

CITY COUNCIL AGENDA

DECEMBER 15, 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. Council Meetings are televised live and rebroadcast on Channel 26.

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

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

- **Call to Order and Roll Call**
9:33 a.m. - Closed Session, Call to Order in Council Chambers
Absent Council Members: None.

1:33 p.m. - Regular Session, Council Chambers, City Hall
Absent Council Members: None.
- **Invocation (Mayor)**
The Venerable Phap Chon 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, with Item 2.7(a) modified to state “and execute” and Item 9.1 not to be heard before 4:00 p.m.
- **Closed Session Report**
No Report.

1. CEREMONIAL ITEMS

- 1.1** Presentation of a commendation to Westgate Team of Beautiful Day for their volunteer work to clean up the Alviso Community Garden. (Chu)
Mayor Reed and Council Members Chu and Constant recognized and commended the Westgate Team of Beautiful Day for their volunteer work to clean up the Alviso Community Garden.

1. CEREMONIAL ITEMS

- 1.2 Presentation of a check from the Happy Hollow Foundation to the City of San José. (Mayor/Nguyen/Parks, Recreation and Neighborhood Services)
Mayor Reed and Council Member Nguyen accepted a generous donation from the Happy Hollow Foundation and Make a Wish Foundation to the City of San José. March 20, 2010 opening day for Happy Hollow.
- 1.3 Presentation of the Applied Materials Silicon Valley Turkey Trot Mayor's Cup. (Mayor) (Rules Committee referral 12/09/09)
Mayor Reed accepted the "Turkey Trot Mayor's Cup" on behalf of the City of San José from Carl Guardino, Silicon Valley Leadership Group and Chris Landis, Akeena Solar.

2. CONSENT CALENDAR

2.1 Approval of Minutes.

Recommendation: Approval of minutes.

- (a) Regular Minutes of November 3, 2009.
- (b) Special Minutes of November 5, 2009.
- (c) Joint/RDA Budget Planning Meeting of November 9, 2009.
- (d) Regular Minutes of November 10, 2009.
- (e) Regular Minutes of November 17, 2009.
- (f) Joint/San José Financing Authority Minutes of November 17, 2009.

Approved, with amendments to 2.1(b).

2.2 Final adoption of ordinances.

Recommendation: Final adoption of ordinances.

- (a) ORD. NO. 28674 – Amending Section 16.32.190 of Chapter 16.32 of Title 16 of the San José Municipal Code to reflect the streamlining of the cardroom license renewal procedure that was accomplished administratively under the revised Title 16, Ordinance No. 28517.

Ordinance No. 28674 adopted.

- (b) ORD. NO. 28676 – Amending Sections 19.32.120, 19.32.130, and 19.32.140 of Chapter 19.32 of Title 19 of the San José Municipal Code relating to agreements to construct public improvements prior to approval of a final subdivision map or parcel map; amending Sections 14.04.160 and 14.04.170 to increase the contracting authority of the Public Works Director without competitive bidding under specified circumstances; and repealing Section 14.04.490 and amending Section 14.04.510 of Chapter 14.04 of Title 14 of the San José Municipal Code relating to the reporting of Public Works Contracts and Change Orders to the Finance Department and Council.

Ordinance No. 28676 adopted.

2. CONSENT CALENDAR

2.2 Final adoption of ordinances (Cont'd.)

- (c) ORD. NO. 28677 – Amending Sections 2.100.290 and 20.100.300 of Chapter 100 of Title 20 of the San José Municipal Code relating to recordation of Land Use Permits, and 20.120.510 of Chapter 120 of Title 20 of the San José Municipal Code relating to alternative means of compliance with General Development Plans.

Ordinance No. 28677 adopted.

- (d) ORD. NO. 28678 – Amending Chapter 12.06 of Title 12 of the San José Municipal Code to add Section 12.06.915 to require electronic filing of Campaign Disclosure Statements.

Ordinance No. 28678 adopted.

- (e) ORD. NO. 28679 – Rezoning certain real property situated between Los Esteros Road and Grand Boulevard (675 Los Esteros Road) from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District. PDC08-054

Ordinance No. 28679 adopted.

- (f) ORD. NO. 28680 – Adding a new Section 20.200.1265 to Chapter 20.200 of Title 20 of the San José Municipal Code to define Supportive Housing and adding a new Section 20.200.1283 to Chapter 20.200 of Title 20 of the San José Municipal Code to define Transitional Housing, and to provide that those uses are and shall be treated as residential uses, subject only to those restrictions on residential uses applicable to the type of residential structure or use involved.

Ordinance No. 28680 adopted.

