

# CITY COUNCIL AGENDA

**APRIL 28, 2009**

## SYNOPSIS

PETE CONSTANT  
ASH KALRA  
SAM LICCARDO  
KANSEN CHU  
NORA CAMPOS

DISTRICT 1  
DISTRICT 2  
DISTRICT 3  
DISTRICT 4  
DISTRICT 5

CHUCK REED MAYOR

PIERLUIGI OLIVERIO  
MADISON P. NGUYEN  
ROSE HERRERA  
JUDY CHIRCO, VICE MAYOR  
NANCY PYLE

DISTRICT 6  
DISTRICT 7  
DISTRICT 8  
DISTRICT 9  
DISTRICT 10

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 every first and third Tuesday at 7 p.m., 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](http://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, 2<sup>nd</sup> 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](mailto:CityClerk@sanjoseca.gov) for the final document.

To arrange an accommodation under the Americans with Disabilities Act to participate in this public meeting, please call (408) 535-1260 or (408) 294-9337 (TTY) at least two business days before the meeting.

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

- **Call to Order and Roll Call**  
9:04 a.m. - Closed Session, Call to Order in Council Chambers  
Absent Council Members: Chirco. (Excused)  
  
1:33 p.m. - Regular Session, Council Chambers, City Hall  
Absent Council Members: Chirco, Constant. (Excused)
- **Invocation (District 4)**  
Father Michael Hendrickson, St. Victor's Catholic Church and Independence High School 76th Cavalry Band provided the Invocation.
- **Pledge of Allegiance**  
Mayor Reed, accompanied by students of John Muir Elementary School (District 1), led the Pledge of Allegiance.
- **Orders of the Day**  
The Orders of the Day and the Amended Agenda were approved, with Item 5.3 deferred to 5/12/09.
- **Closed Session Report**  
No Report.

# 1. CEREMONIAL ITEMS

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- 1.1 Presentation of a commendation to the Filipino American World War II Veterans in remembrance of the Fall of Bataan that occurred on April 9, 1942. (Chu)  
**Mayor Reed and Council Members Chu and Liccardo recognized and commended the Filipino American World War II Veterans in remembrance of the Fall of Bataan that occurred on April 9, 1942.**
- 1.2 Presentation of a commendation to Diane Cunningham for winning a gold medal in the 4x400-meter Snowshoeing Relay and a bronze medal in the 800-meter Snowshoeing Race at the Special Olympics in Boise, Idaho. (Kalra)  
**Mayor Reed and Council Member Kalra recognized and commended Diane Cunningham for her achievements.**
- 1.3 Presentation of a commendation to PRX for its generous contribution in promoting San José's vibrant neighborhood business districts. (Redevelopment Agency)  
**Dropped.**
- 1.4 Presentation of a proclamation declaring May 1, 2009 as "Show Us Your Hope Day" in the City of San José. (Pyle/Oliverio)  
**Mayor Reed and Council Members Pyle and Oliverio recognized May 1, 2009 as "Show Us Your Hope Day" in the City of San José.**
- 1.5 Presentation of a proclamation declaring April 30, 2009 as "El Día de Los Niños/El Día de Los Libros Children's Day/Book Day" in the City of San José. (Campos/Oliverio) (Rules Committee referral 4/15/09)  
**Mayor Reed and Council Members Campos and Oliverio recognized April 30, 2009 as "El Día de Los Niños/El Día de Los Libros Children's Day/Book Day" in the City of San José.**

# 2. CONSENT CALENDAR

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- 2.1 **Approval of Minutes.**  
**There were none.**
- 2.2 **Final adoption of ordinances.**

**Recommendation:** Final adoption of ordinances.

- (a) ORD. NO. 28528 – Establishing Rule 20A Underground Utility District along Tully Road, between Kenoga Drive and 720 feet west of Senter Road and along Senter Road, between Parrott Street and 170 feet south of Tully Road  
**Ordinance No. 28528 adopted.**

## 2. CONSENT CALENDAR

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### 2.3 Audits of Bond Project Funds and Library Parcel Tax Fund.

