

CITY COUNCIL AGENDA

OCTOBER 25, 2011

SYNOPSIS

PETE CONSTANT
ASH KALRA
SAM LICCARDO
KANSEN CHU
XAVIER E. CAMPOS

DISTRICT 1
DISTRICT 2
DISTRICT 3
DISTRICT 4
DISTRICT 5

CHUCK REED MAYOR

PIERLUIGI OLIVERIO
MADISON NGUYEN, VICE MAYOR
ROSE HERRERA
DONALD ROCHA
NANCY PYLE

DISTRICT 6
DISTRICT 7
DISTRICT 8
DISTRICT 9
DISTRICT 10

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

Welcome to the San José City Council meeting!

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

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

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

You may speak to the City Council about any discussion item that is on the agenda, and you may also speak during Open Forum on items that are not on the agenda and are within the subject matter jurisdiction of the City Council 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.

To request an accommodation or alternative format under the Americans with Disabilities Act for City-sponsored meetings, events or printed materials, please call (408) 535-1260 or (408) 294-9337 as soon as possible, but at least three business days before the meeting.

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

- **Call to Order and Roll Call**
10:06 p.m.- Closed Session, Call to Order in Council Chambers
Absent Council Members: Liccardo. (Excused)

1:34 p.m. - Regular Session, Council Chambers, City Hall
Absent Council Members: Liccardo. (Excused)

7:00 p.m. - Evening Session
Evening Session was canceled.
- **Invocation (District 9)**
Ida Price Middle School Flute Duet, directed by Mrs. Catherine Lorigan, 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 2.3(b) deferred to November 1, 2011 and Item 4.2 was heard before Item 4.1.
- **Closed Session Report**
No Report.

1. CEREMONIAL ITEMS

- 1.1 Presentation of a commendation to Damian Trujillo in celebration of his 15 years of service as the host and producer of NBC Bay Area’s weekly program “Comunidad Del Valle.” (Campos)
Mayor Reed and Council Members Campos and Kalra recognized and commended Damian Trujillo.
- 1.2 Presentation of commendation to Eros Correa of the San José PAL for his representation in the AIBA World Boxing Championships, and victories at the US Olympic Boxing Trials and CAL PAL Championships. (Campos)
Deferred to November 1, 2011 per District 5.
- 1.3 Presentation of a proclamation declaring October as “Filipino American History Month” in the City of San José. (Chu)
Mayor Reed and Council Member Chu recognized October as “Filipino American History Month” in the City of San José.
- 1.4 Presentation of a commendation to Nina Rodriguez in recognition of her excellence and achievements in the sport of golf, and in appreciation for her serving as a role model for San José residents young and old. (Kalra/Campos)
Mayor Reed and Council Members Kalra and Campos recognized Nina Rodriguez.
- 1.5 Presentation of a proclamation declaring the Month of October 2011 as “Employment of Persons with Disabilities Month” in the City of San José. (Pyle)
(Rules Committee referral 10/12/11)
Mayor Reed and Council Member Pyle recognized October as “Employment of Persons with Disabilities Month” in the City of San José.

2. CONSENT CALENDAR

2.1 Approval of Minutes.

Recommendation: Approval of minutes.

- (a) Regular Minutes of June 7, 2011.
- (b) Special Minutes of June 13, 2011.
- (c) Regular Minutes of June 14, 2011.
- (d) Special Redevelopment Agency Meeting of June 17, 2011.
- (e) Regular Minutes of June 21, 2011.
- (f) Special Council Meeting of June 24, 2011.
- (g) Special Redevelopment Agency Meeting of June 24, 2011.

Approved.

2.2 Final Adoption of Ordinances.

There were none.

2. CONSENT CALENDAR

2.3 Approval of Council Committee Reports.

Recommendation: Approval of Council Committee Reports.

- (a) Transportation and Environment Committee Report of October 3, 2011. (Liccardo)
- (c) Neighborhood Services and Education Committee Report of October 13, 2011. (Pyle)
- (d) Rules and Open Government Committee Report of September 21, 2011. (Mayor)
- (e) Rules and Open Government Committee Report of September 28, 2011. (Mayor)

Approved.

