

CITY COUNCIL AGENDA

AUGUST 9, 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 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**
9:00 a.m. - Closed Session, Call to Order in Council Chambers
Absent Council Members: **Chu, Herrera, Kalra, Oliverio.**
1:30 p.m. - Regular Session, Council Chambers, City Hall
Absent Council Members: **None.**

- **Invocation (District 7)**
Pastor Jon Talbert of Westgate Church 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 commendation to the Beautiful Day Team for their extraordinary role and dedication to serve San José residents and surrounding communities. (City Council)
Mayor Reed, Vice Mayor Nguyen and Council Members Constant and Herrera commended the Beautiful Day Team for their service to San José residents and surrounding communities.
- 1.2 Presentation of a commendation to the Center of Spiritual Enlightenment for its 30 years of spiritual enlightenment and service to our community. (Rules Committee referral 07/27/11) (Chu)
Mayor Reed and Council Member Chu commended the Center of Spiritual Enlightenment for its 30 years of service to our community.
- 1.3 Presentation of commendations to the winners of the 2011 Falcon Naming Contest. (Mayor)
(Rules Committee referral 07/27/11)
Mayor Reed commended the winners of the 2011 Falcon Naming Contest.
- 1.4 Presentation of commendation recognizing the Santa Clara Valley Science and Engineering Fair Association. (Kalra)
(Rules Committee referral 07/27/11)
Mayor Reed and Council Member Kalra recognized the Santa Clara Valley Science and Engineering Fair Association.

2. CONSENT CALENDAR

- 2.1 **Approval of Minutes.**
None.
- 2.2 **Final adoption of ordinances.**

Recommendation:

- (a) ORD. NO. 28908 – Amending Title 6 of the San José Municipal Code to add a new Chapter 6.88 to establish regulations pertaining to medical marijuana collectives and to the individual cultivation, and use of medical marijuana.
[Deferred from 5/17/11 – Item 2.2(a) and 6/14/11 – Item 2.2(a)]
Dropped per Administration.

2. CONSENT CALENDAR

2.3 Approval of Council Committee Reports.

Recommendation: Approval of Council Committee Reports.

- (a) Rules and Open Government Committee Report of July 27, 2011. (Mayor)
Deferred to 8/16/11 per Administration.
- (b) Rules and Open Government Committee Report of June 1, 2011. (Mayor)
[Deferred from 6/21/11 – Item 2.3(a) and 8/2/11 – Item 2.3(a)]
- (c) Rules and Open Government Committee Report of May 18, 2011. (Mayor)
[Deferred from 6/14/11 – Item 2.3(a), 6/21/11 – Item 2.3(c) and 8/2/11 – Item 2.3(c)]
- (d) Rules and Open Government Committee Report of May 25, 2011. (Mayor)
[Deferred from 6/14/11 – Item 2.3(b), 6/21/11 – Item 2.3(d) and 8/2/11 – Item 2.3(d)]
- (e) Rules and Open Government Committee Report of May 11, 2011. (Mayor)
[Deferred from 6/7/11 – Item 2.3(a), 6/14/11 – Item 2.3(c) and 6/21/11 – Item 2.3(e)]
- (f) Rules and Open Government Committee Report of June 8, 2011. (Mayor)
[Deferred from 8/2/11 – Item 2.3(i)]
- (g) Rules and Open Government Committee Report of June 15, 2011. (Mayor)
[Deferred from 8/2/11 – Item 2.3(k)]
- (h) Rules and Open Government Committee Report of June 22, 2011. (Mayor)
[Deferred from 8/2/11 – Item 2.3(m)]

Approved.

2.4 Mayor and Council Excused Absence Requests.

Recommendation:

- (a) Request for an excused absence for Councilmember Constant from the Regular Meeting of the Rules and Open Government Committee on August 31, 2011 and the tentative City Council Study Session on September 1, 2011 due to Authorized City Business: 2011 Annual CALAFCO Conference in Napa, CA. (Constant)
(Rules Committee referral 07/27/11)
- (b) Request for an excused absence for Councilmember Constant from the Regular Meeting of the Rules and Open Government Committee on October 19, 2011 and the Regular Meeting of the Public Safety, Finance and Strategic Support Committee on October 20, 2011 due to Authorized City Business: 2011 Chamber of Commerce Annual City-to-City Trip in Portland, OR. (Constant)
(Rules Committee referral 07/27/11)

Excused.

