



CITY COUNCIL AGENDA

SEPTEMBER 18, 2012

SYNOPSIS

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

DISTRICT 1
DISTRICT 2
DISTRICT 3
DISTRICT 4
DISTRICT 5

CHUCK REED MAYOR

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

DISTRICT 6
DISTRICT 7
DISTRICT 8
DISTRICT 9
DISTRICT 10

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

Welcome to the San José City Council meeting!

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

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

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

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

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

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

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

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

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

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

- **Call to Order and Roll Call**
9:30 a.m. - Closed Session, Call to Order in Council Chambers
Absent Council Members: None.
1:30 p.m. - Regular Session, Council Chambers, City Hall
Absent Council Members: None.
- **Invocation (District 8)**
Jessi Kaur of the Sikh Gurdwara San José provided 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.
- **Closed Session Report**
No Report.

1. CEREMONIAL ITEMS

- 1.1 Presentation of a proclamation declaring September 19, 2012 as “It Can Wait – No Texting While Driving Pledge Day” in the City of San José. (Mayor)
Mayor Reed proclaimed September 19, 2012 “It Can Wait – No Texting While Driving Pledge Day” in the City of San José.
- 1.2 Presentation of a proclamation recognizing September 22, 2012 as “National Gymnastics Day” in the City of San José. (Mayor)
Dropped per Administration.
- 1.3 Presentation of a commendation to the San José Police Officers Association and San José Police Department Bureau of Field Operations Administration personnel Adriene O’Dell and Michelle Martinez for establishing a Victim’s Fund for the three Jimenez children who were orphaned on July 23rd in a tragic and senseless act of domestic violence. (Pyle)
Mayor Reed and Council Member Pyle offered a commendation to San José Police Officers Association and San José Police Department Bureau of Field Operations Administration personnel Adriene O’Dell and Michelle.
- 1.4 Presentation of a commendation to San José Action Sports (formally Save Our Skate Park) for their community support and fundraising efforts for the Lake Cunningham Regional Skate Park. (Herrera)
Mayor Reed and Council Member Herrera presented a commendation to San José Action Sports for their community support and fundraising efforts for the Lake Cunningham Regional Skate Park.
- 1.5 Presentation of a proclamation recognizing the Week of September 17 – 23, 2012 as “Constitution Week” in the City of San José. (Mayor)
Mayor Reed recognized the Week of September 17 – 23, 2012 as “Constitution Week” in the City of San José.

2. CONSENT CALENDAR

- 2.1 **Approval of Minutes.**
None provided.
- 2.2 **Final Adoption of Ordinances.**

Recommendation: Final adoption of ordinances.

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

Deferred to 9/25/12 Per City Attorney’s Office.

2. CONSENT CALENDAR

2.3 Approval of Council Committee Reports.
None provided.

2.4 Mayor and Council Excused Absence Requests.

Recommendation:

- (a) Request for an excused absence for Council Member Constant from the Regular Meeting of the Rules and Open Government Committee on September 12, 2012 due to illness of a family member. (Constant)
- (b) Change the status of an absence from the Council Meeting on August 28, 2012 for Council Member Constant from excused to unexcused, and discontinue further excused absences due to medical leave for the remainder of September. (Constant)

Approved.

2.5 City Council Travel Reports.
None provided.

2.6 Report from the Council Liaison to the Retirement Boards.
None provided.

2.7 Amendment to the Advertising Concession Agreement with Clear Channel.

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 at Norman Y. Mineta San José International Airport to combine the minimum capital investment requirements of the various advertising categories, provide Clear Channel with office/storage space at no additional charge in support of its operations at the Airport and resolve all claims against the City relating directly or indirectly to the Minimum Annual Guarantee payable to the City under the terms of the Agreement. CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Airport)

Approved.