- (b) Rules and Open Government Committee Report of October 5, 2011. (Mayor)
Deferred to November 1, 2011 per Orders of the Day.

2.4 Mayor and Council Excused Absence Requests.

There were none.

2.5 City Council Travel Reports.

There were none.

2.6 Report from the Council Liaison to the Retirement Boards.

Council Member Constant presented highlights from the Cheiron Presentation to the Board of Administration Federated City Employees' Retirement System on October 20, 2011, regarding the Preliminary June 30, 2011 Valuation Results and the Impact of Potential Assumption Changes. Council Member Constant provided comments about the discussions relating to calculation of the reconciliation of prepayment based on different assumption rates and the Department of the Retirement Services staffing levels.

2.7 Agreement with Clear Channel for Airport Advertising Concessions.

Recommendation: Approve a Third Amendment to the Advertising Concession Agreement between the City of San José and Clear Channel Outdoor, Inc. d/b/a Clear Channel Airports ("Clear Channel") at the Norman Y. Mineta San José International Airport to:

- (a) Combine the minimum capital investment requirements of the various advertising categories.
- (b) Provide Clear Channel with office/storage space at no additional charge in support of its operations at the Airport.

CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Airport)

Dropped.

2. CONSENT CALENDAR

2.8 Agreements with AMS-SJC JV, Areas USA SJC, LLC and Host International, Inc. for Airport Food and Beverage Concessions.

Recommendation: Approve a First Amendment to the AMS-SJC JV Airport Retail Concession Agreement, Second Amendments to the Airport Food and Beverage Concession Agreements with Areas USA SJC, LLC and Host International, Inc. and a Second Amendment to the Host Airport Retail Concession Agreement to revise the Concession Agreement provisions regarding customer pricing and to revise provisions regarding concession concepts and space layouts to reflect current concession operations at the Airport. CEQA: Not a Project, File No. PP10-066(e), Service agreements involving no physical change to the environment. (Airport)

Deferred to November 15, 2011 per Administration.

2.9 Actions Related to the 2012 Municipal Election Cycle.

Recommendation: Adopt a resolution:

- (a) Setting the Voluntary Expenditure Limits for the 2012 Municipal Election Cycle based upon current population figures.
- (b) Calling for a Regular Municipal Election on June 5, 2012 and a Run-off Municipal Election on November 6, 2012, if necessary, for the purpose of electing Council Members for Districts 2, 4, 6, 8, and 10 and requesting consolidation with the County of Santa Clara.

(City Clerk)

(Rules Committee referral 10/12/11)

Deferred to November 1, 2011 per City Clerk.

2.10 Actions Related to Council Member Constant's Travel to Washington, D.C.

Recommendation:

- (a) Approve travel by Council Member Constant to Washington, D.C. on October 27, 2011 to represent the City of San José as Vice Chair of the National League of Cities' (NLC) Public Safety and Crime Prevention (PSCP) Steering Committee. Source of Funds: Mayor & Council Travel Fund. (Constant)
- (b) Request for an excused absence for Council Member Constant from the Regular Meeting of the Rules and Open Government Committee on October 26, 2011 due to Authorized City Business: Representing National League of Cities Public Safety & Crime Prevention Committee at a meeting with Senior White House Officials in Washington, D.C. (Constant)

Approved.

2. CONSENT CALENDAR

2.11 Actions Related to Mayor Reed's Travel to Portland, Oregon.

Recommendation:

- (a) Approve travel by Mayor Reed to Portland, Oregon on October 19-21, 2011 to attend the 2011 San José/Silicon Valley Chamber of Commerce City-to-City Trip as one of the City's designated representatives. Source of Funds: Mayor's Office Fund. (Mayor)
- (b) Request for an excused absence for Mayor Reed from the Regular Meeting of the Rules and Open Government Committee on October 19, 2011 due to Authorized City Business: Representing the City on the 2011 San José/Silicon Valley Chamber of Commerce City-to-City Trip to Portland, Oregon. (Mayor)

Approved.

