



CITY COUNCIL AGENDA

DECEMBER 6, 2011

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

DISTRICT 1
DISTRICT 2
DISTRICT 3
DISTRICT 4
DISTRICT 5

CHUCK REED MAYOR

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

DISTRICT 6
DISTRICT 7
DISTRICT 8
DISTRICT 9
DISTRICT 10

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

Welcome to the San José City Council meeting!

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

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

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

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

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

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

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

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

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

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

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

- **Call to Order and Roll Call**
9:00 a.m. - Closed Session, Call to Order in Council Chambers
Open Session, Labor Negotiations Update (See Item 3.2)
Adjourn to Closed Session in Council Chambers Conference Room, W133
See Separate Agenda
1:30 p.m. - Regular Session, Council Chambers, City Hall
- **Invocation (Mayor)**
Danny Sanchez, Calvary Chapel
- **Pledge of Allegiance**
- **Orders of the Day**

Items recommended to be added, dropped, or deferred are usually approved under Orders of the Day unless the Council directs otherwise.

- **Closed Session Report**

1. CEREMONIAL ITEMS

- 1.1 Presentation of a commendation to Peter's Bakery in celebrating 75 years of outstanding service as a small and successful business in providing memorable experiences through their products of baked good and desserts. (Campos)

2. CONSENT CALENDAR

Notice to the public: There will be no separate discussion of Consent Calendar items as they are considered to be routine by the City Council and will be adopted by one motion. If a member of the City Council, staff, or public requests discussion on a particular item, that item may be removed from the Consent Calendar and considered separately.

2.1 Approval of Minutes.

2.2 Final Adoption of Ordinances.

2.3 Approval of Council Committee Reports.

Recommendation: Approval of Council Committee Reports.

- (a) Rules and Open Government Committee Report of November 16, 2011. (Mayor)
- (b) Public Safety, Finance and Strategic Support Committee Report of November 17, 2011. (Constant)
- (c) [Ad Hoc Committee on Airport Competitiveness Report of August 18, 2011.](#)
(Mayor)
- (d) [Ad Hoc Committee on Airport Competitiveness Report of September 15, 2011.](#)
(Mayor)

2.4 Mayor and Council Excused Absence Requests.

2.5 City Council Travel Reports.

2.6 Report from the Council Liaison to the Retirement Boards.

2.7 [Lease of Airport Premises with G2 Secure Staff.](#)

Recommendation: Approve a [Third Amendment to Lease](#) of Airport Premises with G2 Secure Staff, LLC to extend the term for five years, from January 1, 2012 through December 31, 2016, with annual revenue to the City of approximately \$36,293. CEQA: Not a Project, File No. PP10-066(f), Lease of existing space for same use. (Airport)

2.8 [Master Agreement with Brown and Caldwell for Consultant Services for Storm Drainage Studies and General Engineering Services.](#)

Recommendation: Approve a [master agreement](#) with Brown and Caldwell for consultant services for Storm Drainage Studies and General Engineering Services from the date of execution to December 31, 2015, in an amount not to exceed \$500,000. CEQA: Exempt, File No. PP10-066. (Public Works)

2. CONSENT CALENDAR

2.9 [Downtown San José Property-Based Business Improvement District Financial Report.](#)

Recommendation: Accept the Downtown San José Property-Based Business Improvement District (PBID) Financial Report for FY 2010-2011, which includes a full audit report by an independent Certified Public Accountant as required by the agreement between the City of San José and the PBID. CEQA: Exempt, File No. PP08-095. (Transportation)

2.10 [Public Records Fees Waiver.](#)

Recommendation: As recommended by the Rules and Open Government Committee on November 16, 2011:

- (a) Approve an [ordinance](#) adding Section 1.17.015 of Chapter 1.17 of Title 1 of the San José Municipal Code to permit waiver of costs associated with requests for records pursuant to the California Public Records Act; and
- (b) Adopt a [resolution](#) amending the FY 2011-2012 Schedule of Fees and Charges (Resolution No. 72737, as amended) to allow the waiver of certain costs associated with Requests for Public Records, to be effective as specified in the ordinance listed in subsection (a).

