

RULES COMMITTEE: 11-18-09  
ITEM: G.1



## Memorandum

**TO:** Lee Price, City Clerk

**FROM:** Councilmember Madison Nguyen

**SUBJECT:** Small Business  
Development Commission

**DATE:** November 12, 2009

*Madison P. Nguyen*

**Approved**

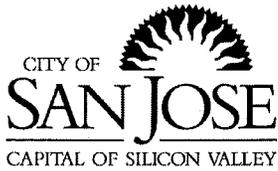
**Date:** 11/12/2009

I would like to recommend the following to be re-appointed to the Small Business Development Commission:

**James Smith**  
**Miguel A. Olivo**

cc: Mayor  
City Council

RULES COMMITTEE: 11-18-09  
ITEM: G.2



## Memorandum

**TO:** RULES AND OPEN GOVERNMENT COMMITTEE  
**FROM:** Vice Mayor  
Judy Chirco  
**SUBJECT:** HISTORIC LANDMARKS COMMISSION APPOINTMENTS  
**DATE:** November 12, 2009

Approved

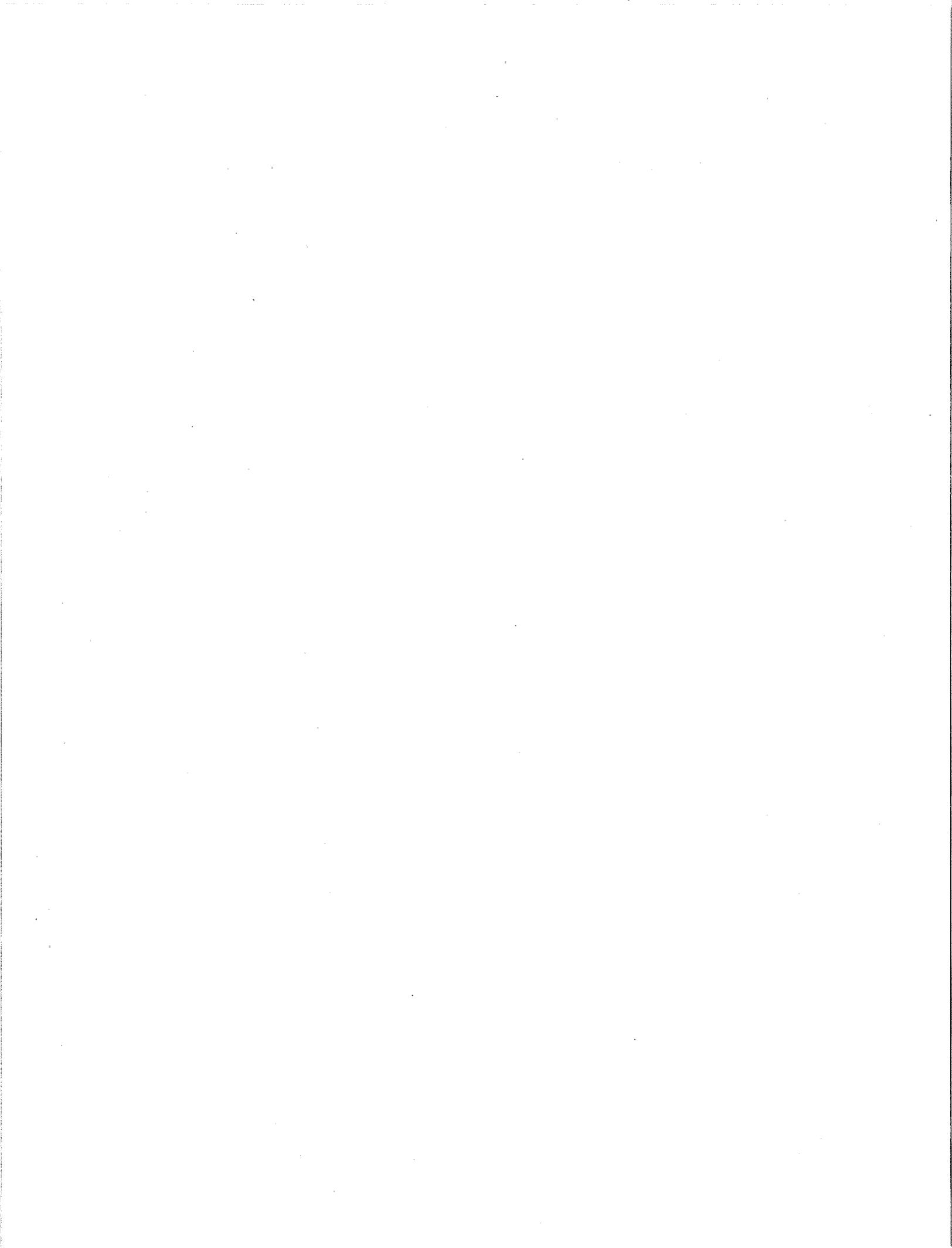
*Judy Chirco*

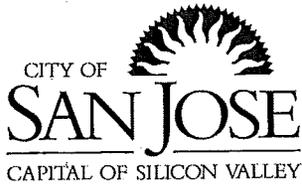
Date

11/12/09

### Recommendation

I recommend that Ramiro Torres be selected to fill the open position on the Historic Landmarks Commission. Mr. Torres has professional training as an architect and past experience with historic preservation that prepares him for service on the commission.





RECEIVED  
San Jose City Clerk

RULES COMMITTEE: 11-18-09  
ITEM: G.3

# Memorandum

2009 NOV 12 P 3:09

**TO: Rules Committee**

**FROM: Judy Chirco**  
Vice Mayor

**SUBJECT: Early Care and Education Commission**

**DATE: November 12, 2009**

Approved

*Judy Chirco*

Date

*November 12, 2009*

I would like to recommend the following candidates to fill a vacant position on the Early Care and Education Commission:

Keith Morales  
Kathleen McDavid  
Erica Schaefer







RECEIVED  
San Jose City Clerk

# Memorandum

2009 NOV 13 P 12:19

**TO:** Lee Price, City Clerk

**FROM:** Councilmember Nancy Pyle

**SUBJECT:** Disability Advisory Commission Appointment

**DATE:** November 13<sup>th</sup>, 2009

Approved

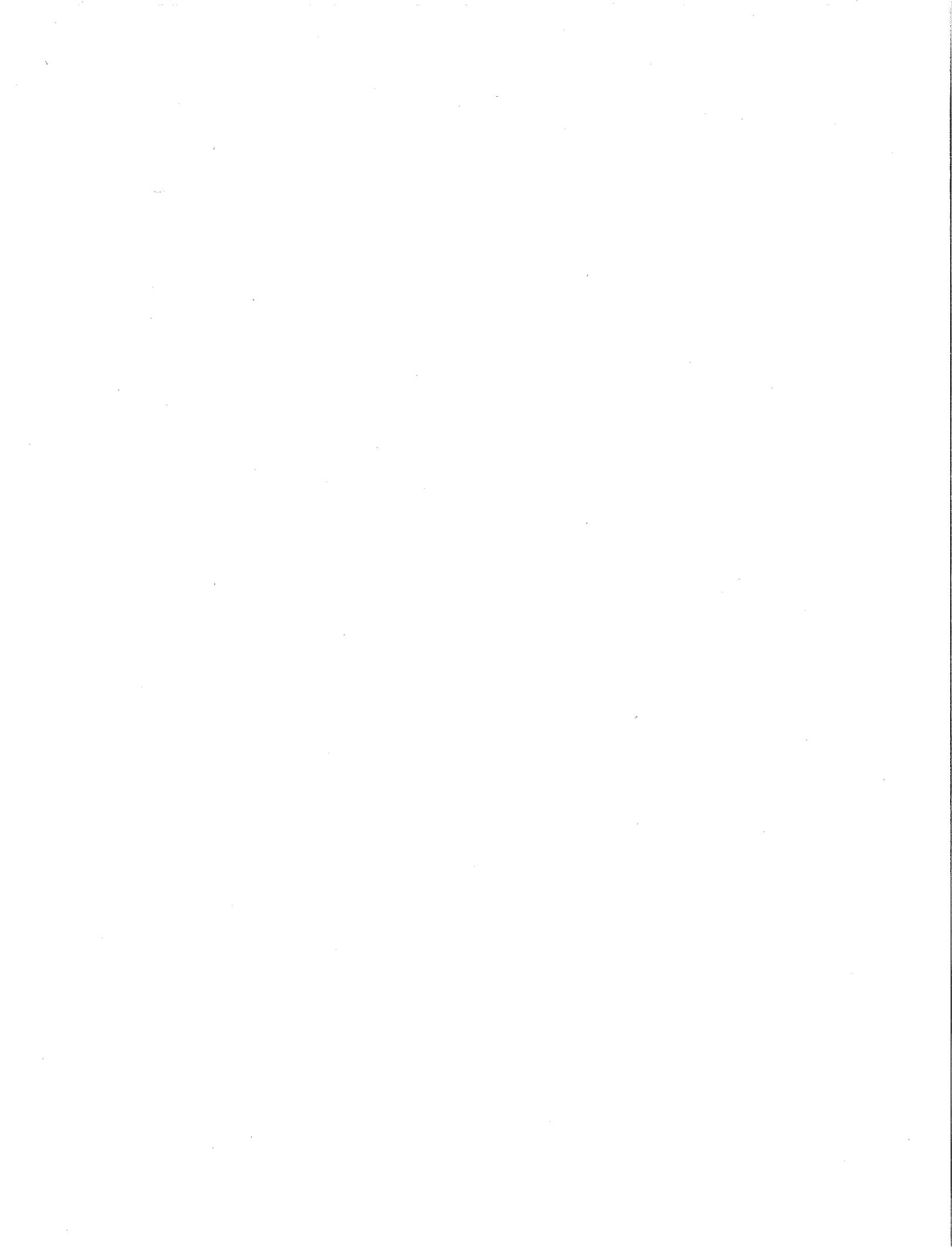
*Nancy Pyle* KS

Date

*11/13/09*

## RECOMMENDATION

I recommend Francisco Javier Rodriguez for appointment to the Disability Advisory Commission.