3. STRATEGIC SUPPORT SERVICES

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

City Manager Debra Figone reported that the 2011 National Medal for Museum and Library Services from the Federal Institute of Museum Library Services was bestowed to the City of San José Public Library.

3.2 Labor Negotiations Update

Recommendation: Accept Labor Negotiations Update.

Heard at 9:00 a.m.

Received. No action taken.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Amended and Restated Line of Credit Agreement with the San José Repertory Theatre.

Recommendation: Adopt a resolution authorizing the City Manager to negotiate and execute an agreement to restructure the existing \$2,000,000 revolving loan Line of Credit Agreement with the San José Repertory Theatre and convert it to a \$2,000,000 Term Loan Agreement to be repaid with interest on or before April 1, 2037. CEQA: Not a Project, File No. PP10-066(e), Services that involved no physical changes to the environment. (Economic Development/Finance)

Resolution No. 76033 adopted.

Noes: Constant.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.2 Agreement with Polycom, Inc., for the Acquisition of Production and Assembly Equipment for Polycom's New Headquarters Facility in San José.

Recommendation: Adopt a resolution authorizing the City Manager to negotiate and execute a Capital Equipment and Assistance Agreement with Polycom, Inc., in which the City will provide an amount not to exceed \$200,000 for the acquisition of production and assembly equipment to be installed at Polycom's new headquarters facility in San José. CEQA: Not a Project, File No. PP10-066(a), Equipment Acquisition. Council District 4. (Economic Development)

Heard before Item 4.1 per Orders of the Day.

Resolution No. 76032 adopted.

5. NEIGHBORHOOD SERVICES

6. TRANSPORTATION & AVIATION SERVICES

6.1 Pavement Maintenance Program Status Report.

Recommendation: As recommended by the Transportation and Environment Committee on October 3, 2011:

- (a) Accept report on the status of San José's Pavement Maintenance Program as a follow up to the City Council Study Session on Pavement Maintenance held on October 12, 2010.
- (b) Provide input to staff on the development of potential priorities for future street maintenance due to the limited funding availability for further consideration by the City Council during the 2012-13 Budget Process.

CEQA: Not a Project, File No. PP10-069(a), Staff reports that involve no approval of any City actions. (Transportation)

The memorandum from Council Member Rocha, dated October 24, 2011 was accepted, with Staff directed to include the prioritization of major roadways with residential frontages in the alternatives analysis scheduled to be discussed in the March report to the Transportation and Environment Committee in 2012.

6. TRANSPORTATION & AVIATION SERVICES

6.2 Agreement for Ampco System Parking, Inc. for the Airport Parking Facilities Management.

Recommendation: Adopt a resolution authorizing the City Manager to execute the Sixth Amendment to the Parking Management Agreement for the Norman Y. Mineta San José International Airport with Ampco System Parking, Inc., to reduce the compensation rate for the last two months of the current term, and extend the term of the agreement for one year ending on October 31, 2012, with a maximum compensation of \$4,740,000 for this extension term. CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Finance/Airport)
(Deferred from 10/18/11 – Item 6.1)

Resolution No. 76034 adopted.

7. ENVIRONMENTAL & UTILITY SERVICES

7.1 Actions Related to the New Market Tax Credit.

Recommendation:

- (a) Adopt a resolution to authorize the City Manager to execute a Ground Lease, Master Lease, Development Agreement, One-Day Loan Agreement, Investment Fund Leverage Loan Agreement, Put/Call Agreement, Environmental Indemnification in the form proposed, and to authorize the City Manager to execute and deliver these documents and other related documents as necessary in connection with the closing of the New Markets Tax Credit (NMTC) financing transaction for the Environmental Innovation Center project.

Resolution No. 76035 adopted.

Noes: Oliverio.