- (g) ORD. NO. 28682 – Amending various Sections of Chapter 6.64 of Title 6 of the San José Municipal Code to authorize the Chief of Police to cease the processing of any new applications for taxicab driver permits when certain economic indicators demonstrate a decline in the demand for taxicab services, with such authorization sunseting within three (3) years of taking effect unless extended by the City Council; to clarify the authorization of the Chief of Police to allow the transfer of permitted taxicab drivers between licensed taxicab companies; and to clarify provisions of Chapter 6.64 to ensure consistency throughout the Code.

Ordinance No. 28682 adopted.

2.3 Mayor and Council Excused Absence Requests.

Recommendation:

- (a) Request for an excused absence for Vice Mayor Chirco from the Regular Meeting of the Rules and Open Government Committee on December 2, 2009 due to a personal appointment. (Chirco)
- (b) Request for an excused absence for Council Member Liccardo from the Special Meeting of the City Council on December 3, 2009 due to illness. (Liccardo)
- (Rules Committee referral 12/09/09)

Excused.

2. CONSENT CALENDAR

2.4 Intention to Disestablish the Willow Glen BID.

Recommendation: Adopt a resolution of intention to set the time and date for the public hearing to disestablish the Willow Glen Business Improvement District, on January 12, 2010 at 1:30 p.m., as the date and time for the public hearing on the proposed elimination of the assessed levy. CEQA: Exempt, File No. PP08-048. Council District 6. (OED)

Resolution No. 75221 adopted.

2.5 Actions Related to Installation of Water Services and Mains: 2009-2010 Project.

Recommendation:

(a) Reject all bids for the Installation of Potable and Non-Potable Water Services and Mains: 2009-2010 project.

All bids rejected.

(b) Adopt a resolution authorizing the Director of Public Works to:

(1) Award the contract for the Installation of Potable and Non-Potable Water Services and Mains: 2009-2010 project to the lowest responsive and responsible bidder in an amount not to exceed \$726,000; and

(2) Decide any timely bid protest(s), make the City's final determination as to the lowest responsive and responsible bidder, or to reject all bids and re-bid the project.

CEQA: Exempt, File No. PP05-130. (Environmental Services)

Resolution No. 75222 adopted.

2.6 Continuation Agreement for Preliminary Design of Water Pollution Control Plant.

Recommendation: Approve a Continuation Agreement with AEPC Group, LLC for consultant services for the preliminary design of the project entitled, "San José/Santa Clara Water Pollution Control Plant, Fiscal Year 2006-2007 Capital Improvement Program, Switchgear M5, Ring Bus, and Cable Replacement," extending the term of the agreement which expired on March 31, 2009 to June 30, 2010 at no additional cost to the City. CEQA: Not a Project. (Environmental Services)

Approved.

2.7 Agreement with Pacific Gas and Electric.

Recommendation:

(a) Adopt a resolution authorizing the City Manager to negotiate "*and execute*" a Master Service Agreement related to the General Conditions and a Contract Work Authorization agreement related to Specific Conditions with Pacific Gas and Electric (PG&E) to conduct the Silicon Valley Energy Watch collaborative program and to receive funding in an amount not to exceed \$846,000 for the term January 1, 2010 through December 31, 2012.

Resolution No. 75223 adopted, as amended, to negotiate "*and execute*".

2. CONSENT CALENDAR

2.7 Agreement with Pacific Gas and Electric (Cont'd.)

- (b) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:
- (1) Increase the appropriation to the Environmental Services Department for Personal Services by \$73,823.
 - (2) Increase the appropriation to the Environmental Services Department for Non-personal/Equipment by \$98,500.
 - (3) Increase the Estimate for Revenue from Local Agencies by \$172,323.

CEQA: Not a Project. (Environmental Services/City Manager's Office)

Ordinance No. 28683 adopted.

Resolution No. 75224 adopted.

2.8 Award of Open Purchase Orders for Supplies, Materials, Equipment and Services.

Recommendation: Approve the award of open purchase orders for supplies, materials, equipment and services for FY 2009-2010 #4 and authorize the Director of Finance to execute the purchase orders. CEQA: See Administration's memo to Council for specific CEQA clearance determinations on each recommended action. (Finance)

Approved.

2.9 Agreement with Ingersoll Rand for the Access Control System at the Airport.

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

- (a) Negotiate and execute the first amendment to the Access Control System Agreement with Electronic Technologies Corporation USA dba Ingersoll Rand (Ingersoll Rand) to increase the compensation up to \$450,000 for a revised not to exceed amount of up to \$792,712 in order to:
- (1) Upgrade the existing access control system at the Norman Y. Mineta San José International Airport (approximately \$400,000); and,
 - (2) Increase maintenance time and materials by \$50,000 to \$100,000 for the initial two year term of the agreement.
- (b) Increase the contingency amount by \$50,000 from \$51,407 to \$101,407 to cover unanticipated in the system design and/or installation.