(City Manager's Office)

[Rules Committee referral 11/16/11 – Item H(2)]

2.11 [Audit of Annual Form 700 Filers.](#)

Recommendation: As recommended by the Public Safety, Finance and Strategic Support Committee on November 17, 2011, accept the audit of Annual Form 700 Filers. (City Auditor)

[Public Safety, Finance and Strategic Support Committee referral 11/17/11 – Item D(8)]

2.12 [Follow-up Report on Supplemental Military Pay.](#)

Recommendation: As recommended by the Public Safety, Finance and Strategic Support Committee on November 17, 2011, accept the Follow-up Report on Supplemental Military Pay. (City Manager's Office)

[Public Safety, Finance and Strategic Support Committee referral 11/17/11 – Item D(10)]

2.13 [Agreement with Mobizent LLC for Mobile Identification Interface Services.](#)

Recommendation: Adopt a resolution authorizing the City Manager to negotiate and execute an amendment to the agreement with Mobizent LLC, (located in Edison New Jersey previously 3i Infotech Corporation) to extend the term of the agreement by two years ending on March 28, 2013, and additional extensions if necessary, for the purpose of completing Phases Three and Four of the project as previously approved by Council. CEQA: Not a Project, File No. PP10-066(a), Agreements and Contracts. (Finance)
(To be Deferred from 11/29/11 – Item 2.8)

3. STRATEGIC SUPPORT SERVICES

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

3.2 Labor Negotiations Update

Recommendation: Accept Labor Negotiations Update.
TO BE HEARD AT 9:00 A.M.

3.3 [Declaration of Fiscal and Service Level Emergency.](#)

[Memo from Mayor Reed](#)

[Fiscal Reform Plan](#)

[All Memos from Previous Council Meetings](#)

[Supplemental Memorandum from City Manager Debra Figone](#)

[Memo from Mayor Reed, Vice Mayor Nguyen and Council Members Constant, Herrera and Liccardo](#)

Recommendation:

- (a) Accept the attached City of San José Fiscal & Service Level Emergency Report.
- (b) Adopt a Resolution declaring a Fiscal and Service Level Emergency based on the City of San José Fiscal & Service Level Emergency Report, including the findings set forth in the [Resolution](#).

(Mayor)

[Deferred from 6/24/11 – Item 3.1, et al, and 9/20/11 – Item 3.4(a)]

3.4 [Consideration of Action on a Ballot Measure on Pension Reform.](#)

[Memo from Mayor Reed](#)

Recommendation:

- (a) Discussion and consideration of a Retirement Reform ballot measure for a March 6, 2012 election.
- (b) If Council wishes to proceed, adopt a [resolution](#) of the Council calling a special municipal election to be held on March 6, 2012, and, on its own motion, giving notice of the submission to the electors of the City of San José, the following measure at that election:

To maintain essential City services, shall the Charter be amended to reform retirement benefits of City employees and retirees by, among others: (1) increasing current employees' contributions; (2) establishing a voluntary reduced pension plan for current employees; (3) establishing pension cost and benefit limitations for new employees; (4) limiting disability retirements; (5) temporarily suspending retiree Cost of Living adjustments; and (6) requiring voter approval to increase future pension benefits?

- (c) Council discussion and consideration of permitting rebuttal arguments in the March 6, 2012 Voter's Sample Ballot, pursuant to Elections Code Section 9285, to be incorporated in the resolution calling the election
- (d) Council discussion and consideration of a resolution authorizing an individual member or members of the City Council to submit an argument in favor of the City measure on the March 6, 2012 Voter's Sample Ballot, pursuant to Elections Code Section 9282, to be incorporated in the resolution calling the election.

(Mayor)

3. STRATEGIC SUPPORT SERVICES

3.5 Discussion and Consideration of Council Action to Either Repeal Ordinance No. 28960 relating to Medical Marijuana or Call an Election.

Recommendation: Discussion and consideration of Council action to either repeal Ordinance No. 28960, which establishes regulations pertaining to medical marijuana collectives and to individual cultivation and use of medical marijuana, or to submit the Ordinance to the voters at a Municipal Election. (City Clerk)

3.6 [Police and Fire Retirement Plan Board of Administration and Federated City Employees Retirement System Board of Administration Interviews.](#) [Applicant Information](#) [Supplemental Memorandum](#)

Recommendation:

- (a) The City Council acknowledges receipt of the following:
 - (1) The Certification by the City Clerk of results of elections conducted among the Fire Department employee representative to the Police and Fire Retirement Systems,
 - (2) The Certification by the City Clerk of results of elections conducted among employee members of the Federated Retirement System,
- (b) At the Council's discretion:
 - (1) Appoint one active employee member to the Board of Administration of the Federated City Employees Retirement System (FCERS) to a term expiring November 30, 2015.
 - (2) Appoint Fire Department employee to the Board of Administration of the Police and Fire Department Retirement Plan to a term expiring November 30, 2015.