- (b) Adopt the following 2011-2012 Appropriation Ordinance and Funding Source Resolution amendments in the Integrated Waste Management Fund:
- (1) Increase the estimate for Earned Revenue by \$8,022,174 to recognize revenue from a one-day loan;
 - (2) Decrease the appropriation to the Environmental Services Department for Household Hazardous Waste Las Plumas Facility by \$11,587,471;
 - (3) Establish an appropriation to the Finance Department for a NMTC Transaction Leverage Loan in the amount of \$19,609,645;
 - (4) Increase the estimate for Earned Revenue by \$8,022,174 to recognize ground lease revenue;
 - (5) Decrease the appropriation to the Environmental Services Department for Non-Personal/Equipment by \$20,055;
 - (6) Establish an appropriation to the Finance Department for the NMTC Transaction One-Day Loan Repayment in the amount of \$8,042,229;

7. ENVIRONMENTAL & UTILITY SERVICES

7.1 Actions Related to the New Market Tax Credit. (Cont'd.)

- (b) (7) Increase the estimate for Earned Revenue by \$10,630,285 to recognize revenue from an initial draw and the fiscal year 2011-2012 portion of development budget;
- (8) Increase the appropriation for Household Hazardous Waste Las Plumas Facility by \$10,441,785;
- (9) Establish an appropriation to the Office of Economic Development for the Environmental Innovation Center's Public Art in the amount of \$188,500.

CEQA: Mitigated Negative Declaration, Resolution No. 75918. Council District 3.
(Environmental Services/City Manager's Office)

Ordinance No. 28987 adopted.

Resolution No. 76036 adopted.

Noes: Oliverio.

7.2 City of San José Community Choice Aggregation Initial Feasibility Study and Recommendations Results.

Recommendation: As recommended by the Transportation and Environment Committee on September 12, 2011, accept the report recommending that the City not proceed with further Community Choice Aggregation efforts at this time, but instead, to continue to monitor Community Choice Aggregation efforts and return with possible recommendations for a work plan should the key uncertainties and benefits change. Continue to expand and continue collaboration with the California Public Utilities Commission, PG&E, and other stakeholders for the identification and implementation of activities that support the City's achievement of the Green Vision Goal of receiving 100% of its electricity from clean, renewable resources by 2022. Specific opportunities identified include development and/or expansions of Smart Grid, Direct Access and Feed-in-Tariff programs as a means of achieving increased energy renewable sources and economic development programs. CEQA: Not a Project, File No. PP10-069(a), Staff reports that involves no approval of any City actions. (Environmental Services)

Report accepted, with Staff directed to:

- (1) **Include more private industries and the private sector in the outreach.**
- (2) **Return to the Transportation and Environment Committee and/or add to the Green Vision Work Plan an impact analysis regarding exploration of alternatives such as Smart Grid, Direct Access and Feed-in-Tariff programs, including partnerships with the California Public Utilities Commission and PG&E.**

Noes: Kalra.

8. PUBLIC SAFETY SERVICES

9. JOINT COUNCIL/REDEVELOPMENT AGENCY

- **Open Forum**

Mike Sampson, Joseph Markenstein, Ryan Bonner, Mark Dugger and Aaron Byrne expressed opposition to allowing only 10 medical cannabis collectives to operate within the limits of San José.

Jerome Mills, Martin Truong, Gil Villagran, Joseph Rosas, Rosylin Dean, Lauren Renaud, Elaine Brown, Marcos Barrera, Tim Bonnemann and Pablo Ghenis voiced support to the freedom of speech and the right to occupy San José.

David Wall suggested that more discussion was needed about environmental issues related to the anaerobic digester operation and the ongoing toxicity at the water pollution control plant.

- **Adjournment**

The Council of the City of San José was adjourned at 5:01 p.m.

10. GENERAL PLAN PUBLIC HEARINGS

10.1 Tentative approval of General Plan Consent Calendar items.

No General Plan Public Hearings on Consent Calendar at this time.