2.8 Actions Related to Age and Mileage Incentives for Accessible and Clean Fuel Vehicles.

Recommendation: Approve an ordinance of the City of San José amending San José Municipal Code Sections 6.64.045 and 6.64.055 creating definitions for Accessible and Clean Fuel Vehicle for Police Taxi Permits and amending sections 6.64.160, 6.64.180, 6.64.360 and 6.64.390 of Chapter 6.64 of Title 6 relating to Accessible and Clean Fuel Vehicles. CEQA: Not a Project, File No. PP10-068, General Procedure & Policy Making. (Police)

Ordinance No. 29144 passed for publication.

2. CONSENT CALENDAR

2.9 Agreement with Santa Clara County for Payment For Pavement Improvements.

Recommendation:

- (a) Approve an agreement between the County of Santa Clara and the City of San José related to the application of microsurfacing on specified roads in previous unincorporated pockets in conjunction with annexation by City in the amount of \$250,000.
- (b) Approve an agreement between the County of Santa Clara and the City of San José related to the application of slurry seal on specified roads in previous unincorporated pockets in conjunction with annexation by City in the amount of \$142,453.

CEQA: Exempt, File No. PP11-035. (Transportation)

Approved.

2.10 Agreement with the San José Downtown Property Owners Association and the San José Downtown Association to Authorize Implementation of Enhanced Security Pilot Program.

Recommendation: Approval of the First Amendment to the agreement with the San José Downtown Property Owners Association and the San José Downtown Association to authorize implementation of an Enhanced Security Pilot Program through the use of the San José Police Department Secondary Employment Program as part of the Downtown Property and Business Improvement District from the date of approval by City Council to December 31, 2012. CEQA: Not a Project, File No. PP10-066, Agreements. Council District 3. (Transportation)

Approved.

2.11 Master Consultant Agreement with RMC Water and Environment to Develop a Master Plan for the South Bay Water Recycling Program.

Recommendation: Approve a master agreement with RMC Water and Environment to develop a Master Plan for the South Bay Water Recycling Program for a total compensation not-to exceed amount of \$2,400,000, and for a term upon execution of the agreement through June 30, 2014. CEQA: Not a Project, File No. PP10-066(a), Agreements and Contracts for purchase of professional services. (Environmental Services) (Deferred from 8/7/12 – Item 2.19)

Approved.

2. CONSENT CALENDAR

2.12 2012-2013 Team San José Performance Measures.

Recommendation:

- (a) Approve the Team San Jose performance measures for 2012 – 2013.
- (b) Adopt a resolution authorizing the City Manager to:
 - (1) Execute the Third Amendment to the Management Agreement between the City of San Jose and Team San Jose to reflect changes to calculations for Performance Measures related to Gross Operating Profit and Gross Operating Revenue, and to clarify which costs are the responsibility of the General Purpose Parking Fund and Convention and Cultural Affairs Fund; and
 - (2) Negotiate and execute an amendment to the Memorandum of Understanding regarding parking operations at the Convention Center garage.

CEQA: Not a Project, File No.PP10-066 (e), Agreements/Contracts. Council District 3. (Economic Development)

(Deferred from 9/11/12 – Item 2.7)

Deferred to 9/25/12 per Administration.

2.13 Resolution Amending the Council’s Rules of Conduct of Meetings.

Recommendation: As recommended by the Rules and Open Government Committee on September 12, 2012, adopt a resolution amending the Rules for the Conduct of City Council and City Council Committee Meetings and superseding Resolution No. 76184.

CEQA: Not a Project. (City Clerk)

[Rules Committee referral 9/12/12 – Item G(3)]

Deferred to 9/25/12 per Administration.

2.14 District 8 Meadowfair Neighborhood Clean-Up.

Recommendation: As recommended by the Rules and Open Government Committee on September 12, 2012:

- (a) Approve the Meadowfair Neighborhood Clean-up as a City-sponsored Special Event; and
- (b) Approve and accept donations from various individuals, businesses, or community groups to support the event.

CEQA: Not a Project. (City Clerk)

[Rules Committee referral 9/12/12 – Item G(6)]

Approved.

