

## MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, OCTOBER 23, 2018

The Council of the City of San José convened in Regular Session at 9:00 a.m. in the Council Chambers at City Hall.

**9:30 a.m.-** Closed Session, Call to Order in Council Chambers  
**Absent Councilmembers: None.**

**1:32 p.m.-** Regular Session, Council Chambers, City Hall  
**Absent Councilmembers: None.**

**6:07 p.m.-** Evening Session, Council Chambers, City Hall  
**Absent Councilmembers: None.**

### CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:00 a.m. to a Closed Session in Room W133; (A) to Confer with Real Property Designated Representatives Pursuant to Government Code Section 54956.8: Property Street Address, Parcel Number, or other Unique Reference of Property: 255 South Montgomery Street (APN 261-37-025), 8 South Montgomery Street (APN 259-38-130), 102 South Montgomery Street (APN 259-48-012), 510 West San Fernando Street (APN 259-48-011, 259-48-013), 150 South Montgomery Street (APN 259-48-059), 105 South Montgomery Street (APN 261-35-003, 261-35-006, 261-35-010), 645 Park Avenue (APN 261-35-014), 525 West Santa Clara Street/566 West Julian Street (APN 259-28-031, 259-28-041, 529-28-043, 259-28-044) West San Carlos Street (261-37-030) No Address (261-37-028); Negotiating Parties: Nanci Klein for the City of San José and Jay Bechtel for Google; Under Negotiation: The direction will concern price and terms of payment.

By unanimous consent, Council recessed from Closed Session at 9:59 a.m.; Council reconvened to Regular Session at 1:32 p.m. in the Council Chambers.

Present: Councilmembers: Arenas, Carrasco, Davis, Diep, Jimenez, Jones, Khamis, Nguyen, Peralez, Rocha; Liccardo.

Absent Councilmembers: All Present.

Access the video, the agenda and related reports for this meeting by visiting the City's website at <http://www.sanjoseca.gov/city> or <http://www.sanjoseca.gov/civiccentertv>. For information on any ordinance that is not hyperlinked to this document, please contact the Office of the City Clerk at (408) 535-1266.

## **INVOCATION (District 8)**

Scott Simmerock, Lead Pastor, Church on the Hill provided the Invocation.

## **PLEDGE OF ALLEGIANCE**

Mayor Sam Liccardo led the Pledge of Allegiance.

## **ORDERS OF THE DAY**

Upon motion by Councilmember Dev Davis, seconded by Councilmember Tam Nguyen, and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (11-0.)

## **CEREMONIAL ITEMS**

- 1.1** Mayor Sam Liccardo and Councilmember Chappie Jones presented a proclamation recognizing October 2018 as National Cybersecurity Awareness Month. (Jones)
- 1.2** Mayor Sam Liccardo, Councilmember Tam Nguyen and Councilmember Lan Diep presented a commendation to the Vietnamese Mass Media Club of Northern California for their contributions to the advancement of quality journalism in the City of San José. (Nguyen)  
*Heard in the evening.*
- 1.3** Mayor Sam Liccardo presented a proclamation declaring October 23, 2018 as Bob Kieve Day in the City of San José. (Mayor Liccardo)
- 1.4** Mayor Sam Liccardo and Councilmember Sergio Jimenez presented a proclamation declaring November 2018 as Family Caregiver Awareness Month to raise awareness of family caregiver issues, celebrate and increase support for family caregivers. (Jimenez)  
*Heard in the evening.*
- 1.5** Mayor Sam Liccardo and Councilmember Sylvia Arenas presented a proclamation recognizing Bullying Prevention Month. (Arenas)  
*Heard in the evening.*
- 1.6** Mayor Sam Liccardo and Councilmember Donald Rocha presented a commendation to San José Flash Power Soccer for outstanding accomplishments and honorable sportsmanship during the 2017-18 Season. (Rocha)

## **CONSENT CALENDAR**

Upon motion by Councilmember Johnny Khamis, seconded by Councilmember Chappie Jones and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (11-0.)

### **2.1 Approval of City Council Minutes.**

None provided.

## **2.2 Final Adoption of Ordinances.**

### **18-1459 Final Adoption of Ordinances.**

(a) Ord. No. 30173 - An Ordinance of the City of San José Amending Section 3.36.020.3 of Chapter 3.36 of Title 3 of the San José Municipal Code to Exclude a Nonpensionable Compensation Increase from the Definition of Compensation.

Action: Ordinance No. 30173 was adopted. (11-0.)

## **2.3 Approval of Council Committee Minutes.**

None provided.

## **2.4 Mayor and Council Excused Absence Requests.**

None provided.

## **2.5 City Council Travel Reports.**

None provided.

## **2.6 Report from the Council Liaison to the Retirement Boards.**

None provided.

### **2.7 18-1403 DROP - Actions Related to the Sale of Surplus Property Located at 435 North 2nd Street.**

Documents Filed: Memorandum from Deputy City Manager/Director of Economic Development Kim Walesh, dated October 3, 2018.

Action: Item dropped per Administration.

### **2.8 18-1404 Actions Related to the Agreement with American Tower, LP. for the Use of Space at Coyote Peak.**

Approve the License Agreement with American Tower, L.P and the City of San José for the use of the communications facility and radio tower on Coyote Peak within the Santa Teresa County Park for an initial five-year term retroactive to July 1, 2017, with three five-year renewal options.

The City shall pay annual rent of \$43,450 for the first year which will be adjusted by a cost of living adjustment of 3% on each anniversary date.

CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. (Economic Development)

**2.8 (Cont'd.)**

Documents Filed: Memorandum from Deputy City Manager/Director of Economic Development Kim Welsh, dated October 11, 2018, recommending approval of a licensing agreement.

Action: Actions Related to the Agreement with American Tower, LP. for the Use of Space at Coyote Peak were approved. (11-0.)

**2.9 18-1405 Amendment to the Agreement with Our City Forest for Operating Services.**

Approve the First Amendment to the Operating Grant Agreement between the City and Our City Forest, which will provide an additional \$120,000 in one-time funds to Our City Forest for expanded fund-raising activities and increase the total grant amount including these one-time funds from \$179,014 to \$299,014.

CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. (Transportation)

Documents Filed: Memorandum from John Ristow, Deputy Director of Department of Transportation, dated October 10, 2018, recommending approval of a first amendment to an operating grant agreement.

Action: the First Amendment to the Operating Grant Agreement between the City and Our City Forest was approved. (11-0.)

**2.10 18-1406 Agreement with Cal Engineering & Geology, Inc. for the 8827-FEMA-Kelley Park Storm Outfall and Alum Rock Park Mineral Springs Bridge Embankment Projects (SCSJC88/PW1137; SCSJG01/PW745).**

Approve an agreement with Cal Engineering & Geology, Inc. for engineering consultant services for the Kelley Park Storm Outfall & Alum Rock Park Mineral Springs Bridge Embankment Projects from the date of execution to October 31, 2021, for a maximum total compensation amount of \$659,312.

CEQA: Statutorily Exempt, CEQA Guidelines Section 15269 (a), Emergency Projects, File No. PP18-003. Council District 5 and 7. (Public Works)

Documents Filed: Memorandum from Director of Public Works, Matt Cano, dated October 10, 2018, recommending approval of an agreement.

Action: The agreement with Cal Engineering & Geology, Inc., was approved. (11-0.)

**2.11 18-1407 Agreement with Fall Creek Engineering, Inc. for the 8831-FEMA-Japanese Friendship Garden Koi Pond and Pump House Project (SCSJE81/PW1051).**

(a) Approve an agreement with Fall Creek Engineering, Inc. to provide engineering consultant services for the Japanese Friendship Garden Koi Pond and Pump House Project from the date of execution to October 31, 2021, in a maximum total compensation amount of \$605,188.

## 2.11 (Cont'd.)

(b) Adopt a resolution authorizing the Director of Public Works to negotiate and execute any amendments to the scope of services provided that the total cost of the agreement does not increase. CEQA: Statutorily Exempt, CEQA Guidelines Section 15269 (a), Emergency Projects, File No. PP18-003. Council District 7. (Public Works)

Documents Filed: Memorandum from Director of Public Works, Matt Cano, dated October 10, 2018, recommending approval of an agreement.

Action: Resolution No. 78832, entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Public Works to Negotiate and Execute any Amendments to the Agreement with Fall Creek Engineering, Inc. for the Japanese Friendship Garden Koi Pond and Pump House Project Necessary to Modify the Scope of Services Provided that the Total Cost of the Agreement Does Not Increase”, was adopted. (11-0.)

## 2.12 18-1463 **Approval of Day on the Bay Sponsored by Council District 4 as a City Council Sponsored Special Event to Expend City Funds and Accept Donations of Materials and Services for the Event.**

As recommended by the Rules and Open Government Committee on October 17, 2018:

1. Retroactively approve the Day on the Bay scheduled on October 17, 2018 as a City Council sponsored Special Event and approve the expenditure of funds; and
2. Approve and accept donations from various individuals, businesses, or community groups to support the event.

CEQA: Not a Project, File No. PP17-011, Temporary Special Events resulting in no changes to the physical environment. (Diep)  
[Rules Committee referral 10/17/18 - Item G.1.a]

Documents Filed: Memorandum from City Clerk Toni J. Taber, dated October 17, 2018, transmitting the recommendations of the Rules and Open Government Committee.

Action: Day on the Bay sponsored by Council District 4 as a City Council sponsored special event was approved, and expenditure of funds and authorization to accept donations from various individuals, businesses or community groups to support the event, was approved. (11-0.)

## 2.13 18-1461 **Appointment of Councilmember Jimenez as City Representative on the Caltrain Local Policy Makers Group.**

As referred by the Rules and Open Government Committee on October 17, 2018, appoint Councilmember Sergio Jimenez as the City representative on the Caltrain Local Policy Makers Group.

CEQA: Not a Project, File No. PP17-010, City Organizational & Administrative Activities resulting in no changes to the physical environment. (Mayor) [Rules and Open Government referral 10/17/18 - Item F.1.a]

## 2.13 (Cont'd.)

Documents Filed: Memorandum from City Clerk Toni J. Taber, dated October 17, 2018, transmitting the recommendations of the Rules and Open Government Committee.

Action: The appointment of Councilmember Jimenez was approved. (11-0.)

## 2.14 18-1462 Updated Committee Appointments.

As referred by the Rules and Open Government Committee on October 17, 2018, appoint Nicole Inamine as an Ex-Officio Board Member to the San José Arena Authority Board to replace Dylan Simon.  
CEQA: Not a Project, File No. PP17-010, City Organizational & Administrative Activities resulting in no change to the physical environment. (Mayor)  
[Rules and Open Government referral 10/17/18 - Item F.1.b]

Documents Filed: Memorandum from City Clerk Toni J. Taber, dated October 17, 2018, transmitting the recommendations of the Rules and Open Government Committee.

Action: The appointment of Nicole Inamine was approved. (11-0.)