2.5 City Council Travel Reports.

None.

2.6 Report from the Council Liaison to the Retirement Boards.

None.

2. CONSENT CALENDAR

2.7 Property Tax Levy for General Obligation Bonds for Fiscal Year 2011-12.

Recommendation: Adopt a resolution establishing the FY 2011-12 property tax levy on all taxable property for general obligation bonded indebtedness and pay the related administration fee to the County. CEQA: Not a Project, File No. PP10-067, Non-Project Specific Funding Mechanism. (Finance)

Resolution No. 75942 adopted.

2.8 Willow Glen Community Benefit and Improvement District Annual Report for Fiscal Year 2011-2012.

Recommendation: Adopt a resolution:

- (a) Approving the Willow Glen Community Benefit and Improvement District Annual Report for Fiscal Year 2011-2012, as filed or modified by Council;
- (b) Confirming the individual assessments as proposed or modified by Council;
- (c) Directing the Director of Finance to deliver the assessment roll to the County for collection with the property taxes.

CEQA: Not a Project, File No. PP10-069(a), Annual Reports. Council District 6.
(Public Works)

Resolution No. 75943 adopted.

2.9 Summary Vacation of a Portion of a Pedestrian Access Easement Located at 150 South Second Street.

Recommendation: Adopt a resolution summarily vacating a portion of a 40-foot Public Pedestrian Access Easement lying on the property owned by the Redevelopment Agency of the City of San Jose, a public body corporate and politic, located at 150 South Second Street (APN 467-22-156). CEQA: Exempt, File No. PP11-060. Council District 3.
(Public Works)

Resolution No. 75944 adopted.

2. CONSENT CALENDAR

2.10 Initiate Proceeding for Annexation/Reorganization of Downer No. 11.

Recommendation: Adopt a resolution re-initiating proceedings and setting August 23, 2011 at 1:30 p.m. for a public hearing to (1) rescind Resolution No. 75807 that ordered the annexation to the City of San José of territory, designated as Downer No. 11, consisting of approximately 8.6 gross acres of land generally located west at the northwest corner of Blossom Hill Road and Southcrest Way and (2) order the reorganization of territory designated as Downer No. 11, which involves the annexation to the City of San José of approximately 21.51 gross acres of land generally located west at the northwest corner of Blossom Hill Road and Southcrest Way, and the detachment of the same from the appropriate special districts including Central Fire Protection and Area No. 01 (Library Services) County Service. CEQA: The environmental impacts of this project were addressed by an Initial Study (IS) and Mitigated Negative Declaration (MND) that were prepared by the Director of Planning, Building, and Code Enforcement for both the approved General Plan Amendment (File No. GP10-01-01) and the Planned Development Rezoning/Rezoning (File No. PDC10-007). The documents were circulated for public review between October 14, 2010 and November 3, 2010, and the City Council approved the IS/MND on December 7, 2010. Council District 10. (Planning, Building and Code Enforcement)
(Continued from 8/2/11 – Item 2.11)

Resolution No. 75945 adopted.

2.11 Deferred Compensation Advisory Committee Appointment.

Recommendation: As recommended by the Rules and Open Government Committee on August 3, 2011, appoint Sean Kaldor to the Deferred Compensation Advisory Committee as the representative nominated by the San José Firefighters, Local 230 (IAFF), for the remainder of the four-year term ending March 1, 2013. CEQA: Not a Project.
[Rules Committee referral 8/3/11 – Item G(1)(a)]
Approved.

2.12 City-Sponsored State Legislation – “Tied House” Changes.

Recommendation: As recommended by the Rules and Open Government Committee on August 3, 2011, authorize the introduction of state legislation amending tied-house state law to allow the City or at the City’s options the City’s operator of the San José McEnergy Convention Center and San José Civic to receive payments for alcohol advertising and sponsorship within these facilities. CEQA: Not a Project, File No. PP10-069(a), Staff Reports. (City Manager’s Office)
[Rules Committee referral 8/3/11 – Item H(5)]
Approved.