CEQA: Resolutions Nos. 67380 and 71451, File No. PP 09-195. (Finance)

Resolution No. 75225 adopted.

2. CONSENT CALENDAR

2.10 Grant for the Highway 237 Bikeway Trail Project – Zanker Road to Coyote Creek.

Recommendation: Adopt a resolution authorizing the City Manager, or designee, to:

- (a) Submit a grant application to the State of California Resources Agency in the amount not to exceed \$350,000 for Environmental Enhancement and Mitigation Program grant funding for design and construction of the Highway 237 Bikeway Trail (Zanker Road to Coyote Creek) project and to make certain written assurances required as part of the grant application; and
- (b) Accept any grant funds awarded to the City and negotiate and execute all necessary documents to any grant funding from the State to the City for the project.

CEQA: Exempt, File No. PP08-195. Council District 4. (Parks, Recreation and Neighborhood Services)

Resolution No. 75226 adopted.

2.11 Grant for the Coyote Creek Trail Project – Hwy 237 Bikeway to Tasman Drive.

Recommendation: Adopt a resolution authorizing the City Manager, or designee, to:

- (a) Submit a grant application to Caltrans in the amount not to exceed \$724,500 under the Bicycle Transportation Account program for the Coyote Creek Reach 3 (Hwy 237 Bikeway to Tasman Drive) Trail project; and
- (b) Accept any grant funds awarded to the City and negotiate and execute all necessary documents related to any grant funding from Caltrans to the City for the Project.

CEQA: Exempt, File No. PP03-230. Council District 4. (Parks, Recreation and Neighborhood Services)

Resolution No. 75227 adopted.

2.12 Continuation Agreement for the Mayfair Community Center Project.

Recommendation: Approve a continuation agreement with Field Paoli, Inc., for consultant services for the Mayfair Community Center Project, extending the term from June 30, 2009 to December 31, 2009; and increasing the amount of compensation by \$7,500 for a total agreement amount not to exceed \$1,652,825. CEQA: Mitigated Negative Declaration, File No. PP06-024. Council District 5. SNI Area: Mayfair. (Public Works)

Approved.

2.13 Public Service Easement Vacation at 3550 Snell Avenue.

Recommendation: Adopt a resolution of intention to vacate a Public Service Easement within a private property at 3550 Snell Avenue and setting a public hearing on January 26, 2010 at 1:30 p.m. CEQA: Not a Project. Council District 7. (Public Works)

Resolution No. 75228 adopted.

2. CONSENT CALENDAR

2.14 Contract Amendment for Storm Drainage, Sanitary Sewer Connection and Sewage Treatment Plant Connection Fees Study.

Recommendation: Approve the first amendment to the consultant agreement with Financial Consulting Solutions Group, Inc. for the Storm Drainage, Sanitary Sewer Connection and Sewage Treatment Plant Connection Fees Study, extending the term of the agreement from December 27, 2009 to June 30, 2011, at no additional cost to the City. CEQA: Not a Project. (Public Works)

Approved.

2.15 Construction Contingency for Trail Projects.

Recommendation:

(a) Adopt a resolution amending City Council Policy No. 1-18, "Operating Budget and Capital Improvement Program Policy," to establish a ten percent construction contingency for Capital Improvement Program trail projects.

Resolution No. 75229 adopted.

(b) Adopt a resolution amending the authority delegated to the Director of Public Works under Resolution Nos. 72943 and 73532 (Streamlining the Award of Public Works Construction Contracts) to incorporate the contingency amounts specified in City Council Policy No. 1-18.

CEQA: Not a Project. (Public Works)

Resolution No. 75330 adopted.

2.16 Actions Related to Martin Park Gas Cutoff Wall Re-Bid Project.

Recommendation:

(a) Approve an increase in the contingency budget for the Martin Park Landfill Gas Cutoff Wall Re-Bid Project in the amount of \$115,000 for a total contingency budget of \$238,000.

(b) Approve Contract Change Order Number 3 in an amount of \$340,000 for a total contract amount of \$1,588,147 with Granite Rock Company, DBA Pavex Construction Division for the Martin Park Landfill Gas Cutoff Wall Re-Bid Project.

(c) Approve an increase in the project delivery budget for the Martin Park Landfill Gas Cutoff Wall Re-Bid project in the amount of \$46,000 for a total project delivery budget of \$463,000.

Approved.

2. CONSENT CALENDAR

2.16 Actions Related to Martin Park Gas Cutoff Wall Re-Bid Project (Cont'd.)

- (d) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund for 2009-2010:
- (1) Increase the estimate for Revenue from the State of California by \$501,000.
 - (2) Increase the appropriation to the Public Works Department for the Martin Park Landfill in the amount of \$501,000.