## STRATEGIC SUPPORT

### 3.1 Report of the City Manager, David Sykes (Verbal Report)

None provided.

### 3.3 18-1408 Approval of the Terms of an Agreement with the International Union of Operating Engineers, Local Union No. 3 (OE#3) for the Term of October 1, 2018 through September 30, 2019.

Adopt a resolution approving the terms of a collective bargaining agreement between the City and the International Union of Operating Engineers, Local Union No. 3 (OE#3) for the term of October 1, 2018 through September 30, 2019, and authorizing the City Manager to execute the agreement with those terms.  
CEQA: Not a Project, File No. PP17-010. (City Manager)

Documents Filed: Joint memorandum from Director of Employee Relations/Human Resources, Jennifer Schembri and Budget Director Margaret McCahan, dated October 9, 2018, recommending adoption of a resolution.

Action: Upon motion by Councilmember Raul Peralez, seconded by Councilmember Sergio Jimenez and carried unanimously, Resolution No. 78833, entitled: “A Resolution of the Council of the City of San José Approving the Terms of an Agreement between the City of San José and the Operating Engineers, Local No. 3 (OE#3), with a Term of October 1, 2018 – September 30, 2019, and Authorizing the City Manager to Execute an Agreement with OE#3”, was adopted. (10-0-0-1. Abstain: Arenas.)

**3.4 18-1410 Legal Update - U.S. Supreme Court’s Decision in Janus v. AFSCME and Recent California Legislation.**

As referred by the Rules and Open Government Committee on September 19, 2018, adopt a resolution urging the City of San José to work with public sector unions in San José to ensure their health and success; and support the freedom of city employees to participate in unions post Janus v. AFSCME.

CEQA: Not a Project, File No. PP17-010, City Organizational & Administrative Activities resulting in no changes to the physical environment. (Peralez) [Rules and Open Government referral 9/19/18 - Item D.3]

Documents Filed: (1) Memorandum from Councilmember Raul Peralez, dated April 11, 2018. (2) Memorandum from City Attorney Richard Doyle, dated October 18, 2018, regarding mandatory access to new employee orientation.

Public Comments: Jeffrey Buchanan and Matt Mason offered support to the memorandum from Councilmember Raul Peralez.

Motion: Councilmember Raul Peralez moved approval of his memorandum dated April 11, 2018. The motion was seconded by Councilmember Donald Rocha.

Councilmember Lan Diep requested a friendly amendment, indicating language that would denote a more neutral role of the government. Councilmember Raul Peralez respectfully declined the friendly amendment.

Mayor Sam Liccardo asked if Councilmember Raul Peralez may be open to changing the word “ensure” to “enable” to soften the language. City Attorney Richard Doyle offered input at the Councilmember’s request. Councilmember Raul Peralez respectfully declined this change to his motion.

Substitute Motion: Councilmember Chappie Jones moved approval of the memorandum from Councilmember Raul Peralez, dated September 9, 2018, with the word “ensure” replaced with the word “enable”. Councilmember Tam Nguyen seconded the motion.

Action: On a call for the question, the substitute motion carried, and Resolution No. 78834, entitled: “A Resolution of the Council of the City of San José Urging the City to Work with Public Sector Unions in San Jose to Enable their Health and Success, and to Support the Freedom of City Employees to Participate in Unions Following the Supreme Court of the United States Decision in Janus V. AFSCME”, was adopted, including memorandum from Councilmember Raul Peralez, dated September 9, 2018, with the word “ensure” replaced with the word “enable” as indicated:

1. That the City Council adopt a resolution urging the City of San Jose to work with public sector unions to ~~ensure~~ enable their health and success; and support the freedom of city employees to participate in unions post Janus v. AFSCME.

with the following addition:

2. Request that City Staff works with the Bargaining Units to host at minimum quarterly information sessions for promotees for a period of two years.

(8-3. Noes: Jimenez, Peralez, Rocha.)

### 3.5 18-1419 **Proposed Public Charge Rule.**

Adopt a resolution opposing the proposed Public Charge rule released by the Department of Homeland Security and published by the Federal Registrar on October 10, 2018, and direct the City Attorney's Office to submit a statement on behalf of the City during the public comment period.

CEQA: Not a Project, File No. PP17-010, City Organizational & Administrative Activities resulting in no changes to the physical environment. (City Manager)

Documents Filed: (1) Joint memorandum from Mayor Sam Liccardo and Councilmembers Chappie Jones, Sergio Jimenez and Dev Davis, dated October 19, 2018, recommending acceptance of staff recommendations with additional direction to the City Attorney's Office. (2) Memorandum from Chief of Staff, Office of the City Manager, Lee Wilcox, dated October 10, 2018, recommending adoption of a resolution.

Assistant to the City Manager, Zulma Maciel offered a presentation.

Motion: Councilmember Dev Davis moved approval of the October 29, 2018 memorandum she cosigned with Mayor Sam Liccardo and Councilmembers. Upon City Attorney Richard Doyle's request, she included language that the City Attorney's Office work with the Attorney General's Office in this matter. The motion was seconded by Councilmember Sergio Jimenez.

Action: Upon motion by Resolution No. 78835, entitled: "A Resolution of the Council of the City of San José Opposing the Proposed Public Charge Rule Released by the United States Department of Homeland Security and Published by the Federal Register on October 10, 2018, and Directing the City Attorney to Submit a Statement on Behalf of the City of San José During the Public Comment Period", was adopted, including the joint memorandum from Mayor Sam Liccardo, and Councilmembers Davis, Jones and Jimenez, dated October 19, 2018, to:

Accept staff recommendation to adopt a resolution opposing the proposed Public Charge rule released by the Department of Homeland Security and published in the Federal Registrar on October 10, 2018, and direct the City Attorney's Office to submit a statement on behalf of the City during the public comment period" and, per the City Attorney, include direction that the City Attorney's Office work with the Attorney General's Office in this matter. (11-0.)