2. CONSENT CALENDAR

2.13 District 1 Disability Awareness Day.

Recommendation: As recommended by the Rules and Open Government Committee on August 3, 2011:

- (a) Approve the District 1 Disability Awareness Day as a City Council 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 8/3/11 – Item H(6)]

Approved.

2.14 Santos Family Car Show.

Recommendation: As recommended by the Rules and Open Government Committee on August 3, 2011:

- (a) Approve the Santos Family Car Show as a City Council 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 8/3/11 – Item H(7)]

Approved.

3. STRATEGIC SUPPORT SERVICES

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

The City Manager briefly discussed Standard & Poor's rating agency's recent downgrade of the U.S. credit rating and potential residual impacts to the City of San José. She announced the recent upgrade/replacement of the cameras and routers with a new digital system at City Hall and the Civic Center, all completed by in-house staff.

3.2 Labor Negotiations Update

Recommendation: Accept Labor Negotiations Update.

Heard at 9 a.m.

3. STRATEGIC SUPPORT SERVICES

3.3 Approval of Conduit Financing for Renewable Energy Facilities TEFRA Hearing.

Recommendation:

- (a) Hold a Tax Equity and Fiscal Responsibility Act (“TEFRA”) Hearing for the issuance of an aggregate amount not to exceed \$24,000,000 of tax-exempt 501(c)(3) revenue bonds by the California Municipal Finance Authority (“CMFA”) to finance and refinance certain renewable energy facilities in the City of San José.

Hearing held.

- (b) Adopt a resolution approving the issuance of Tax-Exempt Revenue Bonds, by the CMFA in an aggregate principal amount not to exceed \$24,000,000 (the “Bonds”) to be used to:
- (1) Finance and refinance the acquisition, construction, improvement and equipping of a facility for the treatment of anaerobic digester gas, one or more fuel cell power plants and related facilities (collectively, the “IEUA Project”) to be located at the Inland Empire Utility Agency Regional Water Recycling Plant #1, at 2662 East Walnut Street, Ontario, CA 91761;
 - (2) Finance and refinance the acquisition, construction, improvement and equipping of a facility for the treatment of anaerobic digester gas, one or more fuel cell power plants and related facilities (collectively, the “San José Project”) to be located at the San José/Santa Clara Water Pollution Control Plant, at 700 Los Esteros Road, San José, CA 95134;
 - (3) Fund a debt service reserve fund for the Bonds; and
 - (4) Pay certain expenses incurred in connection with the issuance of the Bonds.

CEQA: Exempt, File No. PP11-030. (Finance)

Resolution No. 75946 adopted.

3.4 Civil Service Commission Stipend.

Recommendation: As recommended by the Rules and Open Government Committee on August 3, 2011, approve an ordinance amending Section 2.08.2010 of Chapter 2.08 of Title 2 of the San Jose Municipal Code regarding stipends paid to members of the Civil Service Commission. CEQA: Not a Project. (City Clerk’s Office)

[Rules Committee referral 8/3/11 – Item H(2)]

Ordinance No. 28947 passed for publication.

3. STRATEGIC SUPPORT SERVICES

3.5 Audit of Supplemental Military Pay and Benefits.

Recommendation: As recommended by the Public Safety, Finance and Strategic Support on June 16, 2011, accept the audit of Supplemental Military Pay and Benefits. CEQA: Not a Project, File No. PP10-069(a), City Organizational and Administrative Activities, Staff Report. (City Auditor)

[Public Safety, Finance and Strategic Support Committee referral 6/14/11 – Item D(4)]
(Deferred from 8/2/11 – Item 3.6)

Accepted, with modifications as outlined in the August 5, 2011 memorandum provided by Vice Mayor Nguyen and Council Members Constant, Kalra and Liccardo, and further modified by Council Member Constant as follows: (3) Direct the City Manager in consultation with the City Attorney, to return to the Public Safety, Finance & Strategic Support Committee within 60-90 days with an analysis of obstacles (including IRS tax compliance and meet and confer issues) to implementation of a modified policy that contains the following provisions: and replacement of item (4) with the following: (4) Repeal San José Municipal Code 3.36.620 and 3.28.630 to ensure that all military reservists, whether participating in the Supplemental Military Pay and Benefits Program or not, shall be required to pay the employee's share of retirement contributions, including retiree healthcare contributions while on active duty to ensure parity with other city employees.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.1 Actions related to Medical Marijuana Collectives.