CEQA: Mitigated Negative Declaration, File No. H06-017, December 3, 2007. Council District 3. SNI Area: Five Wounds/Brookwood Terrace. (Public Works/Environmental Services/City Manager's Office)

Ordinance No. 28684 adopted.

Resolution No. 75231 adopted.

2.17 Agreement for Architectural Consultant Services for Fire Station No. 37, located at 2175 Lincoln Avenue.

Recommendation:

- (a) Allow the consultant selection to be made without following the procedures set forth in the Qualifications Based Consultant Selection Policy (QBCS) with regard to selecting BFGC Architects Planners, Inc. (BFGC) to provide architectural services for the Fire Station No. 37 Project.
- (b) Approval of an agreement with BFGC for architectural consultant services for the Fire Station No. 37 Project, from the date of execution to January 31, 2012, in an amount not to exceed \$256,000.

CEQA: Exempt, File Nos. PP08-050 and PP09-150. Council District 6. (Public Works/Fire)

Renumbered from Item 8.1.

Approved.

2.18 Agreement with Macias, Gini & O'Connell for Audit Services.

Recommendation: Adopt a resolution authorizing the City Auditor to negotiate and execute a Third Amendment to the Agreement for Audit Services with Macias, Gini & O'Connell LLP to provide a financial audit of the Neighborhood Security Bond Projects Capital Projects Fund of the City for the period from inception through June 30, 2009 for a total one-time fee not to exceed \$49,600, for a total contract amount not to exceed \$2,954,940. (City Auditor)

(Rules Committee referral 12/09/09)

Resolution No. 75232 adopted.

3. STRATEGIC SUPPORT SERVICES

- 3.1 **Report of the City Manager, Debra Figone (Verbal Report)**
City Manager Debra Figone reported that the 2009/2010 Holiday Closure was scheduled from Thursday, December 24, 2009 through Friday, January 1, 2010, with City Hall back to business as usual on January 4, 2009. She added that during the furlough the City libraries and community centers will be open on reduced schedules.
- 3.2 **Report of the Rules and Open Government Committee – December 2, 2009**
Mayor Reed, Chair
Deferred to 1/12/10 per City Clerk.
- 3.3 **Report of the Public Safety, Finance and Strategic Support Committee**
Council Member Nguyen, Chair
No Report.
- 3.4 **Mayor's 2009 Biennial Review of Ethics Ordinances.**

Recommendation: Accept the Mayor's Biennial Review of the Ethics Ordinances and provide direction to staff as outlined in the Mayor's Memo. (Mayor)

(Rules Committee referral 11/4/09)

(Deferred from 11/17/09 – Item 3.8 and 12/8/09 – Item 3.4)

Recommendations outlined in the memorandum from Mayor Reed, dated December 14, 2009, amended and restated, were approved, as modified:

(1) **Avoiding Conflicts of Interests Arising from Family Relationships –**
Recommendations (a)-(c) Approved. Recommendation regarding Council Policy 0-32 referred to the Elections Commission and the Ethics Review Panel in parallel.

Noes: Constant, Oliverio.

(2) **Closing a Loophole in Lobbyist Registration and Disclosures –**
Recommendation referred to the Elections Commission and the Ethics Review Panel in parallel.

(3) **More Sunshine for Decision-Making Boards and Commissions –**
Recommendation Approved

(4) **Avoiding Policy by Surprise at Council Committees –**
Recommendation Approved

(5) **Process Improvements for “Revolving Door” Employment Restriction Waivers –**
Recommendation Approved

(6) **Improving Timely Disclosure of Calendars –**
Recommendation Approved

3. STRATEGIC SUPPORT SERVICES

3.4 Mayor's 2009 Biennial Review of Ethics Ordinances (Cont'd.)

(Action Cont'd.)

- (7) **Protecting Public Participation in Council Hearings – Recommendation Approved.** *Referred to the Elections Commission and the Ethics Review Panel in parallel the concept of allowing, beyond the Brown Act, for public comments and debate about items on the Agenda during Orders of the Day even if the City Council is not debating any items during Orders of the Day.*
- (8) **Limiting Anonymous Complaints to the Elections Commission – Recommendation Approved.** *Referred to the Elections Commission and the Ethics Review Panel in parallel consideration of whether the phrase "good cause" should include those who can demonstrate a substantial vulnerability to retaliation by the person who is the subject of the complaint and review and determine what additional situations would constitute "good cause" for providing anonymous tip line complaints for inclusion in the regulation.*

Noes: Campos, Kalra, Nguyen.

- (9) **Make Interest Arbitration Hearings Open to the Public – Recommendation Approved.**

3.5 2010 Legislative Guiding Principles, Priorities and Advocacy Issues.

