CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

CITY COUNCIL AGENDA

DECEMBER 14, 2010

SYNOPSIS

PETE CONSTANT	DISTRICT 1		PIERLUIGI OLIVERIO	DISTRICT 6
ASH KALRA	DISTRICT 2		MADISON P. NGUYEN	DISTRICT 7
SAM LICCARDO	DISTRICT 3	CHUCK REED MAYOR	ROSE HERRERA	DISTRICT 8
KANSEN CHU	DISTRICT 4		JUDY CHIRCO, VICE MAYOR	DISTRICT 9
XAVIER CAMPOS	DISTRICT 5		NANCY PYLE	DISTRICT 10

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Office of the City Clerk

The City of San José is committed to open and honest government and strives to consistently meet the community's expectations by providing excellent service, in a positive and timely manner, and in the full view of the public.

Welcome to the San José City Council meeting!

This Agenda contains both a Consent Calendar section for routine business items that require Council approval, and general business items arranged to correspond with San José's City Service Areas (CSAs). City Service Areas represent the policy-making level for strategic planning, policy setting, and investment decisions in the critical functions the City provides to the community. They are:

- ***Strategic Support Services*** — The internal functions that enable the CSAs to provide direct services to the community in an effective and efficient manner.
- ***Community & Economic Development*** — Manage the growth and change of the community in order to create and preserve healthy neighborhoods and ensure a diverse range of employment and housing opportunities.
- ***Neighborhood Services*** — Serve, foster, and strengthen community by providing access to lifelong learning and opportunities to enjoy life.
- ***Transportation & Aviation Services*** — A safe and efficient transportation system that contributes to the livability and economic health of the City; and provide for the air transportation needs of the community and the region at levels that is acceptable to the community.
- ***Environment and Utility Services*** — Manage environmental services and utility systems to ensure a sustainable environment for the community.
- ***Public Safety Services*** — Commitment to excellence in public safety by investing in neighborhood partnerships as well as prevention, enforcement, and emergency preparedness services.

Items listed in Section 9 require approval of both the City Council and the San José Redevelopment Agency Board.

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

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

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

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

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

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

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

- Call to Order and Roll Call

  9:00 a.m. - Closed Session, Call to Order in Council Chambers
  Absent Council Members: All Present.

  10:05 a.m.- Regular Session, Council Chambers, City Hall
  Absent Council Members: All Present.

  1:33 p.m. - Regular Session, Council Chambers, City Hall
  Absent Council Members: All Present.

- Invocation (Mayor)

  Delorme McKee-Stovall, Manager, Santa Clara County Office of Human Relations 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) deferred to 01/11/2011, Item 4.4(a) dropped and Item 8.1 heard before the Consent Calendar.

- Closed Session Report

  No Report.

1. CEREMONIAL ITEMS

1.1 Presentation of a commendation to La Raza Roundtable de California for their commitment to ensure social justice, education, and leadership development while improving the quality of life in San José. (Herrera)
Mayor Reed and Council Members Herrera, Liccardo and Nguyen recognized and commended La Raza Roundtable de California.

SPECIAL CEREMONIAL

Mayor Reed and the Council Members recognized and commended Vice Mayor Chirco and City Clerk Lee Price for their years of service to the City of San José and for their exemplary dedication and commitment to the residents of the San José.

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. 28855 – Repealing Sections 11.72.020, 11.72.030, 11.72.040, 11.72.050, 11.72.060 and 11.72.070 of Chapter 11.72 of Title 11 of the San José Municipal Code and amending Section 11.72.150 of Chapter 11.72 of Title 11 to eliminate bicycle licensing requirements.
Ordinance No. 28855 adopted.

(b) ORD. NO. 28858 – Amending Title 20 of the San José Municipal Code to add a new Chapter 20.75, Pedestrian Oriented Zoning Districts, establish the Main Street Districts within that Chapter, establish parking and loading requirements for Main Street Districts, and make other related changes to Chapter 20.10, General Provisions and Zoning Districts, Chapter 20.40, Commercial Zoning Districts, Chapter 20.80, Specific Use Regulations, Chapter 20.175, Commercial and Industrial Common Interest Development Regulations, and 20.200, Definitions, all to better align with and further support the Pedestrian Oriented Zoning Districts.
Ordinance No. 28858 adopted.

(c) ORD. NO. 28859 – Amending Sections 9.10.1100, 9.10.1200, and 9.10.1210 of Chapter 9.10 of Title 9 of the San José Municipal Code to limit the ability to establish residential solid waste service accounts to the owner and their agents.
Ordinance No. 28859 adopted.

2. CONSENT CALENDAR

2.2 Final adoption of ordinances (Cont'd.)

(d) ORD. NO. 28861 – (1) Amending Sections 12.06.210 and 12.06.540 of the San José Municipal Code to clarify how to calculate increases based on the Consumer Price Index; (2) Eliminating contribution limitations to Independent Committees by repealing Part 3 of Chapter 12.06; (3) Amending Section 12.06.910 to clarify the reporting requirements for Independent Committees; (4) Amending Section 12.06.920 to clarify the type of information to be provided in the City Clerk's report; and (5) Amending Section 12.06.1010 to clarify the notices and reports required.

Ordinance No. 28861 adopted.

(e) ORD. NO. 28862 – Amending Parts 3 and 5 of Chapter 25.11 of Title 25 of the San José Municipal Code to revise the method for determining minimum compensation and amending Parts 15 and 17 regarding administration and administrative enforcement for the Airport Living Wage and Labor Standards.

Ordinance No. 28862 adopted.

(f) ORD. NO. 28864 – Rezoning certain real property situated on the south side of Aborn Road between Alessandro Drive and Ruby Avenue, from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District. PDC10-001

Ordinance No. 28864 adopted.