## COMMUNITY & ECONOMIC DEVELOPMENT

### 4.1 18-1411 Actions Related to the 8151 - Large Trash Capture Device - Phase VI Project.

Adopt a resolution authorizing the Director of Public Works to:

- (a) Award and execute the 8151 - Large Trash Capture Device - Phase VI Project construction contract to the lowest responsive and responsible bidder, in a total amount not to exceed \$5,250,000 and to approve a construction contingency of 15% percent of the amount of the construction contract, not to exceed \$787,500;
- (b) Decide any timely bid protest(s), make the City's final determination as to the lowest responsive bidder that is responsible, or reject all bids and rebid the project; and
- (c) Negotiate and execute any single and/or multiple change orders for the 8151 - Large Trash Capture Device - Phase VI Project in excess of \$100,000 up to the amount of the contingency of \$787,500.

CEQA: Addendum to a Mitigated Negative Declaration adopted on January 22, 2009 for a previous project (File No. PP08-257; public project for the Citywide Large Trash Capture Device Installation), File No. PP15-081. (Public Works)

Documents Filed: Memorandum from Director of Public Works, Matt Cano, dated October 10, 2018, recommending adoption of a resolution.

Deputy Director of Public Works, Michael O'Connell, responded to questions.

Action: Upon motion by Councilmember Sergio Jimenez, seconded by Councilmember Dev Davis and carried unanimously, Resolution No. 78836, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Public Works to 1) Award a Construction Contract for the 8151 – Large Trash Capture Device – Phase VI Project to the Lowest Responsive and Responsible Bidder in an Amount not to Exceed \$5,200,000 and to Approve a Fifteen (15) Percent Contingency in an Amount not to Exceed \$787,500; 2) Decide any Timely Bid Protest(s), Make the City's Final Determination as to the Lowest Responsive Bidder that is Responsible, or Reject All Bids and Re-Bid the Project; 3) Negotiate and Execute any Single and/or Multiple Change Orders for the Project in Excess of \$100,000 up to the Amount of the Contingency", was adopted. (11-0.)

## NEIGHBORHOOD SERVICES

### 5.1 18-1412 Audit of Community Center Reuse.

As recommended by the Neighborhood Services and Education Committee on September 13, 2018, accept the results of the audit of the Reuse of Community Centers Program.

CEQA: Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action. (City Auditor)

[Neighborhood Services and Education Committee referral 9/13/18 - Item (d)3.]

## 5.1 (Cont'd.)

Documents Filed: (1) Memorandum from Mayor Sam Liccardo, dated October 23, 2018, recommending acceptance of the report with additional direction. (2) Joint memorandum from Councilmember Sergio Jimenez and Councilmember Raul Peralez, dated October 19, 2018. (3) Memorandum from Councilmember Sylvia Arenas, dated October 22, 2018 recommending acceptance of the report with additional direction. (4) Memorandum from City Auditor Sharon Erickson, dated September 6, 2018, providing the Audit of Community Center Reuse.

City Auditor Sharon Erickson provided a presentation, and Director of Public Works Jon Cicirelli and staff continued with a PRNS reuse administration discussion.

Motion: Councilmember Sergio Jimenez moved the memorandum he cosigned with Councilmember Raul Peralez, dated October 19, 2018 with changes as indicated below in “Action” and including Mayor Sam Liccardo’s memorandum dated October 23, 2018 and Councilmember Sylvia Arenas’ memorandum dated October 22, 2018. Councilmember Sylvia Arenas seconded the motion.

Extensive discussion followed. Councilmember Donald Rocha noted that he could not accept the motion on the floor citing concerns regarding use of the public’s community centers.

Action: On a call for the question, the motion carried, including the memorandum from Mayor Sam Liccardo, dated October 23, 2018, with changes as indicated:

1. Accept the Community Center Reuse audit and Staff’s Response;
2. Direct PRNS staff to update the Neighborhood Services and Education Committee by December 2018 as to ~~(a) the status of PRNS’s Greenprint, and its target date for completion; and (b)~~ a full, written disclosure of the process and rationale for the selection of community center providers that failed to timely respond to the 2015 and 2017 RFQ’s, or that failed to perform as well as competing providers who were not selected;
3. As to those community center facilities requiring substantial ongoing maintenance and repair, accelerate the Housing Department’s current work analyzing sites that could be rehabilitated in financial partnership with a developer executing a plan to construct mixed-use housing development above or adjacent to the rebuilt/rehabilitated community center space, with minimal City funding. Direct City Manager to issue an Information Memorandum by January 2019 describing the next steps in this process, evaluating options for an RFQ, RFP, or engagement with a land use consultant, as appropriate; ~~(4) Return to Council by January 2019~~ *Discuss provision in April 2019, returning to the Neighborhood Services and Education Committee regarding whether to* (a) terminate the suspension of competitive processes for re-use of facilities; and (b) discuss whether the City should hire a consultant to make data-based, strategic recommendations for overhauling the re-use facility program, with a work plan that might include:
  - a. Resetting current re-use center rents, cost-sharing of utilities and maintenance, and revenue-generation practices aligned with a coherent grant-making strategy;
  - b. Adoption of software to facilitate on-line reservations and facility management;
  - c. Assessment of the cost of appropriate staffing of facility management, comparing both in-house and contracted options;
  - d. Better alignment of service provision in community centers with (a) geographically-relevant and neighborhood-specific community needs for services, and (b) citywide strategies and policies, including those relating to serving seniors, youth, residents with disabilities, gang prevention, and digital literacy.