Recommendation: As recommended by the Rules and Open Government Committee on December 9, 2009 and as amended to include the City Attorney's Office in the legislative process to ensure positions are consistent with the Guiding Principles:

- (a) Accept the 2010 Legislative Guiding Principles and Advocacy Issues for the second year of the two-year Legislative Session in Sacramento and the 111th Congress.
- (b) Approve a streamlined process for responding to legislative proposals and legislation that would enable the staff to be responsive to bills considered in Sacramento and Washington, D.C.

(City Manager's Office)

[Rules Committee referral 12/09/09 – Item H(4)]

Approved.

4. COMMUNITY & ECONOMIC DEVELOPMENT

- 4.1 **Report of the Community & Economic Development Committee – November 30, 2009**
Council Member Pyle, Chair
Accepted.

4.2 Report on RFP for Multi-Family Loan Portfolio Management System.

Recommendation:

- (a) Accept report on Request for Proposal for the purchase of a Multi-Family Loan Portfolio Management System and adoption of a resolution authorizing the Director of Finance to:
 - (1) Execute an agreement with MK Partners, Inc. (Encino, CA) for the implementation of the Multi-Family Loan Portfolio Management System in an amount not to exceed \$246,700 including all professional and technical support services required to implement the system as well as hosting services that will be provided by Salesforce.com Inc. (San Francisco, CA) under a separate subscription agreement.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.2 Report on RFP for Multi-Family Loan Portfolio Management System (Cont'd.)

- (a) (2) Execute change orders not to exceed a contingency amount of \$40,000 to cover any unanticipated changes in the system design and implementation.
- (3) Execute ten one-year options to renew the agreements for continued technical support and hosting services subject to annual appropriation of funding.

Report Accepted.

Resolution No. 75233 adopted.

Noes: Oliverio.

- (b) Adopt the following Appropriation Ordinance amendments in the Low and Moderate Income Housing Fund (Fund 443) for 2009-2010:

- (1) Decrease the Ending Fund Balance by \$286,700; and
- (2) Increase the Housing Department's Non-Personal/Equipment Appropriation in the amount of \$286,700.

CEQA: Not a Project. (Finance/City Manager's Office)

(Deferred from 11/3/09 – Item 2.5, et al, 12/1/09 – Item 4.4, and 12/8/09 – Item 4.7)

Ordinance No. 28685 adopted.

Noes: Oliverio.

4.3 Mills Act Historical Property Contract for the Tommie Smith House.

Recommendation: Conduct a public hearing on the Historical Property Contract (California Mills Act No. MA09-007) between the City of San José and the owners of the Tommie Smith House, located at 55 N. Eleventh Street, (City Landmark No. HL08-181) (Brian Boguess, Property Owner) and adopt a resolution approving the contract. SNI: University. CEQA: Exempt. Council District 3. The Historic Landmarks Commission (HLC) recommends (5-0-1; Peak absent) that the City Council adopt a resolution approving Historical Property Contract File No. MA09-007. (Planning, Building and Code Enforcement)

[Deferred from 12/1/09 – Item 4.6(b)]

Resolution No. 75234 adopted.

4.4 Designation and Naming of Winchester Boulevard as a Targeted Business Area.

Recommendation: Adopt a resolution designating and naming Winchester Boulevard as a Targeted Business Area. (Planning, Building and Code Enforcement)

Resolution No. 75235 adopted.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.5 Ordinance to Allow Extension of Development Permits in North San José.

Recommendation: Conduct a public hearing and consider an ordinance amending Title 20 of the San José Municipal Code, the Zoning Ordinance, to amend Section 20.100.500 of Chapter 20.100 Part 4 to add the North San José Area to the Director of Planning's authorization to extend certain development permits for a discrete period of time and make other related clarifying changes. CEQA: North San José EIR Resolution No. 72768. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1). (Planning, Building and Code Enforcement)

Ordinance No. 28686 passed for publication. Staff directed to return to Council on January 26, 2010 with an update and any additional actions necessary relevant to the "readiness" of residential projects with Planning permit approval.

4.6 Catalyst Program.

Recommendation: As recommended by the Community and Economic Development Committee on November 30, 2009, accept the progress report of the investment activities of the Economic Development Catalyst Fund. (Economic Development)

[Community and Economic Development Committee referral 11/30/09 – Item D(9)]

Deferred to 1/12/10 per Administration.