(g) ORD. NO. 28865 – Rezoning certain real property situated on the west side of South Monroe Street, approximately 400 feet north of Tisch Way and approximately 270 feet north of Tisch Way between South Baywood and Dudley Avenues, from the CG Commercial General and R-M Multiple Residence Zoning Districts to the A(PD) Planned Development Zoning District. PDC10-018

Ordinance No. 28865 adopted.

(h) ORD. NO. 28866 – Rezoning certain real property situated at 405 North Third Street from the R-M Multiple Residence Zoning District to the A(PD) Planned Development Zoning District to allow up to *three* residential units (total) on a 0.17 gross acre site. PDC08-033

Deferred to 01/11/11 per Orders of the Day.

2.3 Approval of Council Committee Reports.

Recommendation: Approval of Council Committee Reports.

(a) Community and Economic Development Committee Report of November 29, 2010. (Pyle)

Deferred to 01/11/11 per City Clerk.

2. CONSENT CALENDAR

2.4 Mayor and Council Excused Absence Requests.

Recommendation:

(a) Request for an excused absence for Council Member Nguyen from the Closed Session and Regular City Council Meetings on November 30, 2010 due to illness. (Nguyen)

Excused.

2.5 City Council Travel Reports.

There were none.

2.6 Lease of Airport Premises at 1239 Airport Boulevard with Southwest Airlines.

Recommendation: Adopt a resolution authorizing the Director of Aviation to:

(a) Negotiate and execute a First Amendment to the Lease of Airport Premises at 1239 Airport Boulevard ("Lease") with Southwest Airlines Co. ("Southwest") to extend the term for 5 years commencing on January 1, 2011, subject to termination by the Director of Aviation ("Director") with 90 days written notice, with annual revenue to the City of $111,300.

(b) Negotiate and execute an Amendment to the Lease to extend the term of the Lease for up to an additional 5 years commencing on January 1, 2016, subject to termination by the Director with 90 days written notice.

CEQA: Not a Project, File No. PP10-066(f), Lease of existing space for same use. (Airport)

Resolution No. 75664 adopted.

2.7 Sublease Agreement between SJC Fuel Company, LLC and Wickland Pipelines LLC for a Portion of the Fuel Storage Tank Site.

Recommendation:

(a) Approve a Sublease Agreement between SJC Fuel Company, LLC and Wickland Pipelines, LLC for a portion of the fuel storage tank site leased premises located at 2500 Seaboard Avenue in San José, for an initial term of 20 years, with automatic one year extensions until terminated by notice from either party to the Sublease Agreement.

Approved.

(b) Adopt a resolution authorizing the Director of Aviation to approve future Sublease Agreements between SJC Fuel Company, LLC and third parties as necessary for the continued operation and modification of the fuel farm.

CEQA: Resolution Nos. 67380, 71451, and 75344, File No.PP10-169. (Airport)

Resolution No. 75665 adopted.

2. CONSENT CALENDAR

2.8 Settlement Agreement and Release.

Recommendation: Approve settlement and authorize payment to Sherretta Henderson, Christina Sanchez, Natasha Burton, Barbara Powell and their attorneys in the total amount of $70,000 pursuant to a Settlement Agreement and Release, as considered by the City Council during the Closed Session held on November 30, 2010. CEQA: Not a Project, File No. PP10-066(h), Settlement Agreement. (City Attorney)

Approved.

2.9 Agreement with the National Development Council for New Markets Tax Credit Consulting Services.

Recommendation: Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with the National Development Council for New Markets Tax Credit consulting services with an initial term from December 15, 2010 through January 31, 2012, and an option to extend up to seven years for compliance and asset management services; for compensation to be contingent on closing of the transaction in an amount not to exceed $177,500 for the initial term, and $70,000 for services during the optional period. CEQA: Negative Declaration for the renovation of the EIC was adopted on December 1, 2009, File No. PP09-138. (Environmental Services)

Resolution No. 75666 adopted.

2.10 Agreement with Harvest Power, Inc. for Evaluation and Demonstration of a Biomass-to-Energy Technology Project.

Recommendation: Adopt a resolution authorizing the City Manager to negotiate an agreement with Harvest Power, Inc. for evaluation and demonstration of a biomass-to-energy technology project at the San José Santa Clara Water Pollution Control Plant to begin February 1, 2011 consistent with the business terms specified in the memorandum to Council. CEQA: Categorical Exemption, File No. PP10-130, CEQA Guidelines Section 15303(d), New Construction and Conversion of Small Structures. (Environmental Services)

Resolution No. 75667 adopted.

2.11 Agreement with the City of Santa Clara for the South Bay Water Recycling Program.

Recommendation:

(a) Adopt a resolution authorizing the City Manager to negotiate and execute the Eighth Amendment to the construction service agreement with the City of Santa Clara for the South Bay Water Recycling Program, extending the term of the agreement to December 31, 2012, adding a new project to the list of recycled water pipeline projects, and increasing the maximum amount payable by the City of San José by $1,011,000 to a total maximum amount not to exceed $34,661,000.

Resolution No. 75668 adopted.

(Item continued on the next page)

2. CONSENT CALENDAR

2.11 Agreement with the City of Santa Clara for the South Bay Water Recycling Program (Cont'd.)

(b) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the San José/Santa Clara Treatment Plant Capital Fund for 2010-11:

(1) Increase the estimate for Earned Revenue by $511,000.

(2) Increase the appropriation for Revised South Bay Action Plan –South Bay Water Recycling Extension by $1,011,000.

(3) Decrease the Ending Fund Balance by $500,000.

CEQA: Addendum to an EIR Resolution 64667, File No. PP10-184. (Environmental Services/City Manager's Office)

Ordinance No. 28868 adopted.

Resolution No. 75669 adopted.

2.12 Grant Agreement with the California Department of Pesticide Regulation to Adopt Pesticide-Free Maintenance Practices.