## 5.1 (Cont'd.)

**Also including the memorandum from Councilmembers Sergio Jimenez and Raul Peralez, dated October 19, 2018, with changes as indicated:**

1. Accept the Audit of Community Center Reuse
2. Direct PRNS staff to bring a report back to the Neighborhood Services and Education Committee by ~~February~~ April of 2019 on the following:
  - a. The status of near-term recommendations as agreed upon by PRNS;
  - b. A list of centers that could potentially move from Reuse to Hybrid using PRNS determined criteria;
  - c. Cost estimates for converting said centers from Reuse to Hybrid centers
3. Direct PRNS to begin discussions with school district partners to evaluate whether current agreements meet student and community needs.

**And include the memorandum from Councilmember Sylvia Arenas, dated October 22, 2018, to: Accept audit and administration response and:**

1. Incorporate the Recreation and Community Services Division to the process of implementing changes that result from this audit and overseeing the City's Community Center Reuse program.
2. Add to next steps a review of whether reuse providers are offering programming that is responsive to community needs and culturally appropriate and report back steps to ensure cultural responsiveness.
3. Incorporate requirements into future plans and contracts that set clear goals and rules for facilities to be fully operational throughout the day.
4. Fully and quickly implement a comprehensive tracking of background checks for all program staff and volunteers.
5. Consider a strategy for requiring reuse providers to make appropriate contributions towards basic wear and tear and maintenance costs - utilizing a sliding scale model and consider allowing either in-kind or dollar contributions.
6. Produce an easy-to-use scheduling platform for the community to utilize open facility space to its maximum capacity and confirm that lead service providers are following city rules in regards to partnering with additional service providers.
7. Present an update on all audit recommendations to the Neighborhood Services and Education Committee during the spring budgeting process. In this report to NSE please identify and present any additional resources necessary in order to meet the recommendations of this memo and the findings of the reuse audit.

**(10-1. Noes: Rocha.)**

## ENVIRONMENTAL & UTILITY SERVICES

### 7.1 18-1413 **Report on Bids and Award of a Contract for the 8073 - Blower Improvements Project at the Regional Wastewater Facility.**

(a) Report on bids and award of a construction contract for the 8073 - Blower Improvements Project to the low bidder, Monterey Mechanical Company, for the base bid and Add Alternate No. 1, in the amount of \$29,498,000, and approval of a contingency in the amount of \$4,425,000.

(b) Adopt a resolution authorizing the Director of Public Works to negotiate and execute any single and/or multiple change orders in excess of \$100,000, up to the amount of the contingency of \$4,425,000.  
CEQA: Categorically Exempt, CEQA Guidelines Section 15301, Existing Facilities, File No. PP16-124. (Environmental Services/Public Works)

Motion: Councilmember Sergio Jimenez moved approval of staff's recommendations, and the motion was seconded by Councilmember Lan Diep.

Environmental Services Department staff responded to questions.

Substitute Motion: Councilmember Johnny Khamis moved deferral of this item to October 30, 2018. Councilmember Donald Rocha seconded the motion.

Action: On a call for the question, the substitute motion carried unanimously, and this item was deferred to the Council meeting of October 30, 2018.

## OPEN FORUM

Steven Hazel offered personal observations.

*Council recessed at 5:15 p.m. and reconvened the evening session at 6 p.m.*

## 10. LAND USE

### 10.1 Land Use on Consent Calendar

(a) **18-1414 C18-011 - Conforming Rezoning for Real Property Located at 2462 Aborn Road.**

Consideration of an ordinance of the City of San José rezoning a 0.29-gross acre site, located at 2462 Aborn Road from the A Agricultural Zoning District to R-1-8 Single-Family Residence Zoning District.

CEQA: Determination of Consistency with the Envision San José 2040 General Plan Final Program EIR (Resolution No. 76041), the Envision San José General Plan Supplemental EIR (Resolution No. 77617), and Addenda thereto. Director of Planning, Building and Code Enforcement recommends approval. (Planning, Building and Code Enforcement)  
C18-011 - Council District 8

(b) **18-1415 C18-014 - Conforming Rezoning for Real Property Located at 0 Pegasus Court.**

Consideration of an ordinance of the City of San José rezoning an approximately 0.44-gross acre site, located at the south side of Pegasus Way, approximately 200 feet easterly of Tulare Hill Road, from the A Agricultural Zoning District to the R-1-8 Single-Family Residence Zoning District.

CEQA: Determination of Consistency with the Envision San José 2040 General Plan Final Program EIR (Resolution No. 76041), the Envision San José 2040 General Plan Supplemental EIR (Resolution 77617), Addenda thereto. Director of Planning, Building and Code Enforcement recommends approval. (Planning, Building and Code Enforcement)  
C18-014 - Council District 2

Documents Filed: City Council Staff Reports for File No. C18-011 and C18-014 provided by Rosalynn Hughey, Director, Planning, Building and Code Enforcement, dated October 11, 2018.