4.7 Brookwood Terrace Family Apartments.

Recommendation: Adopt resolutions:

- (a) Supplementing the authority previously granted to issue not to exceed \$13,600,000 of City of San José Multifamily Housing Revenue Bonds (Brookwood Terrace Family Apartments), Series 2009B (the "Bonds") to allow such issuance in two series, with (i) the Series B-1 Bonds (the "Series B-1 Bonds") issued fixed rate bonds directly placed with the U.S. Treasury Department (the "Treasury"), and (ii) the Series B-2 Bonds (the "Series B-2 Bonds") issued either as a publicly offered variable rate demand bonds credit enhanced by a letter of credit from JP Morgan Chase (the "Bank") or as variable rate bonds directly placed with the Bank; and authorizing the Assistant Director of Finance to negotiate and approve changes to the Bond Documents previously approved by the City Council and to negotiate and approve other documents necessary to enable to the issuance of the Bonds in two series.

Resolution No. 75236 adopted.

Noes: Oliverio.

- (b) Approving a request for disbursement of up to \$600,000 of the existing City construction/permanent loan funding commitment; and, authorizing the Director of Housing to negotiate and execute all documents to effectuate this disbursement.

CEQA: Mitigated Negative Declaration, File No. PDC08-038. Council District 3. SNI: Five Wounds/Brookwood Terrace. (City Attorney's Office)

Resolution No. 75237 adopted.

Noes: Oliverio.

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.8 Public Utility Easement Vacation at 1542 Larkspur Drive.

Recommendation: Conduct a public hearing and adopt a resolution to vacate a portion of an existing 10-foot wide Public Utility Easement while reserving a Wire Clearance Easement over the area to be vacated, located at the rear of Lot 22 of Tract 1593 (1542 Larkspur Drive). CEQA: Not a Project. Council District 9. (Public Works)

Renumbered from Item 7.4.

Resolution No. 75238 adopted, as amended, the property address was corrected to read 1542 Larkspur Lane.

5. NEIGHBORHOOD SERVICES

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

No Report.

5.2 Neighborhoods Commission Workplan.

Recommendation: As recommended by the Neighborhood Services and Education Committee on December 10, 2009, approve the Neighborhoods Commission Workplan. (City Manager's Office)

[Neighborhood Services and Education Committee referral 12/10/09 – Item D(3)]

Approved.

6. TRANSPORTATION & AVIATION SERVICES

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

No Report.

6.2 Agreement with Caltrans for the Highway 87 Detour II Sanitary Sewer Reconstruction Project – Phase II.

Recommendation: Approve the second amendment to Utility Agreement No. 1390.1, between the California Department of Transportation and the City, to transfer the remaining agreement balance of \$4,230,000 to the City for the completion of the Highway 87 Detour II Sanitary Sewer Reconstruction Project – Phase II. CEQA: Mitigated Negative Declaration, File No. PP03-12-378. Council District 3. (Public Works)

Approved.

7. ENVIRONMENTAL & UTILITY SERVICES

7.1 Award of Contract for Motor Control Centers at the Water Pollution Control Plant.

Recommendation: Report on bids and award of contract for the MCC H1, MCC H2, MCC J1, and MCC J2 Replacement Project to the lowest responsive bidder, Dynalectric Company, in the amount of \$1,637,295; and approval of a budget contingency of 15%, for a total contingency amount of \$245,595. CEQA: Exempt, File No. PP04-03-079. (Environmental Services)

Approved.

7.2 Commercial Solid Waste and Recyclable Collection Franchise Agreement.

Recommendation: Hold a public hearing on the application of Lam Hauling for a Commercial Solid Waste and Recyclables Collection Franchise, approve the ordinance granting the franchise, and approve the Commercial Solid Waste and Recyclables Collection Franchise Agreement for a term from February 12, 2010 to June 30, 2012 with the option of three one-year extensions. CEQA: Exempt, File No. PP08-228. (Environmental Services)

Ordinance No. 28687 passed for publication.

7.3 Solar America Cities Special Projects Grant.

Recommendation:

- (a) Adopt a resolution authorizing the City Manager to negotiate and execute a grant agreement with the Department of Energy to conduct the Solar America Initiative's Solar Market Transformation activities, for the term of January 1, 2010 through December 31, 2011, and to accept a grant in an amount not to exceed \$1,101,636.

Resolution No. 75239 adopted.

- (b) Adopt a resolution authorizing the City Manager to:
- (1) Negotiate and execute an agreement with Santa Clara University to accept the donation of the use of the Solar Decathlon House for the term of January 1, 2010 through December 31, 2011, at a value of \$198,050; and
 - (2) Negotiate and execute an agreement with the Redevelopment Agency for use of the site located at 155-193 East Santa Clara Street, which is valued at \$9,343 per month, for a period of up to two years, for the Green Vision Education and Demonstration Center.

Resolution No. 75240 adopted.

7. ENVIRONMENTAL & UTILITY SERVICES

7.3 Solar America Cities Special Projects Grant (Cont'd.)

- (c) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund for 2009-2010:
- (1) Establish a City-Wide Expenses Recovery Act – Solar Market Transformation appropriation to the Environmental Services Department in the amount of \$1,101,636; and
 - (2) Increase the estimate for Revenue from Federal Government – Recovery Act by \$1,101,636.