Recommendation:

(a) Adopt a resolution authorizing the City Manager to negotiate and execute a grant agreement with the California Department of Pesticide Regulation to adopt pesticide-free maintenance practices and construct demonstration sustainable gardens on a portion of the Guadalupe River Park and Gardens, and develop and conduct public outreach and training focused on Integrated Pest Management techniques for the term of December 2010 through May 2013, with a grant to the City in the amount of $200,000.

Resolution No. 75670 adopted.

(b) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund for 2010-2011:

(1) Increase the estimate in the General Fund for Revenue from the State Government by $115,000 and

(2) Establish a Citywide Pesticide Management Demonstration appropriation to the Environmental Services Department in the amount of $115,000.

CEQA: Not a Project, File No. PP10-165, minor alterations to land which do not involve removal of healthy, mature, scenic trees. (Environmental Services/Parks, Recreation and Neighborhood Services/City Manager's Office)

Ordinance No. 28869 adopted.

Resolution No. 75671 adopted.

2. CONSENT CALENDAR

2.13 Open Purchase Order for Emergency Tree Services Program.

Recommendation: Exercise the final option period and establish an Open Purchase Order for the period December 17, 2010 through December 16, 2011, with a total compensation not to exceed $550,000. This Purchase Order will provide all labor, materials and equipment necessary for the citywide emergency tree services program managed by the Department of Transportation. Office of Equality Assurance: Living and Prevailing Wages where Prevailing Wage is higher. CEQA: Not a Project, File No. PP10-066(a), Purchase Order/Cooperative Purchase of Supplies, Equipment & Professional Services with no changes in the physical environment. (Finance)

Approved.

2.14 Agreement with a Google Reseller for a Pilot Google Apps Software Program.

Recommendation: Adopt a resolution authorizing the Director of Finance to negotiate and execute an Agreement with a Google Reseller to engage in a pilot program with up to 200 City employees using Google Apps software for a period of up to approximately one year, and accept 200 Google Apps licenses from Google, Inc. at no cost to the City of San José. CEQA: Not a Project, File No. PP10-066(a), Agreements and Contracts for purchase of supplies. (Information Technology)

Resolution No. 75672 adopted.

2.15 Report on bids and award of contract for the O'Donnell's Gardens Park Gazebo Design Build Project.

Recommendation:

(a) Report on bids and award of contract for the O'Donnell's Gardens Park Gazebo Design Build Project to the low bidder, Rodan Builders, Inc., in the amount of $175,300 and approval of a contingency in the amount of $18,000.

Approved.

(b) Adopt the following Appropriation Ordinance amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District 3 (Fund 380):

(1) Increase the appropriation to the Parks, Recreation and Neighborhood Services Department, for the O'Donnell's Garden Park project in the amount of $165,000; and

(2) Decrease the Ending Fund Balance by $165,000.

CEQA: Exempt, File No. PP10-182. (Parks, Recreation and Neighborhood Services/ Public Works/City Manager's Office)

Ordinance No. 28870 adopted.

2. CONSENT CALENDAR

2.16 Approval of Actions Related to the 2010 COPS Technology Grant.

Recommendation:

(a) Adopt a resolution accepting the 2010 COPS Technology Program Grant in the amount of $710,000, and authorizing the City Manager and Chief of Police to execute the Grant Agreement and all related documents; and to negotiate and execute additional amendments and related documents without further Council action other than appropriation of funds.

Resolution No. 75673 adopted.

(b) Adopt the following appropriation ordinance and funding sources resolution amendments in the General Fund for fiscal year 2010-2011:

(1) Establish a City-wide appropriation to the Police Department for the 2010 COPS Technology Program Grant in the amount of $710,000; and

(2) Increase the Earned Revenue Estimate from the Federal Government by $710,000.

CEQA: Not a Project, File No.PP10-066(a), Agreements and Contracts for purchase of supplies. (Police/City Manager's Office)

Ordinance No. 28871 adopted.
Resolution No. 75674 adopted.

2.17 Agreement with Denise Duffy & Associates for Environmental Consultant Services.

Recommendation: Approve the first amendment to the master agreement with Denise Duffy & Associates extending the duration from December 31, 2010 to December 31, 2012 for a continuation of ongoing environmental consultant services supporting various City projects, at no additional cost to the City. CEQA: Not a Project, File No. P10-066(d), Consultant Services for Design, Study, Research, Inspection or other professional consulting services to determine the feasibility of a project with no commitment to future action. (Public Works)

Approved.

2.18 Agreement with Gilbane Building Company for Program, Project and Construction Management Consultant Services.

Recommendation: Approve the second amendment to the master agreement with Gilbane Building Company extending the duration from December 31, 2010 to December 31, 2012 for a continuation of ongoing program, project and construction management consultant services supporting various City projects, at no additional cost to the City. CEQA: Not a Project, File No. P10-066(d), Consultant Services for Design, Study, Research, Inspection or other professional consulting services to determine the feasibility of a project with no commitment to future action. (Public Works)

Approved.

2. CONSENT CALENDAR

2.19 Agreement with Krazan & Associates for Special Inspections and Material Testing Services.

Recommendation: Approve the first amendment to the master agreement with Krazan & Associates extending the duration from December 31, 2010 to December 31, 2012 for a continuation of ongoing special inspections and material testing services supporting various City projects including Safety Bond, at no additional cost to the City. CEQA: Not a Project, File No. P10-066(d), Consultant Services for Design, Study, Research, Inspection or other professional consulting services to determine the feasibility of a project with no commitment to future action. (Public Works)

Approved.

2.20 Agreement with Portico, Inc. for Project Design and Management Services for the Happy Hollow Park and Zoo Parks Bond Project.

Recommendation: Approve the fourth amendment to the master agreement with Portico, Inc. extending the duration from December 31, 2010 to December 31, 2012 for a continuation of project design and management services for the City's Happy Hollow Park and Zoo Parks Bond Project, at no additional cost to the City. CEQA: Mitigated Negative Declaration, File No. PP05-142, dated April, 2007 and Amended Mitigated Negative Declaration, File No. PP09-023, dated February 6, 2009. (Public Works)

Approved.