Recommendation:

- (a) Approve an ordinance amending Title 6 of San José Municipal Code to add a new Chapter 6.88 to establish a registration process pertaining to Medical Marijuana Collectives; and, to establish regulations pertaining to Medical Marijuana Collectives and to the individual cultivation and use of medical marijuana. (City Attorney's Office)
- (b) Approve an ordinance amending Title 1 of the San José Municipal Code by amending Section 1.13.050 of Chapter 1.13 to exempt a lawful Medical Marijuana Collective from the definition of a public nuisance and amending Title 20 of the San José Municipal Code by amending Section 20.10.040 of Chapter 20.10, amending Section 20.40.100 of Chapter 20.40, amending Section 20.50.100 of Chapter 20.50, amending Section 20.70.100 of Chapter 20.70, adding a new Part 9.5 to Chapter 20.80, adding a new Part 13 to Chapter 20.100, and amending Section 20.100.200 of Chapter 20.100, all to establish land use regulations pertaining to Medical Marijuana Collectives and to establish a related Zoning Verification Certificate process. (Planning, Building and Code Enforcement). (Deferred from 6/14/11 – Item 3.9 and 8/2/11 – Item 4.6)

CEQA: Negative Declaration, File No. PP11-039. Citywide.

Deferred to 9/13/11 per Administration.

5. NEIGHBORHOOD SERVICES

6. TRANSPORTATION & AVIATION SERVICES

7. ENVIRONMENTAL & UTILITY SERVICES

8. PUBLIC SAFETY SERVICES

8.1 Memorandum of Understanding with the City and County of San Francisco for the 2010 Bay Area Urban Areas Security Initiative Grant Allocation.

Recommendation:

- (a) Adopt a resolution authorizing the City Manager to execute an Agreement between the City of San José and the City and County of San Francisco, acting as fiscal agent for the Bay Area UASI, to accept the 2010 UASI grant allocation in the amount of \$1,234,000 and to negotiate and execute additional amendments and related documents without further Council action.

Resolution No. 75947 adopted.

- (b) Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the General Fund in fiscal year 2011-2012:
- (1) Establish a city-wide appropriation to the Police Department for the 2010 Urban Areas Security Initiative (UASI) Grant- Police in the amount of \$1,030,400;
 - (2) Establish a city-wide appropriation to the Fire Department for the 2010 Urban Areas Security Initiative (UASI) Grant- Fire in the amount of \$203,600; and,
 - (3) Increase the estimate for Revenue from the Federal Government by \$1,234,000.

CEQA: Not a Project, File No. PP10-066(a), 2009 UASI Grant MOU. (Police/Fire/City Manager's Office)

Ordinance No. 28948 adopted.

Resolution No. 75948 adopted.

9. JOINT COUNCIL/REDEVELOPMENT AGENCY

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>
10082	Northeast Corner of Baypointe Parkway and Tasman Drive	4	LCOR Venture Enterprises, LLC	1 Lot/ 229 Units	MFA

- **Open Forum**

- (1) **David Wall provided input regarding the sick leave buyout policy and noted a discrepancy in the Council Meeting "Conduct for Public Meeting" policy.**
- (2) **Ross Signorino protested the four-dollar fee charged for carts at the airport as excessive and noted that Forbes Magazine had elected San Jose as the "Geek Capital" of the United States.**
- (3) **Michael McDuffie reiterated continual after-hours street noise at the 7 Trees Shopping Plaza.**

- **Adjournment**

The Council of the City of San José adjourned at 3:33 p.m. in memory of former San José Councilmember and Fire Captain John Diquisto, who passed away on June 27, 2011. After retiring from the San José Fire Department, John served eight years on the San José City Council, where he fought to ensure that our Police and Fire departments received the support they needed to keep San José safe, and also that police officers, firefighters, retirees and their families were treated fairly and with respect. Additionally, while serving as President of the San José Firefighters, John was an extremely well-respected labor leader throughout Santa Clara County and California. (Rocha/Campos)