Action: Upon motion by Vice Mayor Magdalena Carrasco, seconded by Councilmember Tam Nguyen and carried unanimously, Ordinance No. 30174, entitled “An Ordinance of the City of San José Rezoning Certain Real Property of Approximately 0.29 Gross Acre Situated on the South Side of Aborn Road, approximately 111 Feet Easterly of Nieman Boulevard (2462 Aborn Road) from the A Agricultural Zoning District to the R-1-8 Single-Family Zoning District”, and Ordinance No. 30175, entitled “An Ordinance of the City of San José Rezoning Certain Real Property of Approximately 0.44 Gross Acre Situated on the South Side of Pegasus Way, Approximately 200 Feet Easterly of Tulare Hill Road (APN: 706-11-021), from the A Agricultural Zoning District to the R-1-8 Single-Family Zoning District”, were passed for publication. (11-0.)

**END OF CONSENT CALENDAR**

## 10 Land Use - Regular Agenda

### *GENERAL PLAN HEARING (THIRD CYCLE) CONTINUED FROM SEPTEMBER 25, 2018*

#### **10.2 18-1417 PDC14-051/PD16-019 - Planned Development Rezoning and Planned Development Permit for Real Property Located at 4200 Dove Hill Road.**

(a) Adopt a resolution adopting the Dove Hill Medical Care Facility Project Mitigated Negative Declaration, for which an Initial Study was prepared, and adopting a related Mitigation Monitoring and Reporting Program, all in accordance to the California Environmental Quality Act, as amended.

(b) Consideration of an ordinance of the City of San José rezoning an approximately 21.0-gross acre site, located on the east side of Dove Hill Road, approximately 500 feet north of Hassler Parkway, from the A Agricultural Zoning District to the PQP(PD) Planned Development Zoning District to allow a Medical Care Facility with up to 248 beds on an approximately 3.0-acre portion of a 21-gross acre site, with the remaining 18.0 acres to be kept as open space.

(c) Adopt a resolution approving a Planned Development Permit, subject to conditions, to allow the demolition of approximately 25 buildings/structures, the construction of a Medical Care Facility with up to 248 beds, and the removal of seven ordinance-size trees on an approximately 3.0-acre portion of a 21.0-gross acre site.

CEQA: Mitigated Negative Declaration for the Dove Hill Medical Care Facility Project, File Nos. PDC14-051 and PD16-019.

Planning Commission recommends approval (5-0-2, Vora and Griswold absent). (Planning, Building and Code Enforcement)

PDC14-051 & PD16-019 - Council District 8

[Continued from City Council Meeting of August 28, 2018-Item 10.2 (File No. 18-1133) and from September 25, 2018 - Item 10.3 (18-1292)]

Documents Filed: (1) Memorandum from Councilmember Sylvia Arenas, dated October 23, 2018, recommending additional conditions to the resolution. (2) Memorandum from City Clerk Toni J. Taber, CMC, dated October 23, 2018, transmitting the Memorandum from Planning Commission Secretary, Rosalynn Hughey, dated August 17, 2018 providing the Planning Commission recommendations. (3) Supplemental memorandum from Rosalynn Hughey, Director, Planning, Building and Code Enforcement, dated October 18, 2018, providing additional public comments to the original hearing.

Rosalynn Hughey, Director, Planning, Building and Code Enforcement provided an introduction.

Public Comments: Sal Caruso, representing the Applicant, offered merits of the project. Warren Gannon, Sheri Wolfgram, Joan Huffman, Ann Green and Josue Garcia expressed support. Expressing concerns and safety issues were: Michael Lozeau, Cynthia Tillo, Sunondo Ghosh, Devasena Reddy, Avanti Pakrasi, Stephen Hazel, Blair Beekman and Rag Kidiyoor.

## 10.2 (Cont'd.)

Councilmembers asked additional questions of Sal Caruso and Fire Chief Curtis Jacobson.

Action: Upon motion by Councilmember Sylvia Arenas, seconded by Councilmember Donald Rocha and carried unanimously, Resolution No. 78838, entitled: “A Resolution of the Council of the City of San José Adopting the Dove Hill Medical Care Facility Project Mitigated Negative Declaration for which an Initial Study was Prepared, all in Accordance with the California Environmental Quality Act, as Amended, and Adopting a Related Mitigation Monitoring and Reporting Program”; and Resolution No. 78839, entitled: “A Resolution of the Council of the City of San José Approving, Subject to Conditions, a Planned Development Permit to Allow the Demolition of Approximately 25 Buildings and Structures, the Construction of a Medical Care Facility with up to 248 Beds, and the Removal of Seven Ordinance-Size Trees on an Approximately 3.0-Acre Portion of a 21.0-Gross Acres Site, Located at the East Side of Dove Hill Road, Approximately 500 Feet North of Hassler Parkway (4200 Dove Hill Road)”, were adopted; and Ordinance No. 30176, entitled “An Ordinance of the City of San José Rezoning Certain Real Property of Approximately 21-Gross Acres Situated on the East Side of Dove Hill Road Approximately 500 Feet North of Hassler Parkway (4200 Dove Hill Road) from the A Agricultural Zoning District to the PQP(PD) Planned Development Zoning District”, was passed for publication, including Councilmember Sylvia Arenas memorandum dated October 23, 2018, adding the following conditions to the resolution approving the permit:

- 1) The Permittee shall submit its construction management plan to the City which shall include the following limitations during construction of the project in addition to any other requirements of the City:
  - (a) limit parking on Hassler Parkway;
  - (b) consistently maintain two lanes of traffic flow on existing roads during the duration of construction, excepting improvement work in the public right of way; and
  - (c) limit construction trips during AM and PM peak hour travel times.
- 2) Prior to and during construction on the project site and public right of way, the Permittee shall erect signs upon its site facing Hassler Parkway that are readily visible and readable from Hassler Parkway and which specify the contact information and contact hours for its construction manager to receive any complaints from the public.
- 3) Any application to extend the permit shall require public notice, in addition to that otherwise required by City policy, to properties within 2,000 feet of the boundaries of the project site, including properties on both sides of any cul-de-sac that is within 2,000 feet of the boundaries of the project site, excepting the project boundary on Dove Road.
- 4) Permittee has voluntarily agreed to the following conditions of approval to construct and install at its own cost the following improvements:
  - a. Construction of a sidewalk to City standards on Dove Road, north of Hassler Parkway, as required by staff in its memorandum;
  - b. Installation of edge lines on Dove Road between Hassler Parkway and Hellyer Ave, as recommended in staffs first supplemental memo
  - c. Installation of an electronic speed sign on Hassler Parkway for westbound/downhill traffic, as suggested in staffs first supplemental memo.
- 5) Permittee has voluntarily agreed to permit public access to the outdoor space nearest to the Dove Road entrance, as depicted by the red boundary on the attached rendering of the site,

*(Item Continued on the Next Page)*

## 10.2 (Cont'd.)

on the condition that members of the public check in at the front desk and meet clearance requirements for the facility. The Permittee may revoke and suspend its consent to permit entry to the outdoor accessible private space at any time in the event that conflicts arise or if public access becomes notably disruptive to the seniors in the facility's care.

6) Permittee voluntarily agrees and shall establish the shift time for the night shift so that the night shift ends and the following shift begins no later than 6:00 am in order to remove employee trips from the trips from the AM peak travel time.

Provide the following direction to staff:

1) One year after the completion of construction, upon request from D8 office or community members, the Department of Transportation's Traffic Safety team will consider conducting an updated traffic safety study of Hassler Parkway and may suggest changes and improvements to be performed by the City subject to availability of funding.

2) Upon approval of the Improvement Plan for the project, including the plans for the sewage system improvements, the Department of Public Works shall make the improvement plan available online for public information.

### (11-0.)

## 10.3 18-1416 **PDC17 058, PT17 063, PD17 029 - Planned Development Rezoning, Vesting Tentative Map, and Planned Development Permit, for Real Property Located at 715 West Julian Street.**

(a) Adopt a resolution approving an Addendum to the Diridon Station Area Plan Final Program EIR (Resolution No.77096), Envision San José 2040 General Plan Final Program EIR (Resolution No. 76041), Supplemental EIR (Resolution No. 77617), and Addenda thereto, in accordance to the California Environmental Quality Act, as amended.

(b) Consideration of an ordinance of the City of San José rezoning a 1.22 gross acre site, located at 715 West Julian Street from the CP Commercial Pedestrian Zoning District and LI Light Industrial Zoning District to the CP(PD) Planned Development Zoning District to allow up to 249 residences with a minimum 0.5 floor area ratio of commercial uses (up to 26,585 square feet).

(c) Adopt a resolution approving a Vesting Tentative Map, subject to conditions, to combine two parcels into one parcel; all on a 1.22 gross acre site.

(d) Adopt a resolution approving a Planned Development Permit, subject to conditions, to demolish five existing buildings, remove six ordinance size trees, construct a mixed use development with 249 multi-family residential units and 26,585 square feet of ground level commercial space.

CEQA: Addendum to the Diridon Station Area Plan Final Program EIR (Resolution No.77096), Envision San José 2040 General Plan Final Program EIR (Resolution No. 76041), Envision San José 2040 General Plan Supplemental Environmental Impact Report



10.3 (Cont'd.)

Supplemental EIR (Resolution No. 77617), and Addenda thereto. Planning Commission recommends approval (5-0-1-1, Yesney absent, Leyba abstained). (Planning, Building and Code Enforcement)  
PDC17-058, PT17-063, PD17-029 - Council District 6

Documents Filed: (1) Memorandum from Planning Commission Secretary, Rosalynn Hughey, dated October 12, 2018 transmitting the Planning Commission recommendations, including the Planning Commission Staff Report, dated September 19, 2018. (2) Supplemental memorandum from Rosalynn Hughey, Director, Planning, Building and Code Enforcement, dated October 19, 2018, providing additional comments from the public on the Initial Study/Addendum.

Public Comments: Erik Schoennauer, the Schoennauer Company, spoke to the merits of the project.

Rosalynn Hughey, Director, Planning, Building and Code Enforcement read Ellis Act language into the record as noted below in “Action”.

Action: Upon motion by Councilmember Dev Davis, seconded by Councilmember Tam Nguyen and carried unanimously, Resolution No. 78840, entitled: “A Resolution of the Council of the City of San José Adopting the 715 West Julian Mixed-Use Project Addendum to the Diridon Station Area Plan Final Environmental Impact Report, the Envision San Jose 2040 General Plan Final Program Environmental Impact Report, Supplemental Environmental Impact Report and Addenda Thereto, All in Accordance with the California Environmental Quality Act, as Amended, and Adopting a Mitigation Monitoring and Reporting Program”; Resolution No. 78841, entitled: “A Resolution of the Council of the City of San José Approving, Subject to Conditions, a Vesting Tentative Map to Consolidate Two 1.22-Gross Acre Site, Located at the Northwest Corner of West Julian Street and Stockton Avenue (715 West Julian Street)”; Resolution No. 78842, entitled: “A Resolution of the Council of the City of San José Approving, Subject to Conditions, a Planned Development Permit to Allow Demolition of Five Existing Buildings, Removal of Six Ordinance-Size Trees and Construction of a New Seven-Story, 249-Unit Residential Mixed-Use Building with 26,585 Square Feet of Ground Floor Commercial Space on a 1.22-Gross Acres Tie Located at the Northwest Corner of West Julian Street and Stockton Avenue (715 West Julian Street)”, were adopted; and Ordinance No. 30177, entitled “An Ordinance of the City of San José Rezoning Certain Real Property of Approximately 1.22 Gross Acres Situated on the Northwest Corner of West Julian Street and Stockton Avenue (715 West Julian Street) from the Commercial Pedestrian Zoning District to the CP(PD) Commercial Pedestrian Planned Development Zoning District”, was passed for publication.