**Recommendation:** Accept the audits of the Parks and Recreation Bond Projects Fund, Library Bond Projects Fund, and Library Parcel Tax Fund for periods ended June 30, 2008. (City Auditor)

**Accepted.**

### 2.4 Countywide HHW Program.

**Recommendation:** Approval of:

- (a) The Agency Agreement with the County of Santa Clara for Countywide Household Hazardous Waste Collection Program for 2009-2010.
- (b) The Agency Agreement with the County of Santa Clara for Countywide AB939 Implementation Fee for 2009-2010.

CEQA: Exempt, File No. PP09-085. (Environmental Services)

**Approved.**

### 2.5 Excused absence for Vice Mayor Chirco.

**Recommendation:** Request for an excused absence for Vice Mayor Chirco from the Regular Meeting of the Neighborhood Services and Education Committee on April 9, 2009 due to illness/medical appointment. (Chirco)

(Rules Committee referral 4/15/09)

**Excused.**

### 2.6 2009 Recovery Act JAG Grant.

**Recommendation:** Adopt a resolution to:

- (a) Join with the County of Santa Clara and eleven cities in the County in applying for the U.S. Department of Justice 2009 Recovery Act Edward Byrne Memorial Justice Assistance Grant (JAG) to partially fund the Police Department's Automated Field Reporting/Records Management System.
- (b) Accept the grant if it is awarded.
- (c) Authorize the City Manager to negotiate and execute any documents necessary to effectuate the grant, including an agreement with the County of Santa Clara and eleven participating jurisdictions including City of Campbell, City of Cupertino, City of Gilroy, Town of Los Gatos, City of Milpitas, City of Morgan Hill, City of Mountain View, City of Palo Alto, City of Santa Clara, City of Sunnyvale, and City of Saratoga in the amount not to exceed a total of \$1,353,687 for the City of San Jose, and any amendments to the agreement.
- (d) Approve the spending plan for the grant.

CEQA: Not a Project. (Police)

(Rules Committee referral 4/22/09)

**Resolution No. 74884 adopted.**

### **3. STRATEGIC SUPPORT SERVICES**

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**3.1 Report of the City Manager, Debra Figone (Verbal Report)**  
City Manager Debra Figone provided an update about the Swine Flu epidemic and confirmed that there are no cases in Santa Clara County. She reported that the Office of Economic Development has submitted stimulus projects to the Regional Recovery Work Plan which outlines the stimulus priorities in the Bay Area.

**3.2 Report of the Rules and Open Government Committee – April 8, 2009**  
Mayor Reed, Chair  
Deferred to 5/5/09.

**3.3 Report of the Public Safety, Finance and Strategic Support Committee – April 16, 2009**  
Council Member Nguyen, Chair  
Accepted.

**3.4 Report of the Rules and Open Government Committee – March 25, 2009**  
Mayor Reed, Chair  
Accepted.

**3.5 Report of the Rules and Open Government Committee – April 1, 2009**  
Mayor Reed, Chair  
Accepted.

**3.6 Auditor’s Semi-Annual Recommendation Follow-Up Report.**

**Recommendation:** As referred by the Public Safety, Finance and Strategic Support Committee on April 16, 2009, accept the Auditor’s Report on the Semi-Annual recommendation Follow-Up Report on all outstanding audit recommendations for the six months ended December 31, 2008. (City Auditor)  
(Public Safety, Finance and Strategic Support Referral 4/16/09 – Item 3.6)  
Accepted.

**3.7 Audit of the City of San José’s Workers’ Compensation Program.**

**Recommendation:** As referred by the Public Safety, Finance and Strategic Support Committee on April 16, 2009, accept the report on the audit of the City of San José’s Workers’ Compensation Program. (City Auditor)  
(Public Safety, Finance and Strategic Support Referral 4/16/09 – Item 3.7)  
Accepted.

**3.8 SB 481 (Cox) – Airports: Wildlife.**

**Recommendation:** As referred by the Rules and Open Government Committee on April 22, 2009, adopt a position of support for SB481 (Cox) – Airports: Wildlife. (Airport)  
[Rules Committee referral 4/22/09 – Item 6.1(a)]  
Position of support for SB481 was adopted.

## 4. COMMUNITY & ECONOMIC DEVELOPMENT

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### 4.1 Report of the Community & Economic Development Committee Council Member Pyle, Chair No Report.