2.21 Agreement with David J. Powers & Associates, Inc. for Environmental Consultant Services.

Recommendation: Approve the first amendment to the master agreement with David J. Powers & Associates, Inc. extending the duration from December 31, 2010 to December 31, 2012 for a continuation of ongoing environmental consultant services supporting various City projects, at no additional cost to the City. CEQA: Not a Project, File No. P10-066(d), Consultant Services for Design, Study, Research, Inspection or other professional consulting services to determine the feasibility of a project with no commitment to future action. (Public Works)

Approved.

2.22 Agreement with URS Corporation Americas for Environmental Consultant Services.

Recommendation: Approve the first amendment to the master agreement with URS Corporation Americas extending the duration from December 31, 2010 to December 31, 2012 for a continuation of ongoing environmental consultant services supporting various City projects, at no additional cost to the City. CEQA: Not a Project, File No. P10-066(d), Consultant Services for Design, Study, Research, Inspection or other professional consulting services to determine the feasibility of a project with no commitment to future action. (Public Works)

Approved.

2. CONSENT CALENDAR

2.23 Increase in the Contingency for the San José Environmental Innovation Center – New Electrical Transformer Project.

Recommendation: Approve an increase in the contingency for the San José Environmental Innovation Center – New Electrical Transformer Project in the amount of $10,000 for a total contingency of $21,712. CEQA: Exempt, File No. PP09-138. (Public Works)

Approved.

2.24 Actions Related to the Paul Moore Park Playground Renovation Project.

Recommendation: Adopt the following Appropriation Ordinance amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District 9 (Fund 388):

(1) Increase the appropriation to the Parks, Recreation and Neighborhood Services Department, for the Paul Moore Park Playground Renovation project for $200,000.

(2) Decrease the Ending Fund Balance by $200,000.

CEQA: Exempt, File No. PP10-176. (Public Works/City Manager's Office)

Ordinance No. 28872 adopted.

2.25 Agreement in which the Valley Transportation Authority for Use of a City Senior Civil Engineer.

Recommendation:

(a) Adopt a resolution authorizing the City Manager to negotiate and execute an agreement in which the Valley Transportation Authority ("VTA") will reimburse the City for all costs up to $275,000 associated with the VTA's use of a City Senior Civil Engineer for a fourteen month period of time.

Resolution No. 75675 adopted.

(b) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the Public Works Program Support Fund:

(1) Establish a new appropriation – Valley Transportation Authority Collaboration in the amount of $160,000.

(2) Increase the estimate for Earned Revenue by $160,000

CEQA: Not a Project, File No. PP10-066 (e) Agreements/Services that involve no physical changes to the environment. (Public Works/City Manager's Office)

Ordinance No. 28873 adopted.

Resolution No. 75676 adopted.

2. CONSENT CALENDAR

2.26 Actions Related to the Parking Penalty and Late Payment Penalty Resolution.

Recommendation:

(a) Adopt a resolution to repeal Resolution No. 75555 and set forth the Schedule of Parking Penalties and Late Payment Penalty for Parking Violations to include a State Trial Court Trust Fund penalty fee in the amount of $3.00, to increase or decrease certain other parking penalties and make corrections to the schedule, effective January 1, 2011.

Resolution No. 75677 adopted.

(b) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:

(1) Increase the revenue estimate for Fines, Forfeitures and Penalties by $290,000.

(2) Increase the Citywide appropriation to the Department of Transportation for the Parking Citations/Jail Courthouse Fees in the amount of $290,000.

CEQA: Statutorily Exempt, File No. PP10-067(a), CEQA Guidelines Section No. 1 5273 – Rates, Tolls, Fares and Charges. (Transportation/City Manager's Office)

Ordinance No. 28874 adopted.
Resolution No. 75678 adopted.

2.27 Agreement for Elections Commission Evaluator and Investigator Services.

Recommendation: Approve an agreement with Hanson Bridgett to provide legal and investigative services as the Evaluator and Investigator to the San José Elections Commission for a four-year term beginning on January 1, 2011 – January 1, 2015, in an amount not to exceed $250,000, subject to appropriation of funds. (City Clerk)

Approved.

2.28 Reappointments to the San José Arena Authority Board.

Recommendation: As recommended by the Rules and Open Government Committee on December 8, 2010, reappoint Bruce Pinsky and Kris McFarland to serve on the San José Arena Authority Board. (Mayor)
[Rules Committee referral 12/8/10 – Item G(1)(a)]

Approved.

2.29 2011 Legislative Guiding Principles, Priorities and Advocacy Issues.

Recommendation: As recommended by the Rules and Open Government Committee on December 8, 2010, accept the 2011 Legislative Guiding Principles as edited by the Council Committees, and the Legislative Priorities and Advocacy Issues for the first year of the two-year Legislative Session in Sacramento and the 112th Congress. (City Manager's Office)
[Rules Committee referral 12/8/10 – Item H(3)]

Accepted.

2. CONSENT CALENDAR

2.30 Challenge Day National Conference.

Recommendation: As recommended by the Rules and Open Government Committee on December 8, 2010:

(a) Approve the Challenge Day National Conference as a City Council sponsored Special Event.

(b) Approve and accept donations from various individuals, businesses or community groups to support the Challenge Day National Conference.

(City Clerk)

Approved.

2.31 Agreement with San Jose Convention & Visitors Bureau.

Recommendation: Adopt a resolution authorizing the City Manager to negotiate and execute an amendment to the existing Second Amended and Restated Agreement between the City of San Jose and the San Jose Convention & Visitors Bureau until February 28, 2011, with a compensation for the extension period not to exceed $700,000. CEQA: Not a Project, File No. PP10-066(e), Agreements/Contracts. (City Manager's Office)

Resolution No. 75679 adopted.

3. STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone mentioned the upcoming Special Council Meeting on Thursday, December 16, 2010, for the purpose of conducting interviews and making appointments to the Boards of Administration for the Federated City Employees' Retirement System and Police and Fire Department Retirement Plan.

3.2 Actions Related to the Authority to Award the Convention Center Project.

Recommendation: Adopt a resolution:

(a) Finding that the design-build procurement process will result in faster project completion than if the City used a procurement process involving its normal competitive bidding process;

(b) Subject to the completion of the related bond financing, the appropriation of funds, and the City Council's approval of the spending reduction plan:

  (1) Authorize the City Manager to negotiate and execute a contract with Hunt Construction for the Convention Center Expansion and Renovation Project in an amount not to exceed $117,000,000.

  (2) Authorize establishing a City-Controlled contingency in the amount of $3,000,000, and authorize the Director of Public Works to issue all change orders of any cost not to exceed the $3,000,000 contingency.

CEQA: Resolution No. 72767 and Addenda thereto. File No. PP08-002. Citywide. (Public Works)

Resolution No. 75680 adopted.

3. STRATEGIC SUPPORT SERVICES

3.3 Actions Related to a Regional Public Safety Interoperable Broadband System.

Recommendation:

(a) City Council consideration of a request from the Alameda County Sheriff's Office to participate in a public safety broadband project in partnership with Motorola, Inc.

(b) Staff recommends the City Council approve Policy Alternatives 2 and 3, as noted in the report:

(1) Ask the National Telecommunications and Information Agency to reallocate the funds to the Bay Area cities and counties.

(2) Adopt a position of Support for the concept of a regional interoperability for public safety communications, along with Guiding Principles for participation in a regional public safety interoperable broadband project.

CEQA: Not a Project, PP10-066(a), Agreements. Additional environmental clearance would be needed if the implementation of this effort would result in a physical change to the environment. (Mayor's Office/City Manager's Office)

Heard first in the morning.

Approved.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Licensing and Regulating Tobacco Retail Establishments.

Recommendation:

(a) Approve an ordinance amending Title 6 of the San José Municipal Code to add a new Chapter 6.87 to license and regulate establishments engaged in the sale of tobacco and tobacco related products, as defined.

Ordinance No. 28875 passed for publication.
Noes: Constant, Oliverio.

(b) Adopt a resolution amending the City's Administrative Citation Schedule of Fines to establish fine amounts for violations of certain provisions of Chapter 6.87, and repealing Resolution No. 75065, to be effective January 1, 2011.

CEQA: Not a Project; File No. PP10-068(c), Municipal Code or Policy. (City Attorney/ Planning, Building and Code Enforcement)

Resolution No. 75681 adopted.
Noes: Constant, Oliverio.

The memorandum from Council Members Chu, Kalra and Campos, dated December 10, 2010 was approved accepting the Staff recommendations and providing the following direction:

(Action continued on the next page)

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Licensing and Regulating Tobacco Retail Establishments (Action Cont'd.)

(1) Staff directed to return to City Council by no later than March 2011 to provide monthly updates at the Community and Economic Development Committee with a summary of results of Decoy Program opportunities to include:

(a) Results of the conversations with the County of Santa Clara's Public Health Department in identifying opportunities to work with nonprofit organizations to assist in the development of a decoy program.

(2) Staff directed to return to City Council by no later than March 2011 to provide a feasibility study of implementation and ongoing costs of a Youth Decoy Program under the supervision of a peace officer or code enforcement officer.

(3) City Manager directed to develop additional languages *for the limited number of small business retailers* but not limited to Middle Eastern and South Asian languages to be included in the initial outreach process.

Noes: Constant, Oliverio.

4.2 Agreements for the Airport West Property.

Recommendation:

(a) Approve Amendments to Two Amended and Restated Option Agreements and related Purchase Agreements with Coleman Airport Partners, LLC for the property located at 1125 Coleman Avenue.

(b) Approve Amendments to an Amended and Restated Option Agreement and related Purchase Agreement with FWSH Partners, LLC related to the 14 acres for the Soccer Stadium site located at 1125 Coleman Avenue.

CEQA: EIR Resolution No. 71716, File No. PP08-093 and File No. PDC09-004. Council District 3. (Economic Development)

Approved.

4.3 TEFRA Hearing and CSCDA Bond Issuance for the McCreery Courtyards Apartment Project to be located at 1884 Alum Rock Avenue and 71, 73 and 75 McCreery Avenue.

Recommendation:

(a) Conduct a Tax Equity and Fiscal Responsibility Act ("TEFRA") Hearing for the issuance of up to $25,000,000 of Tax-Exempt Multifamily Housing Revenue Bonds (the "Bonds") by the California Statewide Community Development Authority ("CSCDA") for the benefit of the McCreery Courtyard Apartments Project and any future issuance of refunding bonds to refinance the Bonds where federal tax laws would not require additional consideration or approval by the City Council.

The TEFRA Hearing was held.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.3 TEFRA Hearing and CSCDA Bond Issuance for the McCreery Courtyards Apartment Project to be located at 1884 Alum Rock Avenue and 71, 73 and 75 McCreery Avenue (Cont'd.)

(b) Adopt a resolution approving the issuance of Tax-Exempt Revenue Bonds by CSCDA in an aggregate principal amount not to exceed $25,000,000 to be used to provide construction and permanent financing for a 93-unit affordable housing project known as McCreery Courtyard Apartments.

CEQA: Mitigated Negative Declaration and addenda thereto, File No. PDC04-088.
Council District 5. SNI: Mayfair. (Housing/Finance)

Resolution No. 75682 adopted.
Noes: Oliverio.

4.4 Actions Related to General Plan Amendments to the South Almaden Valley Urban Reserve and Rancho del Pueblo Golf Course Property.