Including the understanding that this language applies only to this project, and including:

1. Accept staff and Planning Commission recommendation to approve the project at 715 West Julian Street.
2. Specify that mixed-use residential project will not be required to pay any charge, fee, assessment, or tax included as part of the Diridon Financing Plan if a complete building permit application is filed by January 1, 2019, and a building permit is issued by January 1, 2020.

(11-0.)

**10.4 18-1418 GP18-009 - General Plan Amendment for the East Santa Clara Street Urban Village Plan.**

(a) Consider the Determination of Consistency with the Final Program EIR for the Envision San José 2040 General Plan (Resolution No. 76041) and the Supplemental EIR to Envision San José General Plan EIR, (Resolution No. 77617), and Addendum thereto, in accordance with CEQA.

(b) Adopt a resolution adopting:

- (1) A General Plan Amendment modifying the East Santa Clara Street (West of 17th Street) Urban Village boundary and changing the land use designations on properties within the boundary of the Urban Village Plan area on the General Plan land use diagram; and
- (2) The East Santa Clara Street (West of 17th Street) Urban Village Plan.

CEQA: Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (Resolution No. 76041) and the Envision San José 2040 General Plan Supplemental Environmental Impact Report (Resolution No. 77617), and Addenda thereto. Planning Commission recommends approval (5-2-0 Leyba and Marquez opposed). (Planning, Building and Code Enforcement)

GP18-009 - Council District 3

Documents Filed: (1) Joint memorandum from Mayor Sam Liccardo, Vice Mayor Magdalena Carrasco and Councilmembers Raul Peralez, Dev Davis and Chappie Jones, dated October 19, 2018, recommending approval of staff recommendations with additions and modifications. (2) Memorandum from Planning Commission Secretary, Rosalynn Hughey, dated October 12, 2018 transmitting the Planning Commission recommendations, including the Planning Commission Staff Report, dated September 4, 2018. (2) Supplemental memorandum from Rosalynn Hughey, Director, Planning, Building and Code Enforcement, dated October 16, 2018, summarizing changes to the Village Plan document made after the September 12, 2018 Planning Commission meeting.

Public Comments: Seventeen members of the public presented concerns and opinions regarding the Urban Village Plan. Glen Williams provided historical information on this project.

Rosalynn Hughey, Director, Planning, Building and Code Enforcement offered an introduction, and Division Manager, Michael Brilliot provided a presentation.

Extensive Council discussion ensued.

Action: Upon motion by Councilmember Raul Peralez, seconded by Councilmember Dev Davis and carried unanimously, the staff recommendations were approved including the memorandum cosigned by Mayor Sam Liccardo, Vice Mayor Magdalena Carrasco, and Councilmembers Peralez, Davis and Jones, dated October 19, 2018, providing additions and modifications as follows:

1. To enhance Building Form and Architecture Standards 3.1-3.3, require that future developers consult with surrounding neighborhoods to gather knowledge and history of the community for design purposes.
2. Modify Urban Design Policies UD 2-9 and UD 2-10 to be a guideline rather than a Policy. (*Continued*)

## 10.4 (Cont'd.)

3. Change the land use designation on the south side of East Santa Clara Street between 9th and 10th Streets to Neighborhood/Community Commercial (NCC) and the adjacent southern parcels to Urban Residential (UR)

4. For any future project at the site bounded by East Santa Clara St. on the North, 14h Street on the West, 17th Street on the East and East St. John Street to the South:

a. Transform the previously abandoned 15th and 16th Streets within the former San Jose Medical Center site into new pedestrian, bicycle, and emergency vehicle through-ways. Motor vehicle access is limited to vehicles for maintaining the property, making deliveries, or accessing parking garages on-site, and these streets shall not be used as cut through streets.

b. Continue to conduct a robust community engagement process and explore for post-development purposes the use of a good neighbor plan to address communication and operational matters.

c. Consider the final recommendations of the *Former San Jose Medical Center Site Stakeholder Advisory Committee* (SAC), where applicable.

5. All projects should conform with the City's construction rules and regulations and must designate a liaison within the development team which includes a name, phone number and email address listed publicly at the project site during the duration of construction to serve as primary contact for inquiries.

And adopting Resolution No. 78843, entitled: "A Resolution of the Council of the City of San José Amending the Envision San Jose 2040 General Plan Pursuant to Title 18 of the San José Municipal Code to Modify the Boundary of the East Santa Clara Street (West of 17<sup>th</sup> Street) Urban Village and Land Use Designations on Properties within the Urban Village, and Adopt the East Santa Clara Street Urban Village Plan".

**(10-1. Noes: Rocha.)**

### **THE GENERAL PLAN HEARING (THIRD CYCLE) WAS CLOSED**

- **Open Forum**

**Blair Beekman offered comments on Urban Villages, urging an open dialog. Mark Trout and Steve Hazel expressed personal observations.**

- **Adjournment**

**The Council of the City of San José adjourned at 9:10 p.m.**

**Minutes Recorded, Prepared and Respectfully Submitted by,**  
***draft***

Toni J. Taber, CMC  
City Clerk

rmk/10-23-18 MIN