RULES COMMITTEE: 11-18-09  
ITEM IG.5

*INVENTIVUM*

**TO:** RULES AND OPEN  
GOVERNMENT COMMITTEE

**FROM:** Councilmember  
Kansen Chu

**SUBJECT:** Human Rights Commission  
Appointments

**DATE:** November 6, 2009

**RECOMMENDATION**

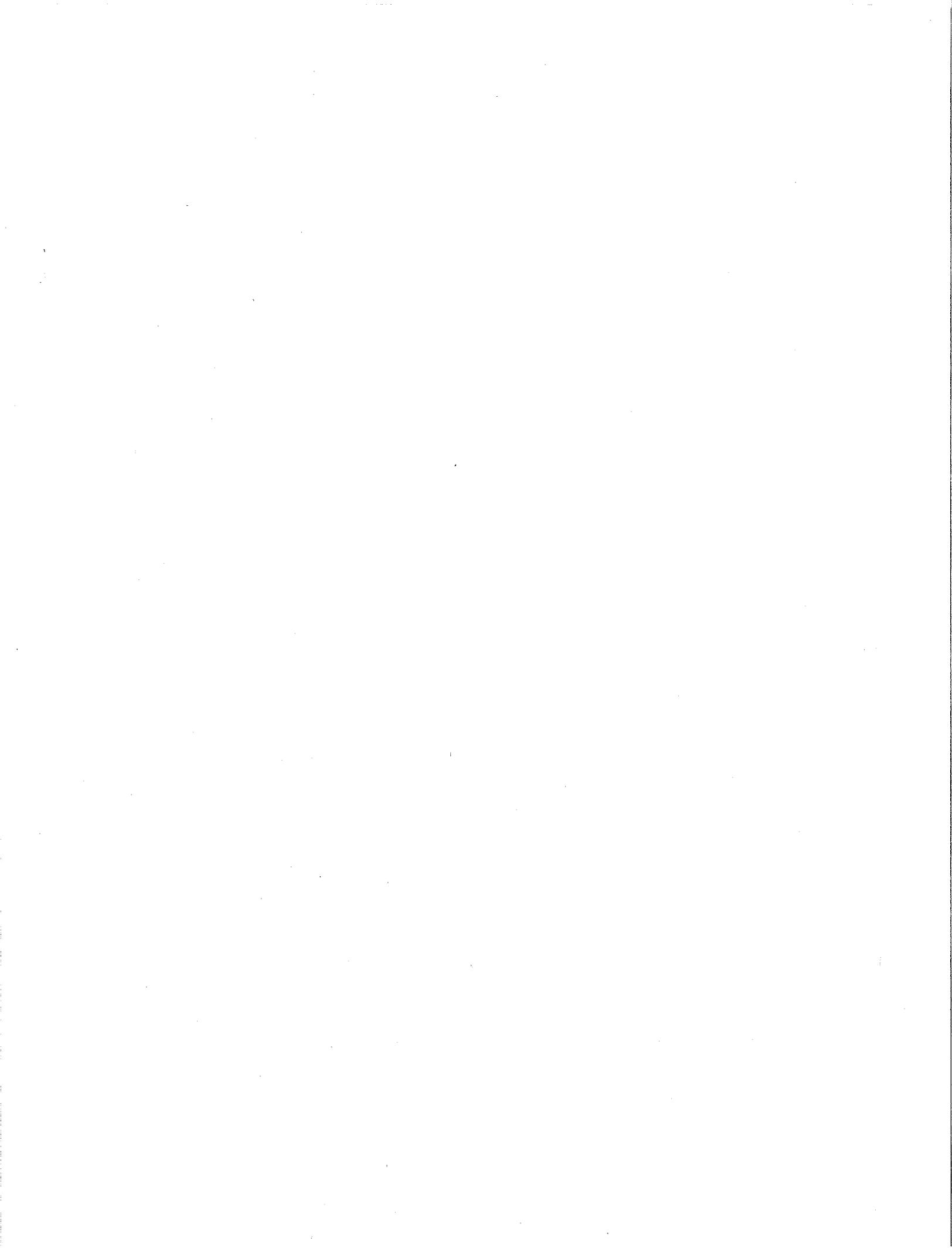
I recommend the re-appointment of Rajwant Bains to the Human Rights Commission.

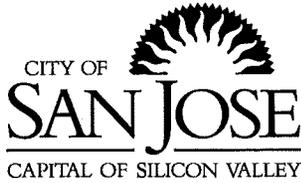
I would like to recommend Megan Young, Jaime Contreras, and Margaret Akdeniz for appointment to the Human Rights Commission.

These appointments will fill four out of five vacancies on the Human Rights Commission. I would, therefore, recommend that the City Clerk be directed to expand the applicant pool by continuing to recruit and accept applications for the Human Rights Commission.

  
KANSEN CHU  
Councilmember

cc: Mayor and Council





# Memorandum

**To:** RULES COMMITTEE                      **From:** Councilmember Nancy Pyle

**Subject:** Improving conditions on city trails                      **Date:** November 10, 2009

**Approved:** *Nancy Pyle*                      **Date:** 11/10/09

**RECOMMENDATION**

Add a review of the Los Alamitos Creek Trail community meeting held on October 28<sup>th</sup> at the Almaden Community Center to the Parks and Recreation Commission work plan. In addition, the PRC should provide the opportunity for city-wide discussion and consideration of further action.

Common areas of concern for the Los Alamitos Creek Trail presented at the October 28<sup>th</sup> meeting were:

- Improved Signage
- Appropriate trail marking
- Leash limits
- Yield protocols
- Education program

**BACKGROUND**

In mid September there was a tragic fatal accident on the Los Alamitos Creek trail involving a walker who became entangled with the leash of a dog running along side a bicycle. The conditions that caused the accident resulted in a large number of public responses to council offices and on blog sites. A community meeting was held on October 28<sup>th</sup> at the Almaden Community Center to provide the opportunity for residents to ask questions of staff and provide their insight to trail usage and identify areas where improvements could be made.

Our trail system is designed for a multitude of uses that include slow-paced walkers, children learning to ride bicycles, joggers, dog walkers, skateboarders, rollerbladers and commuters on bicycles. The variety of speed on the trails requires users to be constantly aware of their surroundings and courteous to the other users. The areas of concern were those raised at the meeting and presented to the Council Office via phone call and email.





# Memorandum

**TO:** RULES AND OPEN GOVERNMENT COMMITTEE      **FROM:** Mayor Chuck Reed

**SUBJECT:** INVOCATIONS

**DATE:** 11/12/2009

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Approved Chuck Reed Date 11/12/09

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## BACKGROUND

These proposed guidelines are reflective of current practices. The policy on invocations is an obsolete policy over 20 years old and should be removed from the policy manual.

## RECOMMENDATION

Approve guidelines for invocations as follows:

1. Invocations should be brief, thoughtful and appropriate for the occasion. Over the course of the year invocations are expected to reflect the diversity of San José
2. Councilmembers should submit a list of all the invocators selected for their assigned month to the Mayor's Office by the 15th of the preceding month.
3. Along with the name of the individual or group providing the invocation, Councilmembers should provide information detailing how many participants there will be, what equipment they will need or be bringing and what set up, if any, is required. City Hall Event Services should be notified of preliminary set-up needs no later than five (5) days before the Council Meeting. Final set-up needs should be coordinated at least one day in advance with City Hall Event Services.
4. Councilmembers are encouraged to provide a copy of these guidelines to invocators
5. Due to space and time limitations and fire code regulations the maximum number of participants is 40 standing and 20 seated. Invocations involving significant set up and take down time are discouraged.
6. Total time for an invocation shall not exceed five (5) minutes, including introductions, entering, exiting and take down.
7. Variations from these guidelines may be approved by the Mayor or the Rules and Open Government Committee.





# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Sharon W. Erickson,  
City Auditor

**SUBJECT:** *REVIEW OF AMERICAN RECOVERY  
AND REINVESTMENT ACT FIRST  
QUARTERLY REPORTS*

**DATE:** November 12, 2009

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## RECOMMENDATION

We recommend that the City Council accept the City Auditor's report on the "Review of American Recovery and Reinvestment Act First Quarterly Reports".

## SUMMARY

Through September 30, 2009, the City of San José (City) has been awarded over \$77 million in American Recovery and Reinvestment Act (Recovery Act) funds<sup>1</sup> and spent approximately \$6.1 million. Approximately \$3.2 million has been reimbursed or advanced to the City. Thus far, the City's Recovery Act programs have created approximately 250 full-time equivalent jobs.<sup>2</sup>

In June 2009, the City Auditor's Office assessed the City's readiness to receive Recovery Act funding and determined that the City was making appropriate progress.<sup>3</sup> Since that report, the City:

- Submitted its reports prior to October 10, 2009, thus meeting the Recovery Act's reporting deadline.
- Established accounting controls to track Recovery Act expenditures.
- Established an internal checklist to ensure compliance with Recovery Act requirements.
- Made progress towards implementing Recovery Act tracking and reporting software.
- Posted relevant information on the City's website, including the Recovery Act certifications.

Based on our review, the City met the Recovery Act's transparency and accountability requirements for quarterly reporting. The City Auditor's Office will continue to monitor Recovery Act spending and internal controls.

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<sup>1</sup> In October 2009, the City was awarded a grant through the Department of Energy's Solar Market Transformation program, bringing the City's total awards to over \$78 million.

<sup>2</sup> The 250 full-time equivalent positions included over 900 part-time jobs in a summer youth employment program.

<sup>3</sup> City of San Jose City Auditor, *American Recovery and Reinvestment Act Preliminary Report on Internal Controls*, June 18, 2009, <http://www.sanjoseca.gov/auditor/AuditMemos/0695/0695M.pdf>.

## **BACKGROUND**

President Obama signed the American Recovery and Reinvestment Act (Recovery Act) into law on February 17, 2009. The stated purposes of the Recovery Act include:

1. To preserve and create jobs and promote economic recovery;
2. To assist those most impacted by the recession;
3. To provide investments needed to increase economic efficiency by spurring technological advances in science and health;
4. To invest in transportation, environmental protection and other infrastructure that will provide long-term economic benefits; and
5. To stabilize state and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases.

Given the scope of the Recovery Act, many City departments have funding opportunities. To date, multiple grant applications across City departments have been submitted for Recovery Act funding.<sup>4</sup>

## **SCOPE AND METHODOLOGY**

This is the second in a series of reports the City Auditor will be issuing related to the Recovery Act. In order to document updates to federal Recovery Act guidance information and the City's progress on its relevant internal controls, we interviewed City staff, reviewed federal guidance and City documents, and observed the Recovery Act weekly meetings that the City Manager's Office's (CMO) holds with City staff. To assess the accuracy of reported expenditures, we reviewed a sample of transactions and their source documentation. To assess the completeness of Recovery Act reporting, we compared reported program expenditures with activity posted in the City's Financial Management System (FMS) and other City documents. We also reviewed the methodology City staff used to calculate the jobs created by Recovery Act expenditures in order to assess compliance with federal guidance.

We conducted our work in accordance with generally accepted government auditing standards. Those standards require that we plan and perform our work to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our objectives.

## **KEY UPDATES TO RECOVERY ACT GUIDANCE AND INTERNAL CONTROLS**

The Recovery Act includes specific rules to ensure that funds are used for appropriate purposes and are transparent to the public. The federal government continues to update Recovery Act guidance. Recent updates include:

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<sup>4</sup> See [www.sanjoseca.gov/recoveryact](http://www.sanjoseca.gov/recoveryact) for up-to-date information on Recovery Act funds awarded to the City.

- May 11, 2009, *Payments to State Grantees for Administrative Costs of Recovery Act Activities*. Office of Management and Budget Memorandum ([http://www.whitehouse.gov/omb/assets/memoranda\\_fy2009/m09-18.pdf](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-18.pdf))
- June 22, 2009, *Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009*. Office of Management and Budget Memorandum (<http://www.whitehouse.gov/omb/asset.aspx?AssetId=1412>)
- September 10, 2009, *The American Recovery & Reinvestment Act: DOJ Recovery Act Reporting – Grants and Cooperative Agreements*. Department of Justice Recipient Webinar (<http://www.ojp.gov/recovery/rawebinar.htm>)
- October 13, 2009, *Payments to State Grantees for their Administrative Costs for Recovery Act Funding – Alternative Allocation Methodologies*. Office of Management and Budget Memorandum ([http://www.whitehouse.gov/omb/assets/memoranda\\_2010/m10-03.pdf](http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-03.pdf))
- As of October 16, 2009, *Frequently Asked Questions: American Recovery and Reinvestment Act of 2009*. Office of Management and Budget ([http://www.whitehouse.gov/omb/recovery\\_faqs/](http://www.whitehouse.gov/omb/recovery_faqs/))

Since our last report, the City has implemented or is in the process of implementing the following accounting and transparency controls:

- *Registered and entered first quarter reports via [www.FederalReporting.gov](http://www.FederalReporting.gov)*. The federal Office of Management and Budget (OMB) clarified the Recovery Act's data reporting requirements and the methodology for calculating jobs created by Recovery Act expenditures. The OMB also provided guidance for recipients to conduct required data quality reviews of submitted data and introduced a new data portal for reporting, [www.FederalReporting.gov](http://www.FederalReporting.gov). The City has registered with [www.FederalReporting.gov](http://www.FederalReporting.gov) and submitted its required quarterly reports in accordance with the reporting requirements. Staff in the CMO met directly with program leads to discuss program activity to ensure data quality prior to submitting reports.
- *Established accounting controls to track Recovery Act expenditures*. Special funds, called memo funds, either have been or will be established within FMS for all programs to separately track Recovery Act activity to ensure transparency of Recovery Act funding.
- *Established an internal checklist to ensure compliance with Recovery Act requirements*. The CMO developed an internal checklist for departments to request CMO approval to submit grant applications for Recovery Act funds. The CMO requires departments to complete the checklist to provide the status of key Recovery Act requirements such as:
  - The project received a full review and vetting,
  - It is an appropriate use of taxpayer dollars,
  - The associated goods and services will be procured in a competitive manner,
  - The project will comply with prevailing wage requirements,

- The project will comply with the Recovery Act's Buy American provisions (unless a waiver is allowed), and
  - The use of funds will be timely.
- 
- *Made progress toward implementing Recovery Act tracking and reporting software.* The City is in the process of finalizing a contract with Information Strategies (Infostrat) to implement a new Recovery Act tracking and reporting tool, Microsoft's Stimulus360 Solution. The software is expected to be implemented in November, 2009. As part of the agreement with Infostrat, they will provide an all day onsite training session for project staff and additional training for CMO staff who will act as the system administrator.
  - *Posted Recovery Act information on City's website.* The City maintains a Recovery Act website ([www.sanjoseca.gov/recoveryact](http://www.sanjoseca.gov/recoveryact)) that includes a required project certification, signed by the City Manager, accepting responsibility for the appropriateness of an infrastructure investment. Also included are memoranda from the CMO to the City Council providing updates on Recovery Act activity, including:
    - July 31, 2009, *July Update on Recovery Act Projects*, and
    - October 21, 2009, *October Update on City Recovery Act Efforts*.

In our opinion, the City continues to make good progress towards establishing the appropriate internal controls over Recovery Act funding.

## **REVIEW OF FIRST QUARTERLY REPORTS**

Through September 30, 2009, the City has been awarded over \$77 million<sup>5</sup> in Recovery Act funds and spent approximately \$6.1 million. Approximately \$3.2 million has been reimbursed or advanced to the City. Thus far, the City's Recovery Act programs have created approximately 250 full-time equivalent jobs.

### *\$3.36 Million in Program Activity Reported Through FederalReporting.gov*

Prior to the October 10, 2009 reporting deadline, the City submitted its first quarterly reports for Recovery Act program activity. Exhibit 1 shows reported activity for programs that were awarded funds directly from federal agencies, as of September 30, 2009. None of these programs received cash reimbursements during this reporting period.

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<sup>5</sup> In addition to the \$33,787,807 listed in Exhibit 1, and the \$28,354,993 listed in Exhibit 2, the City has been awarded \$8,840,600 for the Energy Efficiency & Conservation Block Grant program and \$6,460,000 for South Bay Water Recycling Phase IC Facility Improvements. The City is in process of finalizing these agreements with the funding federal agencies.