### 4.2 Policy Changes to the Housing Rehabilitation Program.

**Recommendation:** Adopt a resolution making findings that the use of Low- and Moderate-Income Housing Funds to provide rehabilitation loans and grants outside a redevelopment project area benefits the Agency's redevelopment project areas and accepting the proposed changes to the Housing Rehabilitation Program as follows:

- (a) Changes to the existing Housing Rehabilitation Program to encourage greater recapture of funds and focus resources on households in the lowest income categories.
- (b) Creation of new loan and grant services, including:
  - (1) Direct Minor Repair Services for urgent home repairs;
  - (2) Disabled Access Grants to improve home access for clients with disabilities.
  - (3) Green Incentive Grants to provide additional funds for clients that choose to install additional green features that are not mandated by the Housing Department.
- (c) Modifications to the Mobilehome Rehabilitation Program that lower the income eligibility levels for recipients of mobilehome grants, increase individual grant amounts, limit repairs to essential health and safety issues, and place a funding limit on the overall amount of Program funds to be spent on mobilehome repair each year.

CEQA: Not a Project. (Housing)

**Deferred to 5/12/09 per Administration.**

### 4.3 Downtown Street Vendor Ordinance.

**Recommendation:**

- (a) Approve an ordinance:
  - (1) Repealing Chapter 6.30 of Title 6 of the San José Municipal Code, the Flower Vendor Ordinance;
  - (2) Amending Chapter 6.54 of Title 6 of the San José Municipal Code, the Peddler Permit Ordinance, to: include regulation of flower street vendors; extend the hours during which approved location peddlers can peddle; authorize the City Manager to make and promulgate time, place and manner regulations reasonably necessary to promote economic growth and create a more vibrant Downtown; and update definitions in the Chapter 6.54 to ensure consistency of terms within Title 6 of the San José Municipal Code.

**Ordinance No. 28534 passed for publication.**

## **4. COMMUNITY & ECONOMIC DEVELOPMENT**

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### **4.3 Downtown Street Vendor Ordinance (Cont'd.)**

- (b) Approve an ordinance amending Chapter 6.55 of Title 6 of the San José Municipal Code, the Downtown Special Events Ordinance, to: reduce the area within which approved location peddler permits may be suspended during a designated Downtown Special Event by limiting the suspension area to the Special Event Boundary; authorize approved location peddlers within the Special Event Boundary to peddle at alternative, temporary approved locations outside the Boundary for the duration of the Downtown Special Event; and clarify the exceptions to the requirement for Event Organizers to provide approved location peddlers an equal opportunity to participate in the Downtown Special Event.
- (c) Direct staff to repeal all fees related to the Flower Vendor Ordinance and the Flower Vendor Permits from the City's Schedule of Fees and Charges, effective June 1, 2009.

CEQA: Downtown Strategy 2000 EIR, Resolution No. 72767. Council District 3. (Economic Development)

(Deferred from 4/14/09 – Item 4.2 and 4/21/09 – Item 4.4)

**Ordinance No. 28535 passed for publication.**

**Staff directed to conduct additional outreach effort to the community, event producers, restaurants and the Downtown Association before the regulations become final.**

## **5. NEIGHBORHOOD SERVICES**

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### **5.1 Report of the Neighborhood Services and Education Committee Council Member Campos, Chair**

**No Report.**

### **5.2 Contract for Remediation and Phase I Improvements for Watson Park.**

**Recommendation:** Report on bids and award of contract for the Watson Park Remediation and Phase I Improvements project to the low bidder, Joseph J. Albanese, Inc., for the base bid and Add Alternate Nos. 1-5 in the amount of \$4,829,000, and approval of a contingency in the amount of \$966,000. CEQA: Mitigated Negative Declaration, PP07-130. Council District 3. SNI: Thirteenth Street. (Public Works)

**Approved.**

## 5. NEIGHBORHOOD SERVICES

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### 5.3 Level 1 Homework Center Program Allocations.

