funds and accept donations from various individuals, businesses and community groups to support this event.

(City Clerk)

Approved.

2.14 District 4 Community Health Resource Fair.

Recommendation: As recommended by the Rules and Open Government Committee on September 26, 2012 and outlined in the memorandum submitted to the Rules and Open Government Committee:

- (a) Approve the District 4 Community Health Resource Fair as a City Council sponsored Special Event.
- (b) Approve and accept donations from various individuals, businesses and community groups to support this event.

(City Clerk)

Approved.

3. STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone pointed out that there are two upcoming Council meetings: Friday, October 05, 2012, the Annual Joint City/County Meeting and Tuesday, October 09, 2012, the Council Priority Setting Study Session.

3.2 Labor Negotiations Update

Recommendation: Accept Labor Negotiations Update.

Heard at 9:30 a.m.

No Report.

3.3 Adoption of a Statement of Policy and City Council Questions Related to the Director of Parks, Recreation and Neighborhood Services.

Recommendation: Adopt a Statement of Policy and City Council Questions related to the selection of the Director of Parks, Recreation and Neighborhood Services as described in the staff memorandum, in compliance with City Charter Section 411.1. CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (City Manager's Office)

Adopted.

3.4 Approval of Terms of an Agreement on Sick Leave Payout with the Association of Building, Mechanical and Electrical Inspectors (ABMEI).

Recommendation: Adopt a resolution approving the terms of an agreement on Sick Leave Payout between the City and the Association of Building, Mechanical and Electrical Inspectors (ABMEI), effective September 30, 2012. CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (City Manager's Office)

Resolution No. 76444 adopted.

Noes: Constant.

3.5 Adoption of a Statement of Policy and City Council Questions Related to the Director of Retirement Services.

Recommendation: Adopt a statement of Policy and City Council Questions related to the selection of a prospective Director of Retirement Services as described in the staff memorandum, in compliance with City Charter Section 411.1. CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (City Manager's Office)
(Rules Committee Referral 09/26/12)

Adopted.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Public Hearing and Election on Community Facilities District No. 13 (Guadalupe Mines).

Recommendation: Hold a public hearing, conduct a special election, and take the following actions related to the formation of Community Facilities District No. 13 (Guadalupe Mines):

The public hearing was held.

- (a) Adopt a resolution for each of the following items to:
 - (1) Establish Community Facilities District No. 13 (Guadalupe Mines) and authorize the levy of a special tax.
Resolution No. 76445 adopted.
 - (2) Declare the results of the special election.
Resolution No. 76446 adopted.

If approved by voters:

- (b) Direct the recording of the notice of the special tax lien for Community Facilities District No. 13 (Guadalupe Mines).
Approved.
- (c) Approve an ordinance imposing the levy of special taxes for Community Facilities District No. 13 (Guadalupe Mines).
Ordinance No. 29155 adopted.
- (d) Establish a new fund for Community Facilities District No. 13 (Guadalupe Mines).
Approved.
- (e) Adopt the following 2012-2013 Appropriation Ordinance and Funding Source Resolution amendments in the Community Facilities District No. 13 (Guadalupe Mines) Fund:
 - (1) Establish an estimate for Earned Revenue in the amount of \$95,084;
 - (2) Establish an estimate for Transfers from Other Funds in the amount of \$10,121;
 - (3) Establish a Personal Services appropriation for the Department of Transportation in the amount of \$6,000;
 - (4) Establish a Non-Personal/Equipment appropriation for the Department of Transportation in the amount of \$52,000;
 - (5) Establish an overhead expense appropriation in the amount of \$2,700;
 - (6) Establish an appropriation for the Community Facilities District No. 13 Feasibility project in the amount of \$30,000; and
 - (7) Establish an Ending Fund Balance in the amount of \$14,505.**Ordinance No. 29156 adopted.**
Resolution No. 76447 adopted.

(Item continued on the next page)

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Public Hearing and Election on Community Facilities District No. 13 (Guadalupe Mines). (Cont'd.)

(f) Adopt the following 2012-2013 Appropriation Ordinance amendments in the Storm Sewer Operating Fund:

- (1) Establish a Transfer to the Community Facilities District No. 13 (Guadalupe Mines) Fund in the amount of \$10,121; and
- (2) Decrease the Ending Fund Balance by \$10,121.

CEQA: Mitigated Negative Declaration, File No. PDC10-005. (Public Works/City Manager's Office)

Ordinance No. 29157 adopted.

5. NEIGHBORHOOD SERVICES

6. TRANSPORTATION & AVIATION SERVICES

7. ENVIRONMENTAL & UTILITY SERVICES

8. PUBLIC SAFETY SERVICES

9. REDEVELOPMENT – SUCCESSOR AGENCY

9.1 Recognized Obligation Payment Schedules.

Recommendation: Adopt resolutions by the City Council acting in its capacity as the Successor Agency to the Redevelopment Agency Board authorizing expenditure of items on:

- (a) The Recognized Obligation Payment Schedule for July 1 - December 31, 2012 (ROPS 2); and
- (b) The Recognized Obligation Payment Schedule for January 1 – June 30, 2013 (ROPS 3).

(Deferred from 08/21/12 – Item 9.2 et. al. and 09/25/12 – Item 9.1)

Deferred to October 16, 2012 per Administration.

- **Open Forum**

- (1) **Art Napoleon expressed support to Black Independence Day and complained about customer service at the Martin Luther King Library.**
- (2) **David Wall thanked Fire Engine Company 1C for responding to calls in his neighborhood but voiced concern about the Fire Company's continued trips to Valley Medical Center for one resident.**
- (3) **Ross Signorino expressed his concerns about Proposition 35.**

- **Adjournment**

**The Council of the City of San José was adjourned at 4:29 pm. in memory of Leigh Weimers, a Mercury News columnist who worked for the newspaper for 47 years.
(Mayor)**