**Exhibit 1: Recovery Act Program Activity Reported to FederalReporting.gov as of September 30, 2009**

Program	Award	Reported Expenditures	Reimbursements/Advances	Number of Jobs Created/Retained
Airport Terminal B Checked Baggage Screening Project <sup>6</sup>	\$20,916,360	\$3,344,903	\$0	10.4
Airport Taxiway "W" Extension	\$5,178,291	\$0	\$0	0
Homeless Prevention and Rapid Re-Housing Program (HPRP)	\$4,128,763	\$1,716	\$0	0
Community Development Block Grant (CDBG) <sup>7</sup>	\$2,700,463	\$0	\$0	0
Internet Crimes Against Children (ICAC)	\$863,930	\$14,662	\$0	0.4
Total	\$33,787,807	\$3,361,281	\$0	10.8

Source: City Auditor-prepared based on reports submitted to [www.FederalReporting.gov](http://www.FederalReporting.gov), the City's Financial Management System, award documentation, and other City data.

*\$2.76 Million in Activity for Programs with Funding Passed Through State or County Agencies*

The City has been awarded additional Recovery Act funds that are passed through the State of California or Santa Clara County. For these programs, the City does not report expenditures or project data directly to [www.FederalReporting.gov](http://www.FederalReporting.gov). Instead, the programs comply with State or County reporting requirements. Exhibit 2 shows activity on these programs.

**Exhibit 2: Recovery Act Activity as of September 30, 2009 for Programs with Funding passed through State or County Agencies**

Program	Award	Expenditures <sup>8</sup>	Reimbursements/Advances	Number of Jobs Created/Retained
Department of Transportation – Street Resurfacing	\$15,144,000	\$23,863	\$0	0
Work Investment Act (WIA) – Adult, Youth, and Dislocated Worker Programs	\$11,857,306	\$2,738,141	\$1,863,682	240
Justice Assistance Grant (JAG) <sup>9</sup>	\$1,353,687	\$0	\$1,353,687	0
Total	\$28,354,993	\$2,762,004	\$3,217,369	240

Source: City Auditor-prepared based the City's Financial Management System, award documentation, and other City data.

<sup>6</sup> The City received approval for the Airport Baggage Screening Project on September 28, 2009 retroactive to April 2009. As of September 30, 2009, no reimbursements had been received.

<sup>7</sup> The City allocated \$1,122 in oversight costs to the CDBG program. These costs will be reported in the next reporting period.

<sup>8</sup> Expenditures reported by the State may not align with the FMS because of timing issues related to reimbursements or reporting schedules.

<sup>9</sup> The federal Department of Justice advances JAG grant funds and considers interest earned as program income that can be spent only on allowable JAG activities. Interest earned as of September 30, 2009 was \$2,305.

### *Data Quality Tests*

The CMO and program staff are responsible for data quality reviews.<sup>10</sup> After the City submitted its required reports, the City identified several minor changes to the reports. In accordance with Recovery Act guidance, these changes were either corrected during the data quality review period or will be corrected in the next quarterly reports.

We performed our audit during the data quality review period. We selected a sample of 25 transactions, including 21 expenditures totaling \$2.4 million that represented approximately 39 percent of total expenditures through September 30, 2009. Each program with activity had at least one transaction within the sample. We traced the transactions to source documents to determine whether they were accounted for and reported accurately. Source documentation existed for all sampled transactions.

Also, we compared reported expenditures with activity posted to the City's Recovery Act memo funds, department-level tracking spreadsheets and a CMO-prepared *Status of Recovery Act Applications* report to assess the completeness of Recovery Act quarterly reporting across programs. We found that all programs with reportable activity had submitted reports. Finally, we reviewed the methodologies and calculations for the number of jobs created by Recovery Act expenditures. The methodologies used by City staff to calculate the number of jobs created complied with federal guidance.

### **ISSUES**

The City Auditor will monitor the following issues in an advisory capacity and review them in future audits if applicable.

#### 1. Recovery Act Oversight Costs

Oversight, reporting and auditing costs directly related to the Recovery Act are allowable administrative costs, however they are subject to specific limitations or requirements. Per OMB guidance, these additional costs should not exceed 0.5 percent of the total dollars. However, the oversight costs are being incurred by various agencies (e.g. states, cities, counties, other agencies, and grantees) and the City continues to wrestle with the question of how much the City will be allowed to charge.<sup>11</sup>

#### 2. Recovery Act Website

One of the City's internal controls is that the CMO is responsible for keeping its Recovery Act website up-to-date. We noted that although the required certification is posted and the website meets Recovery Act requirements, other website sections had not been updated since August 2009. Although providing other information, such as project summaries, is not required by the Recovery Act, it reflects the City's commitment to transparency. According to the CMO,

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<sup>10</sup> The OMB requires data quality review processes and allows for corrections to the reports until the 29<sup>th</sup> day of the reporting month. Federal agencies are also responsible for data quality reviews during the 22<sup>nd</sup> through 29<sup>th</sup> days of the reporting month.

<sup>11</sup> Federal legislation was passed in the U.S. House, and is still in the Senate, that would provide funding for oversight to prevent and detect waste, fraud and abuse.

the website has not been updated regularly because of a combination of factors including limited staffing resources and unexpected technology glitches. CMO staff is working on solutions to update the website more frequently, such as training additional non-technical staff to do the routine uploads. Since we discussed this issue with the CMO, the website has been updated.

### 3. Procedures for Quarterly Reporting

After the Recovery Act reports were submitted, the City identified several minor changes. Although the minor corrections will be performed in accordance with federal Recovery Act guidance, the CMO can improve the consistency of the corrections process by tracking corrections and establishing procedures.

According to the federal Department of Justice (DOJ) which oversees the JAG and ICAC grants, agencies should establish written internal procedures to limit or prevent errors when collecting, reviewing, submitting or changing data. Furthermore, according to the DOJ, documentation should be included in formal policy, standard operating procedures and/or official operations manuals. The Police Department has indicated that it will establish written procedures as described in the guidance. These procedures may be applicable to other City programs.

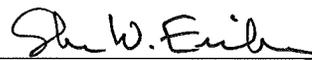
### 4. Timely Reimbursement of Funds

A potential issue is the timeliness of reimbursement requests. Recovery Act funds available to the City are received primarily on a reimbursement basis. Program leads are aware that they need to seek reimbursement in a timely manner in order to minimize interest costs to the City budget. As more programs expend Recovery Act funds, we will monitor the timeliness of reimbursement requests to minimize the City's interest costs.

## **CONCLUSION**

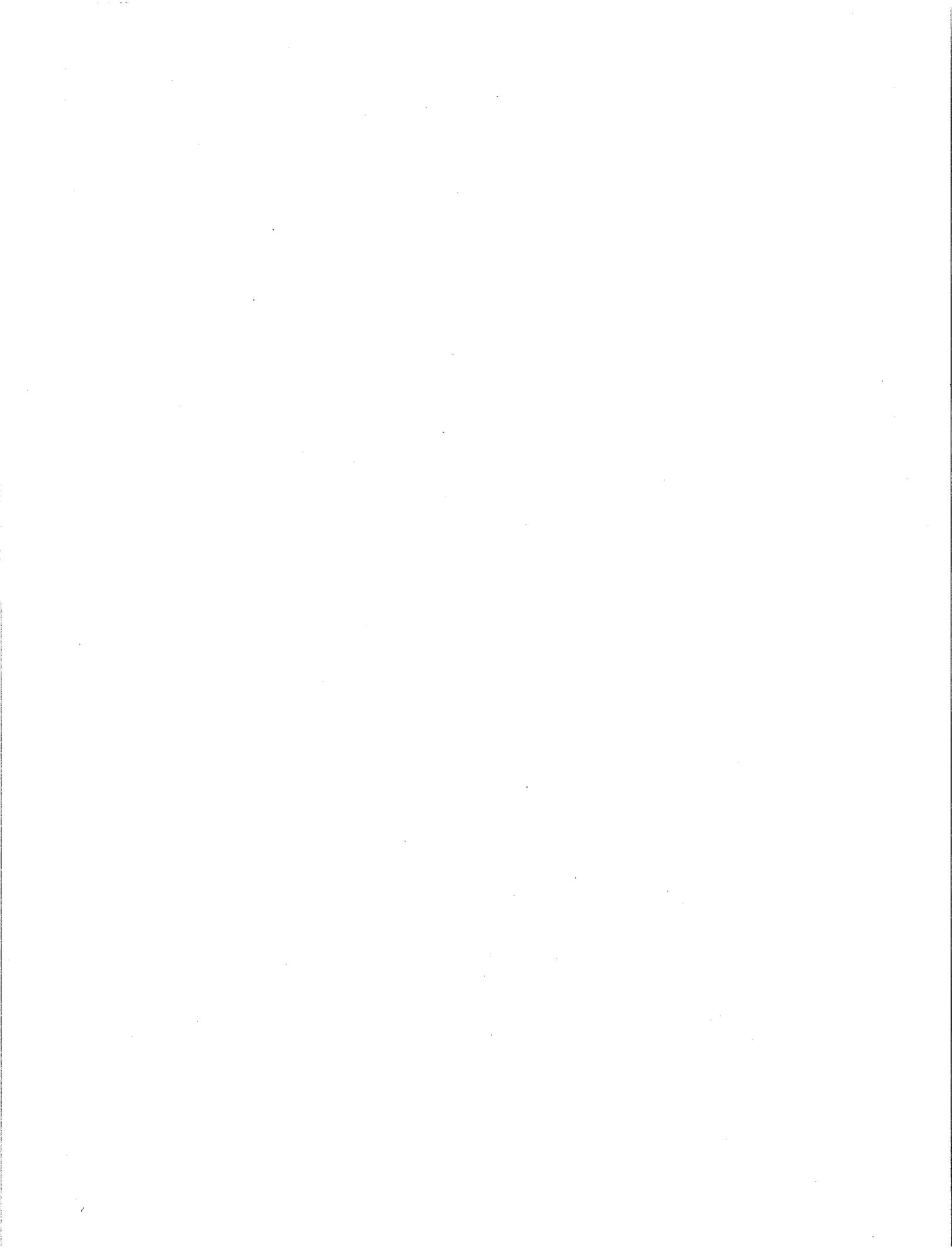
Based on our review, the City met the Recovery Act's transparency and accountability requirements for quarterly reporting as of September 30, 2009. The City continues to make progress on establishing key internal controls. Future audits will verify compliance with Recovery Act requirements and provisions and assess the accuracy and appropriateness of expenditures.