3. STRATEGIC SUPPORT SERVICES

3.1 Report of the City Manager, Debra Figone

No report provided.

3.2 Labor Negotiations Update

Recommendation: Accept Labor Negotiations Update.

No update provided.

3.3 Ordinance to Streamline and Enhance the Collection of the City's Transient Occupancy Tax and Other Taxes.

Recommendation: Approve an ordinance amending Titles 1, 2 and 4 of the San José Municipal Code to:

- (a) Provide for personal liability for the payment of unpaid taxes by certain responsible parties;
- (b) Provide, where not otherwise in conflict or specified in the Municipal Code, that the Director of Finance has authority to promulgate and publish regulations related to the administration, collection and enforcement of City taxes;
- (c) Clarify the hotel operator's and service supplier's obligation to hold City's taxes in trust for City's benefit;
- (d) Provide that the Director of Finance's decision following a tax assessment hearing is final and conclusive in order to expedite the resolution of disputes;
- (e) Set forth the responsibility of successor hotel operators for unpaid taxes;
- (f) Clarify the definition of operator for purposes of the Transient Occupancy Tax; and
- (g) Clarify that payment of a disputed City tax is required prior to filing a lawsuit to challenge the tax.

CEQA: Not a Project; File No. PP10-068c, Municipal Code or Policy. (City Attorney's Office)

Ordinance No. 29145 passed for publication.

3.4 Approval of Terms of an Agreement on Sick Leave Payout with the Association of Engineers and Architects (Unit 41/42 and Unit 43), International Federation of Professional and Technical Engineers, Local 21 (AEA).

Recommendation: Adopt a resolution approving the terms of an agreement on Sick Leave Payout between the City and the Association of Engineers and Architects (Unit 41/42 and Unit 43), International Federation of Professional and Technical Engineers, Local 21 (AEA), effective September 30, 2012. CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (City Manager's Office)

Resolution No. 76432 adopted.

Noes: Constant.

3. STRATEGIC SUPPORT SERVICES

3.5 Approval of Terms of an Agreement on Sick Leave Payout with the Association of Maintenance Supervisory Personnel, International Federation of Professional and Technical Engineers, Local 21 (AMSP).

Recommendation: Adopt a resolution approving the terms of an agreement on Sick Leave Payout between the City and the Association of Maintenance Supervisory Personnel, International Federation of Professional and Technical Engineers, Local 21 (AMSP), effective September 30, 2012. CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (City Manager's Office)

Resolution No. 76433 adopted.

Noes: Constant.

3.6 Approval of Terms of an Agreement on Sick Leave Payout with the City Association of Management Personnel, International Federation of Professional and Technical Engineers, Local 21 (CAMP).

Recommendation: Adopt a resolution approving the terms of an agreement on Sick Leave Payout between the City and the City Association of Management Personnel, International Federation of Professional and Technical Engineers, Local 21 (CAMP), effective September 30, 2012. CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (City Manager's Office)

Resolution No. 76434 adopted.

Noes: Constant.

3.7 Approval of Compensation and Benefit Changes related to Sick Leave Payout for Executive Management and Professional Employees in Unit 99, and Other Unrepresented Employees (Units 81/82).

Recommendation: Adopt a resolution approving the compensation and benefit change related to Sick Leave Payout for executive management and professional employees in Unit 99, and other unrepresented employees (Units 81/82), effective September 30, 2012. CEQA: Not a Project, File No. PP10-069(b), Personnel Related Decisions. (City Manager's Office)

Resolution No. 76435 adopted.

Noes: Constant.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Public Hearing on the FY 2011-2012 Consolidated Annual Performance Evaluation Report.

Recommendation: Hold a public hearing on the FY 2011-2012 Consolidated Annual Performance Evaluation Report and approve the document for submittal to the U.S. Department of Housing and Urban Development by the September 28, 2012 deadline. CEQA: Not a Project, File No.PP10-069(a), Annual Report. (Housing)

**Public Hearing Held
Approved.**

4.2 Public Hearing on an Amendment to the Citizen Participation Plan as Required by the U.S. Department of Housing and Urban Development (HUD) for Local Government Recipients of Entitlement Grants.