Recommendation:

(a) Reject the private request for an Alternative Draft Envision 2040 Land Use/Transportation Diagram designation of Residential Neighborhood allowing urban residential uses in the South Almaden Valley Urban Reserve because it is inconsistent with the Council's prior direction to consider no housing or job growth in the Urban Reserves within the timeframe of the Envision 2040 Plan.

Dropped per Orders of the Day.

(b) Direct staff to withdraw the Council initiated General Plan Land Use and corresponding Transportation Diagram amendment for the Rancho del Pueblo Golf Course property located at the northeast corner of King Road and Hermocilla Way.

CEQA: Incomplete. (Planning, Building and Code Enforcement/Economic Development)

Dropped.

4.5 Rezoning real property located at the southwest corner of East Brokaw Road and Old Oakland Road.

Recommendation: Conduct a public hearing and consider an ordinance rezoning the real property located at the southwest corner of East Brokaw Road and Old Oakland Road from the IP Industrial Park and HI Heavy Industrial Zoning Districts to the A(PD) Planned Development Zoning District to allow for the development of up to 650 multi-family residential units and up to 150,000 square feet of commercial uses or up to 300,000 square feet of office/R&D uses on a 29.9 gross acre site (Fox Properties/ Markovits & Fox, Inc., Owner). CEQA: Addendum to the Fox Property General Plan Amendment Environmental Impact Report (EIR). (Planning, Building and Code Enforcement)
PDC07-010 – District 4

(Action continued on the next page)

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.5 Rezoning real property located at the southwest corner of East Brokaw Road and Old Oakland Road (Action Cont'd.)

The public hearing was held.
The memorandum from Mayor Reed and Council Member Chu, dated December 10, 2010, was approved accepting the Staff recommendations as modified and, with the following direction:

(1) Modify the Development Standards to include no more than 30 units of single family detached residential uses as part of the development.

(2) Staff directed to report back to the City Council no later than March 2011 with a comprehensive evaluation of the North San José Phase 1 units inventory to include:

(a) An update on the status and schedule of residential projects currently in the permit process and anticipated to break ground as specified in the Satisfaction Agreements.

(b) A process by which surplus activity, if available, can be reallocated and distributed to development projects currently not in Phase 1 and which could further the goals of the North San José Vision 2030 Policy.

Ordinance No. 28876 passed for publication, as amended.

4.6 Community Identification and Wayfinding Policy.

Recommendation: As recommended by the Community and Economic Development Committee on November 29, 2010:

(a) Adopt a resolution amending City Council Policy 9-3: Community Identification and Wayfinding (currently "Community Identification Signs and Architectural Gateway Monuments").

Resolution No. 75683 adopted.

(b) Adopt a resolution amending Resolution No. 72737 (Fees and Charges) to:

(1) Establish a Wayfinding Banner Application charge of $535, plus $89 per hour after 6 hours in the Office of Economic Development for costs associated with the application review and coordination of wayfinding banners in the public right-of-way.

(2) Establish a Double Banner Installation charge of $66 in the Department of Transportation Miscellaneous Charges for costs associated with the installation of one dual set of wayfinding banners on a single street pole with existing banner hardware.

(3) Establish a New Double Banner Hardware Installation charge of $86 plus cost of materials in the Department of Transportation Miscellaneous Charges for costs associated with the installation of one dual set of wayfinding banners on a single street pole without existing banner hardware.

CEQA: Exempt, File No. PP09-075. (City Manager's Office)
Resolution No. 75684 adopted.
Staff directed to seek input on the development of the Administrative Guidelines.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.7 Parking Incentive Programs.

Recommendation: Adopt a resolution to repeal Resolution No. 75445 and set forth the Master Parking Rate Schedule to:

(a) Expand the Free Parking Incentive program to include non-City and non-Redevelopment Agency operated or funded Incubators (including innovation centers, shared workspace centers or other similar entities) to:

(1) Provide up to three years of free parking for Incubators that enter into a written lease agreement for a downtown office or commercial retail building, up to a maximum of 50 parking permits for each Incubator.

(2) Allow the Incubator to "opt out" of the written parking lease terms that require purchasing parking permits during the fully paid portion of the parking lease agreement, if the Incubator maintains its office space in San José.

(b) Establish the following incentive programs and rate structures to increase flexibility and responsiveness of the Parking Program:

(1) Nighttime Monthly permit rate for use between the hours of 5 pm to 6 am, in the range of $25-$50 at the Market/San Pedro Square, Second/San Carlos, Third Street, and Fourth Street Garages.

(2) Special Event rate for major events in the range of $5-$15 at the Market/San Pedro Square, Second/San Carlos, and Third Street Garages.

(3) Introductory Monthly rate providing a 25% discount for up to six months for new customers at underutilized parking facilities.

(4) University Semester rate for SJSU students in the range of $150-$175 per semester at the Fourth Street Garage and Second/San Carlos Garage.

CEQA: Statutorily Exempt, File No. PP10-067(a), CEQA Guidelines Section No.15273, Rates, Tolls, Fares and Charges. Council District 3. (Transportation)
[Community and Economic Development Committee referral 11/29/10 – Item D(7)]
Resolution No. 75685 adopted.

5. NEIGHBORHOOD SERVICES

5.1 Report on the Community Center Reuse and Aquatics Programs.

Recommendation: As recommended by the Neighborhood Services and Education Committee on December 9, 2010:

(a) Accept staff's report on the status of the Citywide Aquatics Program.

Accepted.
Noes: Campos.

5. NEIGHBORHOOD SERVICES

5.1 Report on the Community Center Reuse and Aquatics Programs (Cont'd.)

(b) Adopt a resolution authorizing the Director of Parks, Recreation and Neighborhood Services to enter into direct negotiations with potential aquatics service providers pursuant to Municipal Code Section 4.12.235, "Unique Services Purchases" for multiple-year terms.