10.2 Actions Related to Envision General Plan Update.

Recommendation: Adopt a resolution to approve the Envision San José 2040 General Plan and Land Use/Transportation Diagram which is a comprehensive update of the current Focus on the Future San José 2020 General Plan, adopted by the City Council in 1994. The City's General Plan is a long-term plan that describes the amount, type and phasing of development needed to achieve the City's social, economic and environmental goals. The General Plan is the policy framework which creates a blueprint for future development and addresses all geographic areas contained within San José's Sphere of Influence and also incorporates goals and policies for a wide variety of municipal services provided by the City. Director of Planning, Building and Code Enforcement and Planning Commission (5-0-1, Platten absent) recommend approval of the Envision General Plan as recommended by the Envision Task Force with minor land use and text changes, but do not recommend any of the following options:

- (a) Land use and policy options submitted by community stakeholders as part of the Envision San José 2040 General Plan update process, such as but not limited to:
 - (1) Open Hillside Development: an option forwarded by the Envision Task Force for City Council consideration to modify the text of the Envision San José 2040 General Plan, Policy Goal LU-19 to add further restrictions on the allowable intensity of development for lands with the Open Hillside designation. Director of Planning, Building and Code Enforcement and Planning Commission (4-1-1, Cahan opposed, Platten absent) recommend not to include policy option.
 - (2) 1506 Hamilton Avenue: a privately requested option for Envision Land Use/Transportation Diagram designation of Mixed-Use Neighborhood (up to 30 DU, FAR 0.25 to 2.0) to allow attached residential units instead of Neighborhood Community/Commercial to for the 0.92-acre property located at 1506 Hamilton Avenue. Director of Planning, Building and Code Enforcement and Planning Commission (5-0-1, Platten absent) recommend not to include policy option.
 - (3) 12750 and 12751 Mabury Road: a privately requested option for Envision Land Use/Transportation Diagram designation of Mixed-Use Neighborhood (up to 30 DU, FAR 0.25 to 2.0) to allow attached residential units instead of Residential Neighborhood (up to for the 3.1-acre property located at 12750 and 12751 Mabury Road. Director of Planning, Building and Code Enforcement and Planning Commission (5-0-1, Platten absent) recommend not to include policy option.

10. GENERAL PLAN PUBLIC HEARINGS

10.2 Actions Related to Envision General Plan Update. (Cont'd.)

- (b) Rancho del Pueblo Residential Option (GP10-05-01): an option for Envision Land Use/Transportation Diagram designation of Mixed Use Neighborhood (up to 30 DU, FAR 0.25 to 2.0) to allow approximately 700 townhouse units, instead of the Task Force, staff, and Planning Commission recommended Open Space, Parklands and Habitat on the approximately 31-acre site (City-owned Ranch del Pueblo golf course) located at the northwest corner of King Road and Hermocilla Way (City of San José, Owner). Council District 5. SNI/RDA: Gateway East SNI area. Director of Planning, Building and Code Enforcement and Planning Commission (5-0-1, Platten absent) recommend not to include.
- (c) iStar Residential Option (GP07-02-01): an option for Envision Land Use/Transportation Diagram designation of Mixed Use Neighborhood (up to 30 DU, FAR 0.25 to 2.0) to allow approximately 700 attached residential units instead of the Task Force, staff, and Planning Commission recommended Combined Industrial/Commercial on a 51.7-acre portion of the approximately 76-acre site (iStar site) located north of State Route 85, west of Monterey Highway (iStar, Owner). Council District 2. SNI/RDA: Edenvale RDA area. Director of Planning, Building and Code Enforcement and Planning Commission (4-1-1, Bit-Badal opposed, Platten absent) recommend not to include policy option.

CEQA: Envision San José 2040 General Plan Program Environmental Impact Report, EIR Resolution to be adopted.

Rescheduled to November 1, 2011 per the Rules and Open Government Committee.

11. PUBLIC HEARINGS

No Public Hearings at this time.

- **Notice of City Engineer's Pending Decision on Final Maps**

In accordance with Sec. 19.16.140d of the San José Municipal Code, this is notice of the City Engineer's receipt of the following Final Maps for review:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>
10092	S/W corner of W San Carlos St & Meridian Ave, including properties along Page Street & Meridian	6	Meridian Associates, LLC	1 Lot / 218 Units	MFA
10097	N/S side of Blossom Hill Road 250' easterly of Cahalan Ave	10	Summerhill Homes, LLC	91 Lots / 86 Units	SFD