



City Council Meeting MINUTES

Tuesday, December 13, 2022

11:00 AM

Hybrid Meeting - Council Chambers and Virtually -

<https://sanjoseca.zoom.us/j/88957084529>

SAM LICCARDO, MAYOR
CHAPPIE JONES, VICE MAYOR, DISTRICT 1
SERGIO JIMENEZ, DISTRICT 2
RAUL PERALEZ, DISTRICT 3
DAVID COHEN, DISTRICT 4
MAGDALENA CARRASCO, DISTRICT 5
DEV DAVIS, DISTRICT 6
MAYA ESPARZA, DISTRICT 7
SYLVIA ARENAS, DISTRICT 8
PAM FOLEY, DISTRICT 9
MATT MAHAN, DISTRICT 10



**MINUTES OF THE SAN JOSÉ CITY COUNCIL
December 13, 2022**

*** COVID-19 NOTICE ***

Consistent with AB 361 and City of San Jose Resolution Nos. 80628, 80659, 80685, 80724 and 80758, Councilmembers may be teleconferencing from remote locations.

• **Call to Order and Roll Call**

9:30 a.m. - Closed Session 22-1921: *See Pages 37-9 for Closed Session Minutes.*
Councilmembers Absent: All Present.

11:30 a.m. - Regular Session
Councilmembers: All Present.

• **Pledge of Allegiance**

Mayor Sam Liccardo led the Pledge of Allegiance.

• **Invocation (Mayor)**

Pastor Jason Reynolds, Senior Pastor of Emmanuel Baptist Church opened the invocation with a prayer.

• **Orders of the Day**

Upon motion by Councilmember Maya Esparza, seconded by Councilmember Pam Foley and carried unanimously, the Orders of the Day were approved. (10-0-1. Absent: Arenas.)

Councilmember Maya Esparza offered that today's meeting is adjourned in memory of Commander Francis "Fran" McVey.

• **Closed Session Report**

None provided.

1. CEREMONIAL ITEMS

HEARD AT 11:30 A.M.

- 1.1 Councilmember Raul Peralez presented the commendation to the COVID-19 Recovery Task Force and Lived Experience Group for their service to our community.

HEARD AT 11:30 A.M.

- 1.2 Councilmember Maya Esparza on behalf of Councilmember Sylvia Arenas presented the proclamation recognizing International Day for the Elimination of Violence Against Women and Human Rights Day.

HEARD AT 11:30 A.M.

- 1.3 Mayor Sam Liccardo offered the special presentation to honor the Library literacy and reading programs.

HEARD AT 1:30 P.M.

- 1.4 Councilmember Raul Peralez presented the commendation recognizing Estella Inda for her excellent work in organizing and curating the “Story and King: San José’s Lowrider Culture” and “East Side Dreams: The Untold Story of East San José” exhibits that brought awareness to the importance of the Lowrider Culture in our City and the history of East San José.

HEARD AT 1:30 P.M.

- 1.5 Councilmember Raul Peralez presented the last “No Cruising Sign” removed on August 31, 2022 at the End of Cruising Ban Celebration held in the San José City Hall Plaza and Rotunda. This sign will be presented to History San José to commemorate this historic event.

2. CONSENT CALENDAR

Public Comments: (Zoom Speakers) Kathryn Hedges (SHHAC); Elaine Breeze, Paul Soto, Blair Beekman, Huascar Castro, Mariana Mejia, Israel Garcia, Alma, Mario Davila, Caller “Catalyze SV”, and (In Person Speaker) Roberto Gonzales (President of the Berryessa Flea Market Vendor Association BFVA) spoke to the items on the Consent Calendar.

Action: Upon motion by Councilmember Maya Esparza, seconded by Councilmember Pam Foley and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (10-0-1. Absent: Arenas.)

2.1 22-1949 Approval of City Council Minutes.

(a) City Council Special Meeting Minutes of December 5, 2022. CEQA: Not a Project, File No. PP17-009, Staff Reports, Assessments, and Annual Reports, and Informational Memos that involve no approvals of any City action.