Recommendation:

- (a) Hold a public hearing on an Amended Citizen Participation Plan; and
 - (b) Adopt a resolution approving the Amended Citizen Participation Plan.
- CEQA: Not a Project, PP10-068, General Procedure and Policy Making. (Housing)

**Public Hearing Held
Resolution No. 76436 adopted.**

4.3 Rezoning Real Property Located on the South Side of Summerside Drive Between McLaughlin and Lucretia Avenues.

Recommendation: Consideration of an ordinance rezoning the real property located on the south side of Summerside Drive between McLaughlin and Lucretia Avenues (2055 Summerside Drive) from the R-M(PD) Planned Development Zoning District to the A(PD) Planned Development Zoning District to allow for the development of up to 103 multi-family attached residences at an existing multi-family residential complex on a 3.52 gross acre portion of a 25.8 gross acre site (Summerwood Investments Et Al, Owner; Peninsula West LLC, Developer). SNI: Tully/Senter. CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval.

PDC08-067 – District 7

**Ordinance No. 29146 passed for publication.
Resolution No. 76437 adopted.**

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.4 Actions Related to Construction Taxes.

Recommendation: Approve an ordinance amending Section 4.46.036 of Chapter 4.46 and Section 4.47.089 of Chapter 4.47 of Title 4 of the City of San Jose Municipal Code to suspend the collection of a portion of construction taxes on downtown high rise developments for a specified period. CEQA: Not a Project, File No. PP10-069, City Administrative Activities. Council District 3. (Planning, Building and Code Enforcement)

Ordinance No. 29147 passed for publication.

Noes: Kalra.

4.5 Amendment to the Design-Build Contract with Hunt Construction Group for the Convention Center Expansion and Renovation Project.

Recommendation: Approve a first amendment to the design-build contract with Hunt Construction Group for the Convention Center Expansion and Renovation Project to increase the maximum total compensation for agreed-upon additional work by \$10,000,000 for a total not to exceed \$127,000,000. CEQA: Resolution No. 72767 and Addenda thereto, File No. PP08-002. (Public Works)

Approved.

4.6 Proposed Annexation to Maintenance District 15 (Silver Creek Valley).

Recommendation: Conduct a public meeting to receive public comment on a proposal for annexation and formation of Zone I into Maintenance District 15 (Silver Creek Valley). CEQA: Mitigated Negative Declaration, File No. PDC09-010. District 8. (Public Works)

Public hearing held.

Approved.

4.7 Proposed Annexation to Maintenance District 19 (River Oaks Area Landscaping).

Recommendation: Conduct a public meeting to receive public comment on a proposal to annex territory into Maintenance District 19 (River Oaks Area Landscaping). CEQA: North San José Development Policy Update EIR, Resolution No. 72768. Council District 4. (Public Works)

Public hearing held.

Approved.

5. NEIGHBORHOOD SERVICES

6. TRANSPORTATION & AVIATION SERVICES

6.1 Amendment to Airport Rate Resolution No. 75809, and Ordinance Regarding Airport Rate Procedures, Methodologies, and Applications.

Recommendation:

- (a) Adopt a resolution:
 - (1) Revising the Airport Fuel Flowage Fees, Ground Transportation Fees and Charges, Federal Inspection Facility Use Fee, Ground Handling Services/Support Services Permit Fees and Miscellaneous Airport Cost Recovery Fees effective October 1, 2012;
 - (2) Establishing an Airport Ground Transportation Application Fee, an Airport Mobile Food Truck and Ice Cream Truck Permit Fee, Film Venue Fee and Conference Room Rate Structure effective October 1, 2012;
 - (3) Establishing a Trip Fee for Blended Hotel/Motel and Off-Airport Parking Operators retroactive to July 1, 2011;
 - (4) Re-adopting all other Airport Fees, Rates and Charges; and
 - (5) Repealing Resolution No.75809.