CEQA: Resolution 65459, File No. PP09-204. (Environmental Services/City Manager's Office)

Ordinance No. 28688 adopted.

Resolution No. 75241 adopted.

7.4 Public Utility Easement Vacation at 1542 Larkspur Drive.

Recommendation: Conduct a public hearing and adopt a resolution to vacate a portion of an existing 10-foot wide Public Utility Easement while reserving a Wire Clearance Easement over the area to be vacated, located at the rear of Lot 22 of Tract 1593 (1542 Larkspur Drive). CEQA: Not a Project. Council District 9. (Public Works)

Item 7.4 Renumbered To Item 4.8.

8. PUBLIC SAFETY SERVICES

8.1 Agreement for Architectural Consultant Services for Fire Station No. 37, located at 2175 Lincoln Avenue.

Recommendation:

- (a) Allow the consultant selection to be made without following the procedures set forth in the Qualifications Based Consultant Selection Policy (QBCS) with regard to selecting BFGC Architects Planners, Inc. (BFGC) to provide architectural services for the Fire Station No. 37 Project.
- (b) Approval of an agreement with BFGC for architectural consultant services for the Fire Station No. 37 Project, from the date of execution to January 31, 2012, in an amount not to exceed \$256,000.

CEQA: Exempt, File Nos. PP08-050 and PP09-150. Council District 6. (Public Works/Fire)

Item 8.1 Renumbered To Item 2.17

9. JOINT COUNCIL/REDEVELOPMENT AGENCY

The Council/Redevelopment Agency portion of the meeting convened at 5:00 p.m. to Consider Item 9.1 in a joint session.

9.1 Actions Related to National Basketball Association Franchise.

Recommendation: Approve a Memorandum of Understanding (MOU) by the City and Redevelopment Agency with San José Arena Management, LLC (Arena Manager) that sets forth general terms and the respective roles and responsibilities of the City and Arena Manager in their efforts to attract a National Basketball Association (NBA) franchise to locate in San José. CEQA: Exempt, File No. PP09-202. (City Manager's Office/ Redevelopment Agency)

Approved.

The Joint/Redevelopment Agency Board portion of the meeting was adjourned at 5:04 p.m.

- **Notice of City Engineer's Pending Decision on Final Maps**
None
- **Notice of City Engineer's Award of Construction Projects**
None.
- **Open Forum**
David Wall acknowledged the efforts of the Mayor and City Council for 2009 and expressed his support to the San José Police Department for keeping the residents safe.
- **Adjournment**
The Council of the City of San José was adjourned at 6:50 p.m. in memory of Jim Fox, noted San José downtown developer whose projects include many downtown landmarks such as the Hotel De Anza, One North First and the Sainte Claire Building. (Mayor)

8. JOINT REDEVELOPMENT AGENCY ITEMS

The Joint Redevelopment Agency Board convened at 5:06 p.m. to consider Items 8.1, 8.2, 8.3, 8.4 and 8.5 in a Joint Session.

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

Recommendation: Adoption of resolutions by the City Council and Redevelopment Agency Board:

- (a) Accepting the Annual Report of Financial Transactions of community redevelopment agencies for FY 2008-09 for the purpose of forwarding the annual report to the State Controller, in accordance with Community Redevelopment Law, Section 33080.1.
- (b) Approving the Independent Auditor's Report On Internal Control Over Financial Reporting And On Compliance And Other Matters Based On An Audit Of Financial Statement Performed In Accordance With Government Auditing Standards, (Compliance Report) as required by Health and Safety Code 33080.1

CEQA: Not a Project. [MERGED]

Resolution No. 75242 adopted.

Redevelopment Agency Board Resolution No. 5936 adopted.

8.2 City Council and Redevelopment Agency Board actions related to the FY 2009-2010 Cooperation Agreements between the City and Agency.

Recommendations:

- (a) Adoption of a resolution by the Redevelopment Agency Board approving an amendment to the Redevelopment Agency's FY 2009-10 Adopted Capital Budget, adding \$1,869,741 for City Support Services, and amending the FY 2009-10 Agency appropriations resolution.

Redevelopment Agency Board Resolution No. 5937 adopted.

- (b) Adoption of resolutions by the City Council and Redevelopment Agency Board authorizing the Executive Director and City Manager to negotiate and execute an amendment to the FY 2009-10 Cooperation Agreement for the Merged Redevelopment Project Area to make payments to the City for January and February 2010 City Services and project expenses.

CEQA: Not a Project. [MERGED]

Resolution No. 75243 adopted.

Redevelopment Agency Board Resolution No. 5938 adopted.