Resolution No. 75686 adopted.
Noes: Campos.

(c) Accept staff's report on the status of the 2010 Community Center Reuse Program.

Accepted.
Noes: Campos.

(d) Adopt a resolution amending Council Policy 7-12 (Community Center Reuse). CEQA: Exempt, File No. PP02-108. (Parks, Recreation and Neighborhood Services)

Resolution No. 75687 adopted.
Noes: Campos.

6. TRANSPORTATION & AVIATION SERVICES

7. ENVIRONMENTAL & UTILITY SERVICES

7.1 Actions Related to the Plant Master Plan Update.

Recommendation:

(a) As referred by the Transportation and Environment Committee on December 6, 2010, accept the Plant Master Plan Update progress report on the development of the draft recommended alternative for the Master Plan for the San José/Santa Clara Water Pollution Control Plant (Plant). CEQA: Not a Project, File No. PP10-069(a), Staff Reports. (Environmental Services)
[Transportation and Environment Committee Referral 12/6/10 – Item D(6)]

Progress report accepted.

(b) Direct staff to consider the Milpitas Guiding Principles for San José/ Santa Clara Water Pollution Control Plant Master Plan Reconstruction and Land Use Alternatives (Milpitas Guiding Principles), along with other tributary agency, stakeholder and public input, in the final development of the Preferred Alternative for the Plant Master Plan currently scheduled to be presented to Council in April 2011, and to present the Milpitas Guiding Principles, along with other tributary agency and partner input into the Land Use Alternatives Public Input Summary that will be presented to Council along with the recommended Preferred Alternative for the Plant Master Plan. CEQA: Not a Project, File No. PP10-069(a), Staff Reports. (Environmental Services)

7. ENVIRONMENTAL & UTILITY SERVICES

7.1 Actions Related to the Plant Master Plan Update (Cont'd.)
The memorandum from Mayor Reed and Council Members Nguyen and Chu, dated December 9, 2010, was approved, the progress report was accepted and Staff was directed to prioritize the identification of sources and potential solutions for elimination of odors coming from the Plant and present options for elimination of the odors, with timelines and cost estimates to do so.

7.2 Actions Related to the Single-Use Carryout Bag Ordinance.

Recommendation:

(a) Conduct an Administrative Hearing on and consider an Appeal of the Planning Commission's certification of the Final Environmental Impact Report (FEIR) for the proposed Single-Use Carryout Bag Ordinance, File No. PP09-193, amending Chapter 9.10 of Title 9 of the City's Municipal Code to prohibit the free distribution of single-use carryout paper and plastic bags at the point of sale for all commercial retail businesses in San José except restaurants and nonprofit charitable reuse organizations (an exception is proposed for paper bags containing at least 40 percent recycled content, which can be provided to customers for a minimum store charge of $0.10 upon adoption of the ordinance, with an automatic increase to $0.25 two years after adoption of the ordinance) and consideration of adoption of a resolution to uphold the Planning Commission's certification of the FEIR and certify that:

(1) The City Council has read and considered the Final EIR; and
(2) The Final EIR has been completed in compliance with the California Environmental Quality Act (CEQA); and
(3) The Final EIR reflects the independent judgment and analysis of the City of San José; and
(4) The Director of Planning, Building and Code Enforcement shall transmit copies of the Final EIR to any other decision-making body of the City of San José for the project.

(Planning, Building and Code Enforcement)
The Administrative Hearing was held.
CEQA Resolution No. 75688 adopted.
Noes: Constant.

(b) Approve an ordinance to add Part 13 to Chapter 9.10 of Title 9 of the San José Municipal Code to ban single-use carryout bags, and prohibit the free distribution of recycled paper bags by retail establishments, to be effective January 1, 2012.

Ordinance No. 28877 passed for publication, as amended.
Noes: Constant.

7. ENVIRONMENTAL & UTILITY SERVICES

7.2 Actions Related to the Single-Use Carryout Bag Ordinance (Cont'd.)

(c) Adopt a resolution to amend the Administrative Citation Schedule of Fines to establish fines related to Single-Use Carryout Bags and to repeal the prior Administrative Citation Schedule of Fines resolution.

CEQA: Environmental Impact Report, File No. PP09-193. (Environmental Services)

Resolution No. 75689 adopted.
Noes: Constant.

The memorandum from Vice Mayor Chirco, Council Members Liccardo, Chu and Nguyen, dated December 10, 2010 was approved, as modified, to accept Staff recommendations with the following modifications:

(1) Modify Section 9.10.2010 Section I to be consistent with the following: Single Use Carryout Bag means a bag other than a reusable bag provided at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment. Single use carryout bags do not include bags <u>without handles</u> provided solely (1) to transport produce, bulk food or meat from a produce, bulk food or meat department within a store to a point of sale; (2) <u>to hold prescription medication from a pharmacy</u>; or (3) <u>to segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a reusable bag or recycled paper bag</u>.

(2) Staff directed to monitor the retailer compliance with the ordinance and its implementation and return to Transportation and Environment Committee with a report within 12 months of ordinance going into effect, with a specific analysis on retailer distribution of reusable bags and the quality of those bags to ensure that the intent of the ordinance is effectuated.

Noes: Constant.

7.3 Evergreen Provisions in Solid Waste Service Agreements.

Recommendation: As referred by the Transportation and Environment Committee on December 6, 2010, discuss and accept the report on the advantages and disadvantages of a perpetual or "evergreen" agreement for Recycle Plus residential solid waste services.

CEQA: Not a Project, File No. PP10-069. (Environmental Services)

Accepted.

8. PUBLIC SAFETY SERVICES

8.1 Approval of Actions Related to the 2010 COPS Hiring Grant.

Recommendation: Adopt a resolution accepting the 2010 COPS Hiring Program Grant in the amount of $7,187,984 and authorizing the City Manager and Chief of Police to execute the Grant Agreement and all related documents; and to negotiate and execute additional amendments and related documents without further Council action other than appropriation of funds. CEQA: Not a Project, File No.PP10-066(a), Agreements and Contracts for purchase of supplies. (Police/City Manager's Office)

Resolution No. 75663 adopted.