Resolution No. 76438 adopted.

- (b) Approve an ordinance amending Sections 25.08.320, 25.08.330, 25.08.340, and 25.08.360 of Part 3 of Chapter 25.08 of Title 25 the San José Municipal Code to establish minimum requirements, rates and charges for the operation at and use of the Norman Y. Mineta San Jose International Airport by certificated passenger and cargo air carriers that are not regularly scheduled to land at the Airport.

Ordinance No. 29148 passed for publication.

- (c) Approve an ordinance of the City of San José Amending Sections 25.10.010 and 25.10.030 of Chapter 25.10 of Title 25 of the San José Municipal Code to clarify the application requirements for ground transportation providers.

CEQA: Statutorily Exempt, File No. PP10-067(a), CEQA Guidelines Section 15273, Rates/Tolls/Fares/Charges (Recommendation A); Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment (Recommendation B-C). (Airport)

Ordinance No. 29149 passed for publication.

6. TRANSPORTATION & AVIATION SERVICES

6.2 Agreement with Taxi San José for Airport On-Demand Ground Transportation Dispatch Services and Ordinance Regarding On-Demand Permits.

Recommendation:

- (a) Adopt a resolution:
 - (1) Authorizing the City Manager to negotiate and execute an agreement with Taxi San José to manage the Airport On-Demand Ground Transportation Dispatch Services for a three-year term from October 1, 2012 through September 30, 2015, with space rent to the City in an annual amount of \$90,752.16.
 - (2) Authorizing the City Manager to exercise one (1) two-year option to extend the Agreement on the same terms and conditions and at the City's sole discretion.

Resolution No. 76439 adopted, with modifications as recommended in the joint memorandum from Mayor Reed and Council Members Liccardo and Rocha, dated 9/14/12, as follows: (1) Terms of contract extended from 3 years to 24 months; (2) Issue a new RFP for on-demand ground dispatch service before the conclusion of the term; (3) Direct the City Auditor to conduct an audit of the existing service model to determine if we are getting the results that were expected as outlined in the Taxi Service Model and the Taxi San José contract with audit results being presented to the Transportation and Environment Committee; and (4) Direct staff to explore options for lowering the amount of monthly rent for the newly constructed staging lot building; said options may include extending the length of the payment schedule from 10 years to 20 or 30 years. Additionally, when performing audit, staff to perform analysis of airport permit allocation/distribution, and include direction to staff to include an audit provision in the negotiated contract.

Noes: Campos, Chu, Herrera, Kalra.

- (b) Approve an ordinance amending San José Municipal Code Section 25.08.750 and following to allow permits rather than agreements for ground transportation providers of on-demand services at the Airport.

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

Ordinance No. 29150 passed for publication.

Noes: Campos, Chu, Herrera, Kalra.

7. ENVIRONMENTAL & UTILITY SERVICES

8. PUBLIC SAFETY SERVICES

9. REDEVELOPMENT SUCCESSOR AGENCY

9.1 Recognized Obligation Payment Schedules.

Recommendation: Adopt resolutions by the City Council acting in its capacity as the Successor Agency to the Redevelopment Agency Board approving:

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

(Deferred from 8/21/12 – Item 9.2, 8/28/12 – Item 9.1 and 9/11/12 – Item 9.1)

Deferred to 9/25/12 per administration.

- **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 pending decision on the following Final Maps:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/ Units</u>	<u>Type</u>	<u>Proposed Decision</u>
10109	South of Village Square, enclosed by Cortona Drive, Classico Avenue, and Ruby Avenue	8	Shapell Homes	36 Lots / 35 Units	SFDR/ Commercial	Approve

- **Open Forum**

Fatima de Guzman representing ACE Community Group, addressed safety problems in the 7 Trees neighborhood and stressed a need for speed bumps and increased police presence.

- **Adjournment**

The Council of the City of San José adjourned at 4:13 p.m.