8. JOINT REDEVELOPMENT AGENCY ITEMS

8.3 City Council/Redevelopment Agency Board approval of the Mayor's Redevelopment Budget Message.

Recommendation: City Council and Redevelopment Agency Board consideration and approval of the Mayor's Redevelopment Agency Budget Message. (Mayor)
(Deferred from 12/8/09 - Item 8.1)

- (1) That the Mayor's Redevelopment Budget Message be amended to direct the City Manager and Redevelopment Agency Executive Director to prepare an analysis which is inclusive of the financing options proposed by Team San José as a means to initiate the Convention Center expansion during FY 2009-2010 as they complete their 45 day analysis called for by the Mayor.
- (2) The Mayor's Redevelopment Budget Message was approved, as amended:
 - (a) Initially require a loan from the 20% Affordable Housing Funds of no more than \$40M in Year 1 to help pay the Redevelopment Agency obligations to the State.
 - (b) Accept the Mayor's proposal for the use of \$10M in other funds to pay the State.
 - (c) Defer a final decision on any additional loans from the 20% Affordable Housing Funds to pay the State until the mid-year budget review in February 2010.
 - (d) Direct Staff to inform the State at the required deadline that the Redevelopment Agency will pay the required \$62M in Year 1 and \$13M in Year 2.
 - (e) Direct Staff to evaluate other sources of funds for the remainder of the obligation to the State (\$12M in Year 1 and \$13M in Year 2) and to include in this evaluation, issues of fairness, risk and cost of borrowing and to report back at the mid-year budget review.
- (3) In addition to the \$10 million that the Mayor has identified, at least another \$25M reduction in Affordable Housing Fund borrowing must be drawn from other sources under the proposal set out by Council Members Kalra and Nguyen.
- (4) In addition to the other options that the Redevelopment Agency, City Staff and the City Attorney might explore, the Staff should explore the following options at a minimum and should articulate a fully developed response to the question of whether the funding source is an appropriate one. These funds are listed in order of priority:
 - (a) Redevelopment Agency budget itself – additional savings generated from cuts in projects.
 - (b) City's Issuance of Commercial Paper, backed by the General Fund but with full reimbursement for costs by the Agency.
 - (c) Additional borrowing from two of the funds as identified in the Mayor's Budget Message:
 - (1) Fund 539, Sewage Treatment Plant Connection Fee (\$14.9M additional)
 - (2) Fund 432, Ice Centre Revenue Fund (\$3.1M additional funds)

8. JOINT REDEVELOPMENT AGENCY ITEMS

8.3 City Council/Redevelopment Agency Board approval of the Mayor's Redevelopment Budget Message (Cont'd.)

(Action Cont'd.)

- (4) (d) Temporary loans from other City funds (with interest paid by the Agency) namely current fund balances are in parenthesis.
- (1) Fund 423 Integrated Waste Management (\$8.7M)
 - (2) Fund 541 Sewer Service and Use Charge (\$16.5M)
 - (3) Fund 446, Storm Service Operating (\$8.3M)
 - (4) Fund 418, Library Parcel Tax (\$3.5M)
 - (5) Fund 426 Anti-Tobacco Master Settlement Agreement Revenue Fund (\$6.5M)
- (5) Executive Director directed to move forward with obtaining of bids for the Civic Auditorium Phase 2 but the award of bids was deferred to February 23, 2010 meeting.

Noes: Constant, Oliverio; Reed.

8.4 Redevelopment Agency Board approval of proposed contracts/payments.

Recommendation: Adoption of a resolution by the Redevelopment Agency Board:

- (a) Authorizing the Executive Director to negotiate and execute contracts and make specified payments during the Interim Budget Period) December 16, 2009, through February 23, 2010; and,
- (b) Authorizing the Executive Director negotiate and execute additional contracts, without additional Board approval, in an amount not to exceed \$10,000 per contract, capped at a cumulative maximum amount of \$100,000 during the Interim Budget Period.

Redevelopment Agency Board Resolution No. 5939 adopted.

- (c) Approving adjustments to the FY 2009-10 Adopted Capital Budget and amendments to the FY 2009-2010 Agency appropriations resolution.

Redevelopment Agency Board Resolution No. 5940 adopted.

8.5 Approval of the Agency's FY 2009-10 Revised Capital and Operating Budgets and the FY 2010-2015 CIP.

Recommendations: Redevelopment Agency Board approval of:

- (a) The Redevelopment Agency's Revised FY 2009-2010 Revenue, Capital and Operating Budgets; and,
- (b) The Redevelopment Agency's Capital Improvement Program (CIP) for FY 2010-15.

(Deferred from 12/8/09 - Item 8.2)

Deferred to 2/23/09.

The Council of the City of San José and Redevelopment Agency Board was adjourned at 6:48 p.m.