9. JOINT COUNCIL/REDEVELOPMENT AGENCY

- Open Forum

There were none.

- Adjournment

The Council of the City of San José was adjourned at 5:23 p.m. to reconvene on Thursday, December 16, 2010 at 8:30 a.m. in a Special Council Meeting.

The Council of the City of San José was adjourned in memory of Le Van Ba, founder of Lee's Sandwiches. Le Van Ba was a successful businessman in Vietnam when war forced his family to start over from scratch. Arriving in San Jose in 1980, Le and his children within three years had launched Lee's Sandwiches, a chain that now has more than 30 Vietnamese sandwich shops in California, plus locations in four other states. Le Van Ba was a pillar of strength and determination for his family; he will be missed in the community. (Nguyen)

8. JOINT REDEVELOPMENT AGENCY ITEM

The Redevelopment Agency Board convened at 11:45 a.m. to consider Items 8.1 and 8.2 in a Joint Session.

8.1 Acceptance of the Annual Report of Financial Transactions of Community Redevelopment Agencies.

Recommendation: Adoption of resolutions by the City Council and Redevelopment Agency Board accepting the Annual Report of Financial Transactions of community redevelopment agencies for FY 2009-10 for the purpose of forwarding the annual report to the State Controller, in accordance with Community Redevelopment Law, Section 33080.1. CEQA: Not a Project. **[MERGED]**

Resolution No. 75660 adopted.
Redevelopment Agency Resolution No. 5997 adopted.

8.2 Approval of Amendments to DDAs with North San Pedro Townhomes and San Pedro Life I, LLC, for the North San Pedro Housing site.

Recommendation: Conduct a public hearing followed by the actions below by the City Council and Redevelopment Agency Board related to Disposition and Development Agreements (DDAs) with North San Pedro Townhomes and San Pedro Life I, LLC, for the North San Pedro Housing site:

The public hearing was held.

(a) Adoption of a resolution by the Redevelopment Agency Board approving the First Amendment to the Amended and Restated Disposition and Development Agreement (DDA) with North San Pedro Townhomes LLC and authorizing the Executive Director to execute ancillary documents contemplated by the DDA, to close escrow subject to compliance with the terms of the DDA, and to negotiate and execute amendments to the DDA substantially in conformance with the intent of the DDA and as reasonably necessary to conform to lender requirements.

Redevelopment Agency Resolution No. 5998 adopted.

(b) Adoption of a resolution by the City Council approving the sale to North San Pedro Townhomes LLC of certain sites located on Agency-owned property generally located in the blocks bounded by Highway 87 to the west, West Saint James Street to the south, North Market Street to the east and a Union Pacific Railroad right of way to the north, accepting the 33433 Summary Report, and finding that the sale of the property will assist in the elimination of blight, is consistent with the Implementation Plan for the Julian-Stockton Redevelopment Project Area, and that the consideration for the property is not less than the fair reuse value for the proposed use, with the covenants and conditions and development costs authorized by the DDA.

Resolution No. 75661 adopted.

(Item continued on the next page)

8. JOINT REDEVELOPMENT AGENCY ITEM

8.2 Approval of Amendments to DDAs with North San Pedro Townhomes and San Pedro Life I, LLC, for the North San Pedro Housing site (Cont'd.)

(c) Adoption of a resolution by the Redevelopment Agency Board approving the First Amendment to the Amended and Restated Disposition and Development with San Pedro Life I, LLC and authorizing the Executive Director to execute ancillary documents contemplated by the DDA, to close escrow subject to compliance with the terms of the DDA, and to negotiate and execute amendments to the DDA substantially in conformance with the intent of the DDA and as reasonably necessary to conform to lender requirements.

Redevelopment Agency Resolution No. 5999 adopted.

(d) Adoption of a resolution by the City Council approving the sale to San Pedro Life I, LLC of certain sites located on Agency-owned property, generally located in the blocks bounded by Highway 87 to the west, West Saint James Street to the south, North Market Street to the east and a Union Pacific Railroad right of way to the north, accepting the 33433 Summary Report and finding that the sale of the property will assist in the elimination of blight, is consistent with the Implementation Plan for the Julian-Stockton Redevelopment Project Area and that the consideration for the property is not less than the fair reuse value for the proposed use, with the covenants and conditions and development costs authorized by the DDA.

CEQA: Brandenburg Mixed Use Project/ North San Pedro Housing Sites Project GPT03-03-01a and GP03-03-01b.

Resolution No. 75662 adopted.

The memorandum from Council Member Liccardo, dated December 14, 2010, was approved, the Staff recommendations were approved and the Executive Director and the City Attorney directed that approval of the first Amendments to the DDA's with North San Pedro Townhomes and San Pedro Life I, LLC (Developers)shall be conditioned on the acceptance by Developers of an addendum to their respective DDA's that:

(1) Amends the Phasing Schedule such that at least one of the two market rate San Pedro Life I towers sited along or near Bassett Street shall be under construction prior to, or concurrently with, the commencement of construction of the stand alone First Community Housing affordable housing project (FCH project). If delays to the construction of the FCH project place the receipt of the Prop 1 C grant funds at substantial risk of loss, the FCH project may proceed prior to either of the two market rate towers described above, provided that the Agency and Developers shall agree upon a mutually acceptable security plan for the area. The plan shall incorporate roving security patrols and possibly other measures funded by the agreement of the parties and subject to Agency Board approval.

(2) The Executive Director shall have the authority to accelerate the disbursement of the Agency Affordable Housing Assistance to reimburse the Affordable Housing Developer for Affordable Project Costs incurred prior to July 1, 2011.