(City Clerk)

3.7 Comprehensive Annual Financial Report & Comprehensive Annual Debt Report.

Recommendation: Accept the following annual reports:

- (a) Comprehensive Annual Financial Report for the City of San José for Fiscal Year 2010-2011.
 - (b) Comprehensive Annual Debt Report for the City of San José for Fiscal Year 2010-2011.
- CEQA: Not a Project, File No. PP10-69 (a) Annual Reports. (Finance)

[Public Safety, Finance and Strategic Support Committee referral 10/20/11 – Items D(3) & D(4)]

RECOMMEND DEFERRAL TO 12/13/11 PER ADMINISTRATION

3. STRATEGIC SUPPORT SERVICES

3.8 [Ordinance Amending Title 16, Gaming Control.](#)

[Attachment – Memo from the City Clerk](#)

Recommendation: As recommended by the Public Safety, Finance and Strategic Support Committee on November 17, 2011, approve an [ordinance](#) amending Section 16.18.030 of Chapter 16.18 and Section 16.30.200 of Chapter 16.30 of Title 16 of the San José Municipal Code, the Gaming Control Regulatory Program Ordinance, to: (1) confine gaming to the single ground floor level of a permitted cardroom or to such other areas of a permitted cardroom as may be approved pursuant to the cardroom permit amendment procedure, (2) make the location of gaming in a cardroom a term and condition of the cardroom permit, and (3) make the requirement to apply for a cardroom permit amendment in order to be allowed to have gaming outside the single ground floor level of a cardroom retroactive to any application for a cardroom permit amendment pending on or after April 1, 2011. CEQA: Not a Project; File No. PP10-068(b), Municipal Code or Policy. [Public Safety, Finance and Strategic Support Committee referral 11/17/11 – Item D(2)]

3.9 [Team San José Quarterly Performance Report First Quarter Results Ending September 30, 2011.](#)

Recommendation: As recommended by the Public Safety, Finance and Strategic Support Committee on November 17, 2011, accept the Team San José Quarterly Performance Report First Quarter Results ending September 30, 2011. (Team San José) [Public Safety, Finance and Strategic Support Committee referral 11/17/11 – Item D(9)]
RECOMMEND DEFERRAL TO 12/13/11 PER ADMINISTRATION

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.1 [Conduct an ADMINISTRATIVE HEARING and Consider an APPEAL of the Planning Commission's Decision to Deny a Conditional Use Permit and Determination of Public Convenience or Necessity to Allow the Off-Sale of Alcohol at a Full-Service Grocery Store.](#)

Recommendation: Conduct an ADMINISTRATIVE HEARING and consider an APPEAL of the Planning Commission's decision to deny a Conditional Use Permit and Determination of Public Convenience or Necessity to allow the off-sale of alcohol at a full-service grocery store on a 6.48 gross-acre site in the CG Commercial General Zoning District, located on the northwest corner of Prospect Road and Saratoga Avenue (5205 Prospect Road, Suite 153)(West Valley Shopping Center, Inc. Owner/Sunflower Farmers Market, Applicant). CEQA: Exempt. The Director of Planning, Building and Code Enforcement recommends the Council uphold the appeal of the Planning Commission's decision and approve the subject Conditional Use Permit and make a Determination of Public Convenience or Necessity by finding that the required findings for a Conditional Use Permit can be made and find there is a significant overriding public benefit served by the proposed off-sale of alcohol and grant a Determination of Public Convenience or Necessity. CP11-054/ABC11-013 – District 1

4. COMMUNITY & ECONOMIC DEVELOPMENT

4.2 [Conduct an ADMINISTRATIVE HEARING and Consider an APPEAL of the Planning Commission’s Decision to Deny a Conditional Use Permit and Determination of Public Convenience or Necessity to Allow the Off-Sale of Beer and Wine at a Full-Service Grocery Store.](#)

Recommendation: Conduct an ADMINISTRATIVE HEARING and consider an APPEAL of the Planning Commission’s decision to deny a Conditional Use Permit and Determination of Public Convenience or Necessity to allow off-sale of beer and wine for a full-service grocery store in a 17,370 square-foot tenant space in a portion of a 35,000 square-foot existing building, on an approximately 2.30 gross-acre site in the CG Commercial General Zoning District, located on the southwest corner of East Santa Clara Street and South 7th Street (272 E SANTA CLARA ST)(Carlos Oropeza Legorreta, Owner; Fresh & Easy Neighborhood Market Scott Whitney, Developer). Council SNI: 13th Street. CEQA: Exempt. The Director of Planning, Building and Code Enforcement recommends the City Council uphold the appeal of the Planning Commission’s decision and approve the subject Conditional Use Permit and make a Determination of Public Convenience or Necessity by finding that the required findings for a Conditional Use Permit can be made and find there is a significant overriding public benefit served by the proposed off-sale of alcohol and grant a Determination of Public Convenience or Necessity.