We reviewed this report with the City Manager's Office and the pertinent City departments. The City Auditor's Office thanks the management and staff from the City Manager's Office, the Finance Department, the City Manager's Budget Office, and departments with Recovery Act programs for their time, information, insight and cooperation during the preparation of this report. The City Auditor's staff who participated in the preparation of this report are Steven Hendrickson, Ruth Merino and Joe Rois.



Sharon W. Erickson  
City Auditor

cc:	Debra Figone	Bill Sherry	Rob Davis	Jennifer Maguire
	Betsy Shotwell	Steve Ferguson	Kenn Lee	Dave Maas
	Darryl Von Raesfeld	Allen Fong	Ashwini Kantak	Scott Johnson
	Katy Allen	Ed Shikada	Mike Ryder	Rick Doyle
	Leslye Krutko	Terri Gomes	John Stufflebean	Albert Balagso
	Hans Larsen	Deanna Santana	Paul Krutko	Alex Gurza
	Lisa Perez	Mary Ellen Dick	Jeff Ruster	Mary Tucker
	Sandra Murillo	Mansour Nasser	David Cavallaro	Harry Mavrogenes
	Rene Cordero	Eric Rosenblum	Laura Luu	





# Memorandum

**TO:** RULES AND OPEN GOVERNMENT COMMITTEE  
**FROM:** Sharon W. Erickson, City Auditor  
**SUBJECT:** *Monthly Report of Activities for October 2009*  
**DATE:** November 12, 2009

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## RECOMMENDATION

Approve the Auditor's Office Monthly Report of Activities for October 2009.

## SUMMARY OF RESULTS

Charter Section 8.05(e) requires the City Auditor to submit a monthly report to the City Council of our activities, findings, and recommendations. This report summarizes reports issued, other activities, assignments in process, and the status of the City Auditor's Fiscal Year 2009-10 Work Plan during the month of October 2009.

### Audit Reports Issued During the Month of October:

- 1. Audit of Animal Care and Services** – We reviewed the cost-recovery status of fees and charges, including the cost-recovery of services provided to other jurisdictions. We made eleven recommendations and presented the report at the October 15, 2009 meeting of the PSFSS Committee. It was accepted at the October 27, 2009 City council meeting.
- 2. Semi-Annual Follow-Up Report On All Outstanding Audit Recommendations For The Six Months Ended June 30, 2009** – The report gave the status of the 92 recommendations outstanding from all previous audit reports, including the 23 new recommendations made since our last semi-annual report. During this reporting period, 34 recommendations were fully implemented. We presented the report at the October 15, 2009 Public Safety, Finance and Strategic Support Committee Meeting. It was accepted at the November 3, 2009 City Council Meeting.

### Assignments in Process:

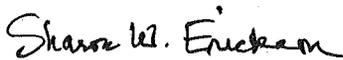
- 1. Audit of the City's Management of Federal Recovery Act Funds – Review of First Quarterly Reports** - This report (Phase II) will assess whether the City met the Recovery Act's transparency and accountability requirements for quarterly reporting.  
**Project Status:** A preliminary draft was issued for comment  
**Anticipated Release Date:** November 2009.

- 2. Semi-Annual Compliance Review of the City's Investment Program** – Macias, Gini, & O'Connell is conducting the audit as of June 30, 2009.  
**Project Status:** Report writing in process.  
**Anticipated Release Date:** November 2009.
- 3. Annual External Financial Audit and Single Audit as of June 30, 2009** – Macias, Gini, & O'Connell is conducting the annual audit of the City financial transactions.  
**Project Status:** Report writing in process.  
**Anticipated Release Date:** November (CAFR), December (Single Audit).
- 4. Audit of Pensionable Time Reporting ("Retirement Rolls")** – To review time reporting and payroll processes that impact pension rates and pensionable hours, City earnings codes and their governance, and the administrative process for determining pensionable amounts and pensionable hours.  
**Project Status:** A final draft has been issued for comment.  
**Anticipated Release Date:** December 2009.
- 5. Annual Audits of the Branch Library Bond Projects Fund, Parks and Recreation Bond Projects Fund, Library Parcel Tax, Special Revenue Fund, and the Public Safety Bond Project Fund** – Macias, Gini, & O'Connell is conducting these audits as of June 30, 2009.  
**Project Status:** Report writing in process.  
**Anticipated Release Date:** December 2009.
- 6. Service Efforts and Accomplishments (SEA) Report** – Second annual report providing data about the cost, quality, quantity, and timeliness of City services. The purpose of SEA reporting is to strengthen public accountability and help improve government efficiency and effectiveness. It incorporates existing performance measurement data, showing five-year historical trends, a variety of comparisons to other cities, and the results of resident surveys.  
**Project Status:** Fieldwork in Process.  
**Anticipated Release Date:** December/January
- 7. Police Sworn/Non-Sworn Staffing** – To assess the efficiency and effectiveness of current deployment of sworn versus non-sworn Police Department employees. This review follows up on a recommendation raised in the January 2008 Management Partners report.  
**Project Status:** Report writing in process. We are holding bi-weekly progress meetings with the Police Department and City Manager staff.  
**Anticipated Release Date:** January 2010.
- 8. Decentralized Cash Handling** – Revenue in the form of cash, checks, and credit cards is collected throughout the City at many locations. The audit will identify strategies and processes to increase accountability where cash handling is currently decentralized.  
**Project Status:** Fieldwork nearly complete.  
**Anticipated Release Date:** January 2010.

9. **Redevelopment Agency DDA** – An audit of the loan agreement between the Redevelopment Agency and Legacy Partners for the 117-unit Museum Park multiple housing development  
**Project Status:** Fieldwork in process.  
**Anticipated Release Date:** January 2010
  
10. **Annual Review of Team San Jose** – Annual review to determine whether TSJ met its performance metrics and all key requirements in the Management Agreement as of June 30, 2009.  
**Project Status:** Report writing in process.  
**Anticipated Release Date:** January 2010.
  
11. **Review of Community Center Staffing** – We are assessing the efficiency and effectiveness of community center staffing.  
**Project Status:** Fieldwork in process.  
**Anticipated Release Date:** TBD.
  
12. **Audits of Major Contracts – Airport Parking Management Agreement.** This audit is the first in a series of audits of large contracts to confirm that the City is getting the service that it is paying for and the revenues to which it is entitled.  
**Project Status:** Fieldwork in process.  
**Anticipated Release Date:** TBD.

Information on the status of the City Auditor's FY 2009-10 Work Plan is attached. On behalf of the Auditor's Office, I would like to express my appreciation to City staff for their cooperation and assistance during our reviews.