**Recommendation:** As referred by the Neighborhood Services and Education Committee on April 9, 2009, consider approval of the following changes to the Level 1 Homework Center Program Allocations Process:

- (a) Allocate the school-based portion of funds to districts serving grades K-8, as a block grant based on the % of district enrollment to total City enrollment, with:
  - (1) A minimum of \$10,000 per site, and a requirement that each School District submit a program.
  - (2) A spending plan with clear, quantifiable outcomes, performance measures, leveraging of funds and a central point of contact for the District grant to ensure accountability.
- (b) Recommend that the funding amounts provided to the Library system, the PRNS system, and to the competitive community-based organizations process remain at the same level of allocation from FY 08-09.
- (c) Expand the eligible use of funds to include weekend and/or summer programming provided the core service remains a safe place for homework center support.

(Parks, Recreation and Neighborhood Services)

[Neighborhood Services and Education Committee referral 4/9/09 – Item 5.1(3)(4)]

(Deferred from 4/21/09 – Item 5.3)

**Deferred to 5/12/09 per Orders of the Day.**

### 5.4 Proposed Revision to Council Policy 0-30 “Schools and City Collaborative”.

**Recommendation:** As referred by the Neighborhood Services and Education Committee on April 9, 2009, adopt a resolution to revise Council Policy 0-30 “Schools and City Collaborative” to reflect recent changes to the structure of the Collaborative. (Parks, Recreation and Neighborhood Services)

[Neighborhood Services and Education Committee referral 4/9/09 – Item 5.1(3)(7)]

(Deferred from 4/21/09 – Item 5.5)

**Resolution No. 74885 adopted.**

## 6. TRANSPORTATION & AVIATION SERVICES

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### 6.1 Report of the Transportation and Environment Committee Council Member Liccardo, Chair

**No Report.**

## 6. TRANSPORTATION & AVIATION SERVICES

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### 6.2 Contract for the Design-Build of the Airport Terminal Area Improvement Program.

**Recommendation:**

- (a) Approve the Fourth Amendment to the Contract with Hensel Phelps Construction Company for design and construction of the Airport Terminal Area Improvement Program to:
- (1) Allow for the early release of Design-Builder Contingency.
  - (2) Allow a modification to the retention formula.
  - (3) Allow for early acceptance of equipment warranties for the Terminal A Modifications Project Element.

**Approved.**

- (b) Adopt a resolution increasing the City Manager's authority to negotiate and execute contract change orders for the City-Controlled Program Reserve from \$67,165,000 to an amount not-to-exceed \$84,862,000.

CEQA: Resolution Nos. 67380 and 71451, File No. PP09-063. (Airport/Public Works)

**Resolution No. 74886 adopted.**

### 6.3 Grant Application for American Recovery and Reinvestment Act of 2009 Street Maintenance Funding.

**Recommendation:** Adopt a resolution authorizing the Director of Transportation to:

- (a) Submit a grant application to the Bay Area's Metropolitan Transportation Commission under the *American Recovery and Reinvestment Act of 2009* for the San José Street Resurfacing and Rehabilitation Project in the amount not to exceed \$12,700,000; and
- (b) Negotiate and execute related grant documents to accept any grant funding.

CEQA: Exempt, File No. PP06-066. (Transportation)

**Resolution No. 74887 adopted.**

## 7. ENVIRONMENTAL & UTILITY SERVICES

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## **8. PUBLIC SAFETY SERVICES**

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### **8.1 Downtown Entertainment Zone Status Report.**

**Recommendation:** Accept the status report related to the Downtown Entertainment Zone Policing Cost-Sharing Model per Council direction on February 24, 2009. CEQA: Not a Project. Council District 3. (Economic Development)  
(Referred from 2/24/09 – Item 3.5 and deferred from 4/21/09 – Item 8.3)  
**Accepted.**

**Staff agreed to respond to questions raised by the San José Restaurant and Entertainment Association and report back to Council via an information memorandum. In addition, Staff confirmed a meeting with the San José Police Officer’s Association regarding deployment models will follow.**

## **9. JOINT COUNCIL/REDEVELOPMENT AGENCY**

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- **Notice of City Engineer’s Pending Decision on Final Maps**  
**None.**
  
- **Notice of City Engineer’s Award of Construction Projects**  
**None.**
  
- **Open Forum**
  - (1) **Fred Villasenor expressed concern about the process for the selection of the Independent Police Auditor.**
  - (2) **Ross Signorino expressed his opinion about sports in schools.**
  
- **Adjournment**  
**The Council of the City of San José was adjourned at 3:32 p.m.**