CP11-040/ABC11-008 – District 3

5. NEIGHBORHOOD SERVICES

6. TRANSPORTATION & AVIATION SERVICES

7. ENVIRONMENTAL & UTILITY SERVICES

8. PUBLIC SAFETY SERVICES

9. JOINT COUNCIL/REDEVELOPMENT AGENCY

- **Open Forum**
Members of the Public are invited to speak on any item that does not appear on today's Agenda and that is within the subject matter jurisdiction of the City Council or Redevelopment Agency Board.
- **Continue RDA Board Meeting**
- **Adjournment**

CITY OF SAN JOSE CODE OF CONDUCT FOR PUBLIC MEETINGS IN THE COUNCIL CHAMBERS AND COMMITTEE ROOMS

The Code of Conduct is intended to promote open meetings that welcome debate of public policy issues being discussed by the City Council, Redevelopment Agency Board, their Committees, and City Boards and Commissions in an atmosphere of fairness, courtesy, and respect for differing points of view.

1. Public Meeting Decorum:

- a) Persons in the audience will refrain from behavior which will disrupt the public meeting. This will include making loud noises, clapping, shouting, booing, hissing or engaging in any other activity in a manner that disturbs, disrupts or impedes the orderly conduct of the meeting.
- b) Persons in the audience will refrain from creating, provoking or participating in any type of disturbance involving unwelcome physical contact.
- c) Persons in the audience will refrain from using cellular phones and/or pagers while the meeting is in session.
- d) Appropriate attire, including shoes and shirts are required in the Council Chambers and Committee Rooms at all times.
- e) Persons in the audience will not place their feet on the seats in front of them.
- f) No food, drink (other than bottled water with a cap), or chewing gum will be allowed in the Council Chambers and Committee Rooms, except as otherwise pre-approved by City staff.
- g) All persons entering the Council Chambers and Committee Rooms, including their bags, purses, briefcases and similar belongings, may be subject to search for weapons and other dangerous materials.

2. Signs, Objects or Symbolic Material:

- a) Objects and symbolic materials, such as signs or banners, will be allowed in the Council Chambers and Committee Rooms, with the following restrictions:
 - No objects will be larger than 2 feet by 3 feet.
 - No sticks, posts, poles or other such items will be attached to the signs or other symbolic materials.
 - The items cannot create a building maintenance problem or a fire or safety hazard.
- b) Persons with objects and symbolic materials such as signs must remain seated when displaying them and must not raise the items above shoulder level, obstruct the view or passage of other attendees, or otherwise disturb the business of the meeting.
- c) Objects that are deemed a threat to persons at the meeting or the facility infrastructure are not allowed. City staff is authorized to remove items and/or individuals from the Council Chambers and Committee Rooms if a threat exists or is perceived to exist. Prohibited items include, but are not limited to: firearms (including replicas and antiques), toy guns, explosive material, and ammunition; knives and other edged weapons; illegal drugs and drug paraphernalia; laser pointers, scissors, razors, scalpels, box cutting knives, and other cutting tools; letter openers, corkscrews, can openers with points, knitting needles, and hooks; hairspray, pepper spray, and aerosol containers; tools; glass containers; and large backpacks and suitcases that contain items unrelated to the meeting.

**CITY OF SAN JOSE CODE OF CONDUCT FOR PUBLIC MEETINGS IN
THE COUNCIL CHAMBERS AND COMMITTEE ROOMS (CONT'D.)**

3. Addressing the Council, Redevelopment Agency Board, Committee, Board or Commission:
- a) Persons wishing to speak on an agenda item or during open forum are requested to complete a speaker card and submit the card to the City Clerk or other administrative staff at the meeting.
 - b) Meeting attendees are usually given two (2) minutes to speak on any discussion item and/or during open forum; the time limit is in the discretion of the Chair of the meeting and may be limited when appropriate. Applicants and appellants in land use matters are usually given more time to speak.
 - c) Speakers should discuss topics related to City business on the agenda.
 - d) Speakers' comments should be addressed to the full body. Requests to engage the Mayor, Council Members, Board Members, Commissioners or Staff in conversation will not be honored. Abusive language is inappropriate.
 - e) Speakers will not bring to the podium any items other than a prepared written statement, writing materials, or objects that have been inspected by security staff.
 - f) If an individual wishes to submit written information, he or she may give it to the City Clerk or other administrative staff at the meeting.
 - g) Speakers and any other members of the public will not approach the dais at any time without prior consent from the Chair of the meeting.

Failure to comply with this Code of Conduct which will disturb, disrupt or impede the orderly conduct of the meeting may result in removal from the meeting and/or possible arrest.