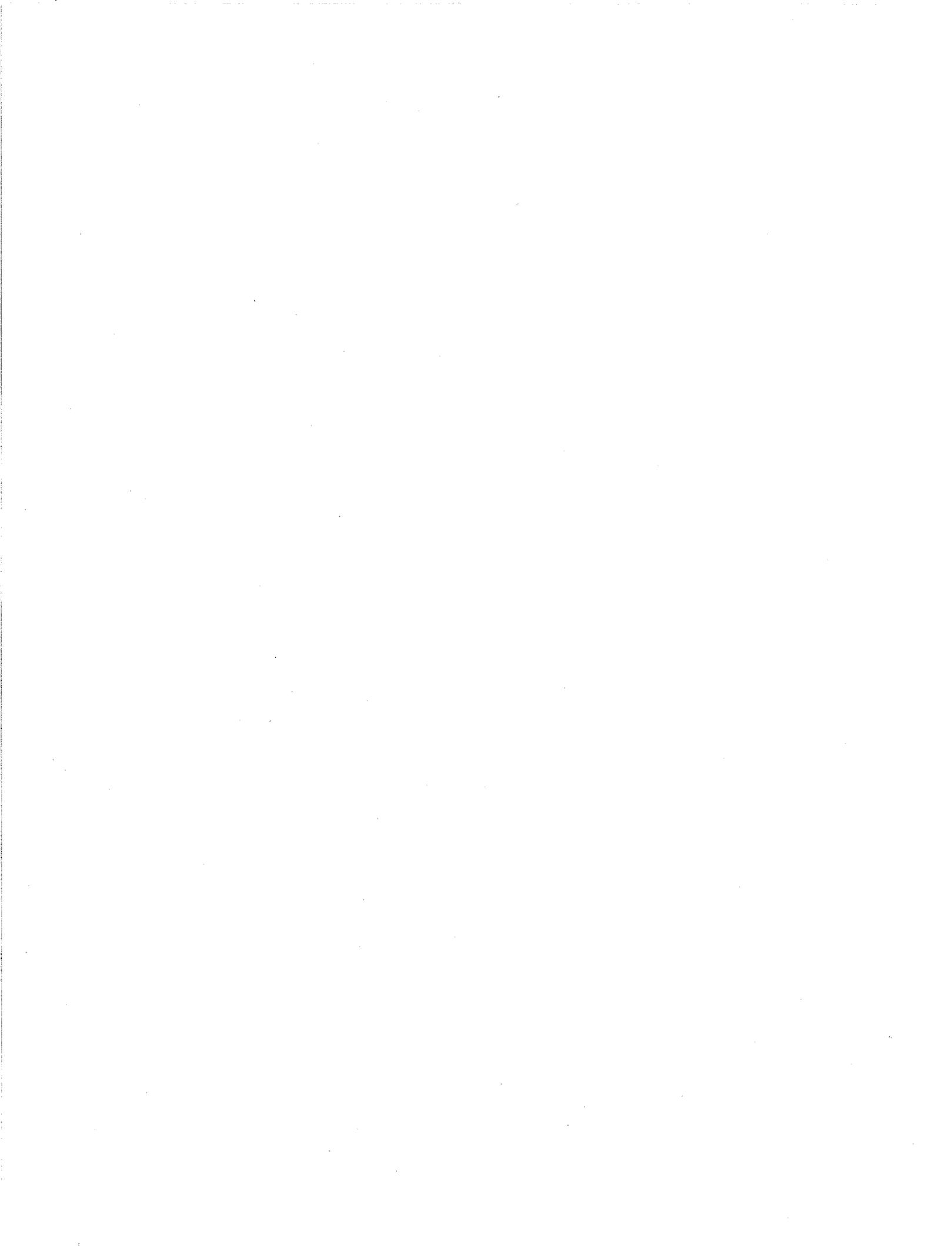
Respectfully submitted,



Sharon W. Erickson  
City Auditor

SE:bh

Attachment: Status of the City Auditor's FY 2009-10 Work Plan





# Memorandum

TO: RULES COMMITTEE

FROM: Mayor Chuck Reed  
Councilmember Sam Liccardo

SUBJECT: Taxicab Driver Permits

DATE: November 13, 2009

APPROVED:

*Chuck Reed*  
*Sam Liccardo PH*

11/13/09

## RECOMMENDATION

Place on the December 8, 2009 City Council Agenda the proposal to authorize the Chief of Police to halt the issuance of driver permits where identified economic indicators demonstrate a substantial decline in demand for taxicab services. Direct the City Attorney to prepare the accompanying ordinance. This ordinance will require that staff to:

- a. Identify those economic indicators – such as hotel occupancy rates and airport taxicab trips – which most reliably demonstrate actual taxi demand, can be counted on in terms of accuracy of the data, and are already collected minimizing the amount of staff time required.
- b. Create an exemption process whereby a taxicab company or new market entrant can demonstrate “hardship” due to having too few drivers to meet the documented demand for that company’s services, or in the event the securing of new account/contract results in a need for more drivers.
- c. Ensure that there will be no “rollback” in the number of issued driver permits, but rather a mere cessation in the issuance of new permits.
- d. Halt the issuance of new driver permits as soon as practicable.

The ordinance shall sunset within three years of taking effect unless the City Council takes affirmative action to continue the process.

## BACKGROUND

Having been referred by the Rules Committee, this matter was placed on the Transportation & Environment Committee Agenda for November 2, 2009. Due to a glitch in placing the item on the formal agenda, it was agendized late on the Friday before the hearing, and required a waiver of Sunshine requirements to have the matter considered by the Committee. Only two members were present, however, leaving the committee short of the quorum required to hear the item.

Given this unforeseen delay, and in light of the urgent appeal of taxi drivers for some relief over the last five months, this item should be sent directly to council for consideration.

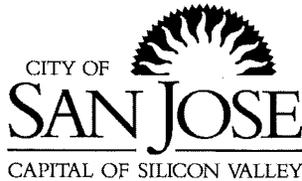
At the present time, we have more taxi drivers than anytime in this city’s history: 607 at last count. Approximately fifty drivers have joined the pool in the last year, and the San Jose Police Department estimates that approximately five more obtain permits each week. At the same time, hotel occupancy rates have declined at least 11% from a year ago—and 2008 was hardly a banner year for hotels--and the number of daily taxi trips originating from the airport have dropped 55% . In May of 2008, each taxi driver could earn revenue from an average of approximately 12.5 trips per day. The daily average has since dropped to 5.6 trips, a number not seen in the last decade.

RULES COMMITTEE :

ITEM:

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In short, the traditional supply-and-demand model has clearly broken down, as a declining demand for taxi services has accompanied a rising supply of taxi drivers. The reasons for this perverse operation of the market may be complex, but likely emanates from the fact that some companies continue to have an incentive to recruit drivers to pay gate fees, and those drivers unwittingly decide to go along, despite the absence of sufficient market demand. Other companies-- such as Yellow Cab--have taken the higher road, and have declined to add any new drivers. Whatever the reason, as long as the market drives this oversupply, the safety of passengers and the standard of living of drivers will suffer.



RULES COMMITTEE: 11-18-09  
ITEM: 1.4a

# Memorandum

**TO:** RULES AND OPEN GOVERNMENT COMMITTEE      **FROM:** Scott P. Johnson

**SUBJECT:** SEE BELOW

**DATE:** 11-12-09

Approved

*Deana Silva*

Date

11/12/09

**SUBJECT: PUBLIC SAFETY, FINANCE & STRATEGIC SUPPORT COMMITTEE (PSFSS) ADDITION**

## RECOMMENDATION

Add to the Public Safety, Finance & Strategic Support Committee work plan for the December 17, 2009 meeting an item regarding the FY 2008-09 audit of the Hayes Mansion.

## BACKGROUND

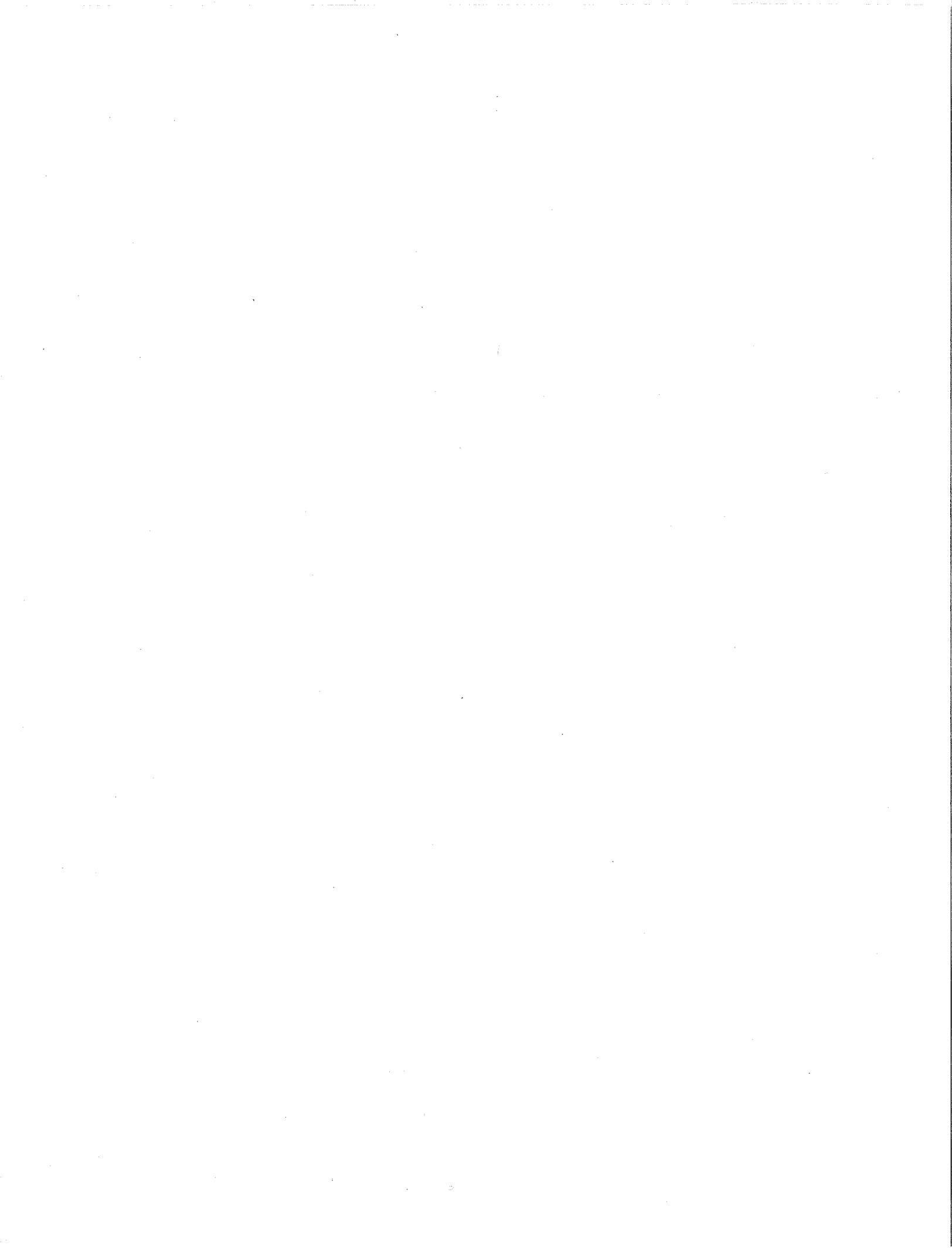
Effective January 1, 2004, the City entered into an agreement (Agreement) with Dolce International/San Jose Inc. to manage and operate the Hayes Mansion. Per the Agreement, an audit of the books and records of the Hayes Mansion shall be performed each year by a firm of independent certified public accountants.

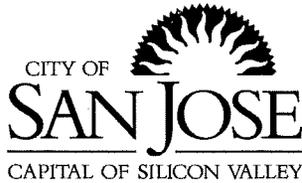
This memorandum being presented will be the independent auditor's reports to Council on the FY 2008-09 audit of the Hayes Mansion. The independent auditor's reports include:

- Independent Auditor's Report and Financial Statements
- Independent Auditor's Report on Applying Agreed-Upon Procedures
- PSFSS Committee Report (Management Letter)

  
SCOTT P. JOHNSON  
Director, Finance

For questions, please contact Julia Cooper, Assistant Director at (408) 535-7011.





# Memorandum

**TO:** RULES AND OPEN GOVERNMENT COMMITTEE      **FROM:** Scott P. Johnson

**SUBJECT:** SEE BELOW

**DATE:** 11-10-09

Approved

Date

11/12/09

**SUBJECT: PUBLIC SAFETY, FINANCE & STRATEGIC SUPPORT COMMITTEE (PSFSS) ADDITION**

## RECOMMENDATION

Add to the Public Safety, Finance & Strategic Support Committee work plan for the December 17, 2009 meeting an item regarding the FY 2008-09 audit of the San José Convention Center and Cultural Facilities.

## BACKGROUND

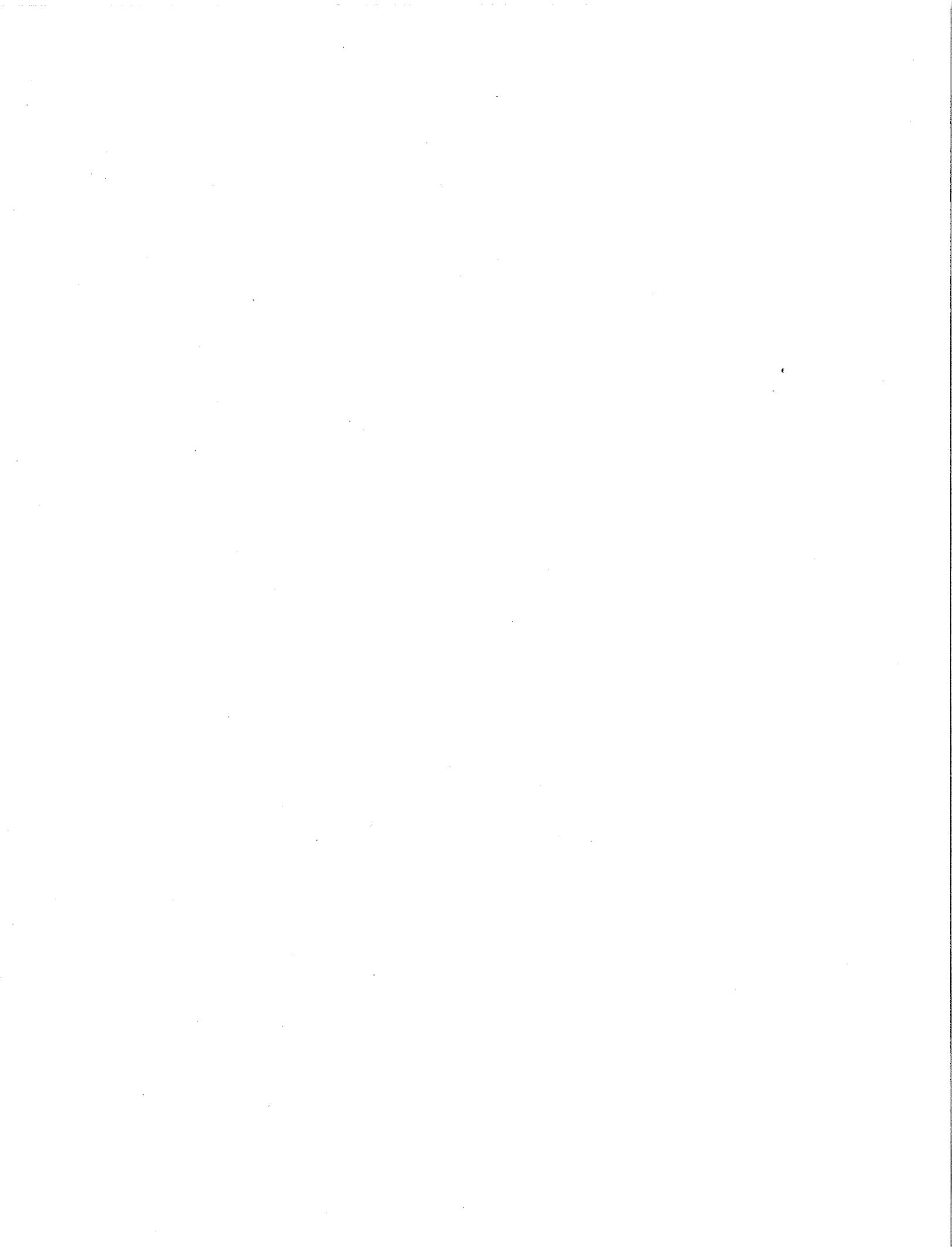
Effective July 1, 2004, the City entered into an agreement (Agreement) with Team San José to manage and operate the San José Convention Center and Cultural Facilities. Per the Agreement, an audit of the books and records of the San José Convention Center and Cultural Facilities shall be performed each year by a firm of independent certified public accountants.

This memorandum being presented will be the independent auditor's reports to Council on the FY 2008-09 audit of the San José Convention Center and Cultural Facilities. The independent auditor's reports include:

- Independent Auditor's Report and Financial Statements
- PSFSS Committee Report (Management Letter)

SCOTT P. JOHNSON  
Director, Finance

For questions, please contact Julia Cooper, Assistant Director at (408) 535-7011.





# Memorandum

**TO:** RULES & OPEN GOVERNMENT  
COMMITTEE

**FROM:** Deanna J. Santana  
Robert L. Davis

**SUBJECT:** SEE BELOW

**DATE:** November 12, 2009

Approved

Date

11/12/09

**SUBJECT: CLARIFICATION REQUESTED BY THE ADMINISTRATION REGARDING CERTAIN POLICE RECORDS [PHOTOGRAPHS] TO BE POSTED ON THE CITY'S WEBSITE REGARDING THE OFFICER-INVOLVED SHOOTING OF MR. DANIEL PHAM ON MAY 10, 2009**

## RECOMMENDATION

- A. Provide clarification regarding which, if any, photographs that are a part of the police report(s) associated with the officer-involved shooting of Mr. Daniel Pham on May 10, 2009 should be released publicly in response to Public Records Requests.
- B. Provide clarification regarding which, if any, photos that are released publicly should also be posted on the Internet.
- C. Staff recommendation on whether to release photographs will be verbally issued on November 18, 2009, and is pending further input from Pham family members and attorneys, but the Administration's preliminary suggestion is to not release the following types of photographs if the Rules & Open Government Committee elects to release any photographs:
  1. Autopsy or morgue;
  2. Photographs unnecessarily graphic.
  3. Photographs that reveal the location of the residence of a reporting party that was not at the location of the incident or unnecessarily intrude upon that reporting party's expectation of privacy regarding the interior portions of his/her residence;
  4. Photographs that unnecessarily expose the interior portions of the Pham family residence.
  5. Photographs of involved police officers.
  6. Photographs which contain identifying information such as license plates, addresses, etc.

## BACKGROUND

On November 4, the Rules Committee considered the release of police records for the officer-involved shooting of Mr. Daniel Pham on May 10, 2009. At that meeting, the Rules & Open

**PUBLIC SAFETY, FINANCE & STRATEGIC SUPPORT COMMITTEE**

**Subject:** Rules Committee Clarification Regarding the Release of Photos

November 12, 2009

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Government Committee (Committee) directed the Administration to release all records pertaining to this incident and to post this information onto the City Clerk's website by November 13, 2009. Furthermore, as part of the Committee action, the Committee requested that the Police Department meet with the Pham family attorney Ms. Teresa Nguyen (that spoke at the Committee on November 4, 2009) and provide an opportunity for the Pham family to view the police records and hear the audio recordings that would be subject to disclosure.

Since that action, the Administration has been working diligently to prepare the police records for posting to the website and to ensure that the information is appropriately redacted. As part of this effort, staff has referred several times to the video record (e.g., Granicus) of the Committee meeting to ensure that actions are compliant with the direction. As part of this due diligence, it should be noted that there is an absence of Committee direction and discussion with respect to the disclosure options for the potential release of photographs that are part of this record.

The purpose of this memorandum is to seek clarification with respect to the Committee's direction in regard to photographs that make up part of the police record. As a result, no photographs have been posted to the website as part of the release of police records. As of November 13, 2009, the following items will be posted to the City Clerk's website:

- Cover letter from the Chief of Police;
- Synopsis/Summary of the Events of SJPD Case #09-130-0526;
- Transcripts of 911 calls and dispatcher communication;
- 4 audio links of the 911 calls and dispatcher communication
  - Track 1 – Recording of reporting party neighbor talking to call taker.
  - Track 2 – Recording of reporting party inside house talking to call taker.
  - Track 3 – Recording of family talking to call taker to learn when they could return home.
  - Track 4 – Recording of Dispatcher and Officers as they handled the call.
- Redacted SJPD Police Report #09-130-0526
- Background Event Chronology of SJPD Event # P091300526 from the Computer Aided Dispatch (CAD)

Additionally, on November 13, 2009, the City will hold a media briefing to review the above information and respond to any questions regarding the disclosed materials. This memorandum will be linked to the City Clerks' website where the police records are made available to provide additional information on the current disposition regarding the release of photos.

**ANALYSIS**

This section outlines policy options for the Committee to consider and provides the outcome of the meeting with the Pham family attorneys.

**PUBLIC SAFETY, FINANCE & STRATEGIC SUPPORT COMMITTEE**

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***Police Record Regarding Collection of Photographs***

The collection of photographs contained in the police record of the incident are both numerous and explicit in what they depict. While they are a part of the record and do help tell the story of what was occurring that day, many of the photographs are very graphic in nature, some contain nudity, and other contain personal/private information.

***Summary of Pham Family Review of Police Records***

On November 10, 2009, the Police Department met with Pham family members and their attorneys to review the police records, dispatch tapes, and a select group of photographs that were carefully selected to the types of photographs taken, while at the same time, to not be too graphic. At that meeting, the family expressed its desire to reserve their right to privacy and dignity and suggested that additional information would be forthcoming on the position of the Pham family with respect to the release of photographs.

On November 11, 2009, one of the Pham family attorneys communicated to the Police Department of the desire for the City to not disclose any autopsy photographs and expressed that correspondence to the City would be issued that confirmed the family's position. As of November 12, 2009, Pham family attorneys Mr. Paul Caputo and Ms. Teresa Nguyen advised that they were meeting with the Pham family during the evening hours and would advise the Police Department of the family wishes regarding the photographs during the morning of November 13, 2009. A verbal update will be provided at the November 18, 2009 Committee meeting that summarizes any additional communication with the Pham family to further inform the Committee of its decision making process.

***Summary of a Reporting Party Privacy Concerns***

As previously shared with the Committee on November 4, 2009, a reporting party that was not at the location of the incident, who called the Police Department to report the incident, expressed a desire to not have the audio tape released due do privacy concerns. The audio tape has been altered per the Committee direction and will be posted to the website, with an accompanying transcript. However, it should also be noted that there are photographs of the residence of the reporting party in the police records. This reporting party has made clear the desire to remain anonymous and to maintain privacy.

***Disclosure Options & Policy Considerations***

Given the lack of Committee discussion and specific direction, combined with the disposition of the Pham family and the reporting party, the Administration would like to present options for the Committee to evaluate for purpose of providing direction with respect to the release of photographs.

The Committee may want to consider making them available for viewing at the Police Department, but not posting them on the Internet. This would allow those who are genuinely

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interested in understanding what occurred on May 10<sup>th</sup> to view the photographs, but would not make them available in a manner that allows their easy distribution across the Internet by those who are interested only in the sensational nature of the images. It should be noted though, that making the photographs available for viewing at the Police Administration Building would result in the potential release of the photographs or posting to the Internet, since with such an action the City would be required to release a copy of the photographs if an individual that elects to view them also requests a copy of them. In this case, the City would be required to provide a copy of the photographs.

**Table 1: Policy Options & Considerations**

Option	Policy Considerations
1. Make available <b>ALL</b> Photographs by posting them to the City's Website	<ul style="list-style-type: none"> <li>▪ There are over 1,000 photographs that make up the photographic record.</li> <li>▪ This would not respond to the Pham family request to not release all photos for concerns for privacy and dignity.</li> <li>▪ Photos posted to the website can be copied and broadly circulated.</li> <li>▪ The photos are very graphic and contain images that could be disturbing to adults and unsuitable for minors.</li> </ul>
2. Make available <b>SELECT</b> Photographs by posting them to the City's Website	<ul style="list-style-type: none"> <li>▪ Allows for the release of some photos that would characterize the scene of the incident and provide context.</li> <li>▪ Photos posted to the website can be copied and broadly circulated.</li> <li>▪ The photos are very graphic and contain images that could be disturbing to adults and unsuitable for minors.</li> <li>▪ Suggested criteria for a select group of photos would be:               <ol style="list-style-type: none"> <li>a. No autopsy or morgue photographs</li> <li>b. Photographs that are unnecessarily graphic.</li> <li>c. Release photos that show weapons/knife, suspect's injuries, victim's injuries, overview of the incident scene, etc.</li> <li>d. Photographs that reveal the location of the residence of a reporting party that was not at the location of the incident or unnecessarily intrude upon that reporting party's expectation of privacy regarding the interior portions of his/her residence;</li> <li>e. No photos that unnecessarily expose the interior portions of the Pham family residence.</li> <li>f. No photos of involved police officers.</li> <li>g. No photos which contain identifying information such as license plates, addresses, etc.</li> </ol> </li> </ul>
3. Make available <b>ALL</b> or <b>SELECT</b> Photographs for Viewing at the Police Administration Building, and provide copies of photographs upon request.	<ul style="list-style-type: none"> <li>▪ Requires physical viewing of the photographs and results in somewhat limiting the circulation/viewing of the photographs.</li> <li>▪ A viewer could request copies of the photographs and the Police Department would be required to duplicate them and disclose them. This could result in broader circulation of the photographs or posting to a website.</li> <li>▪ This would not respond to the Pham family request to not release all photos for concerns for privacy and dignity.</li> <li>▪ Suggested criteria for a select group of photos would be the same as noted above.</li> </ul>
4. Do Not Release Any Photographs	<ul style="list-style-type: none"> <li>▪ Protects the privacy and dignity of the deceased.</li> <li>▪ Protects the privacy interests of the Pham family and the reporting party who wishes to remain anonymous.</li> <li>▪ Does not distribute graphic photographs that contain disturbing images.</li> <li>▪ Information already released is not complemented with photographic representation.</li> </ul>

**PUBLIC SAFETY, FINANCE & STRATEGIC SUPPORT COMMITTEE**

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**COORDINATION**

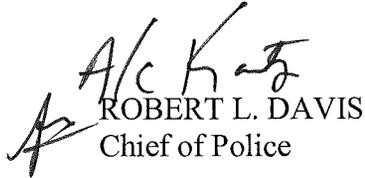
This report has been coordinated with the Office of the City Attorney.

**CEQA**

Exempt.



DEANNA J. SANTANA  
Deputy City Manager



ROBERT L. DAVIS  
Chief of Police