Action: The City Council Minutes were approved. (10-0-1. Absent: Arenas.)

2.2 22-1880

Final Adoption of Ordinances.

(a) Ordinance No. 30848 - An Ordinance of the City of San José Amending Section 4.04.020 of Chapter 4.04 of Title 4 of the San José Municipal Code to Streamline Current City Disposition Processes for Surplus Property or Exempt Surplus Property, and Amending Chapter 4.20 of Title 4 of the San José Municipal Code to Change the City’s Procedures for Noticing for Public Sales, the Definition of “Surplus Real Property,” and Other Related Procedures for the Disposition of Real Property.[Passed for Publication on 11/29/2022 - Item 2.8(a) (22-1736)]

(b) Ordinance No. 30850 - An Ordinance of the City of San José Amending Section 7.10.120 Of Chapter 7.10 of Title 7 of the San José Municipal Code, to Update the Grooming Business Definition to Include In-Home Pet Grooming Services.

[Passed for Publication on 11/29/2022 - Item 2.15 (22-1742)]

(c) Ordinance No. 30856 - An Uncodified Ordinance of the City of San José Renewing the San José Hotel Business Improvement District, Approving Its Assessment Rate and Budget Report, and Authorizing the Levy of Assessments Beginning Fiscal Year 2023-2024.

[Passed for Publication on 12/6/2022 - Item 8.1(d) (22-1799)]

Action: (a) **Ordinance No. 30848**, (b) **Ordinance No. 30850**, (c) and **Ordinance No. 30856** were adopted. (10-0-1. Absent: Arenas.)

2.3 22-1911

Approval of Council Committee Minutes.

(a) Regular Public Safety, Finance and Strategic Support Committee Minutes of February 17, 2022.

(b) Regular Public Safety, Finance and Strategic Support Committee Minutes of March 17, 2022.

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

Action: The Council Committee Minutes were approved. (10-0-1. Absent: Arenas.)

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 22-1827

Settlement with County of Santa Clara Related to North San José.

Approve a Settlement Agreement between the County of Santa Clara, and the City of San José related to North San José and authorize the City Manager and City Attorney to execute the Settlement Agreement and related documents. CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment; Addendum to the Envision San José 2040 General Plan Final Program Environmental Impact Report (Resolution No. 76041) and Supplemental Environmental Impact Report to the Envision San José General Plan Final Program Environmental Impact Report (Resolution No. 77617). (City Attorney/City Manager)

Action: The Settlement Agreement between the County of Santa Clara, and the City of San José related to North San José was approved. (10-0-1. Absent: Arenas.)

2.8 22-1828

Settlement with City of Sunnyvale Related to Sewer Service (Tract 1379).

(a) Approve the settlement of a claim filed by the City of Sunnyvale in the total amount of \$800,000 and authorize the City Attorney to execute a settlement agreement.

(b) Adopt the following 2022-2023 Appropriation Ordinance amendments in the Sanitary Sewer Connection Fee Fund:

(1) Decrease the Unrestricted Ending Fund Balance Reserve by \$800,000; and

(2) Establish the City of Sunnyvale Sanitary Sewer Settlement appropriation to the Public Works Department in the amount of \$800,000. CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. (City Attorney/City Manager)

Action: (a) The Settlement with City of Sunnyvale Related to Sewer Service (Tract 1379) was approved and (b) 2022-2023 Appropriation **Ordinance No. 30858** was adopted. (10-0-1. Absent: Arenas.)

2.9 22-1833

Team San José and the Convention and Visitors Bureau Performance Report Annual Review.

As recommended by the Community and Economic Development Committee on November 28, 2022, accept a report on the annual review of Team San José and the Convention and Visitors Bureau performance for Fiscal Year 2021-2022.

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)

[Community and Economic Development Committee referral 11/28/2022 - Item (d)2]

Action: The Team San José and the Convention and Visitors Bureau performance report for Fiscal Year 2021-2022 Annual Review was accepted. (10-0-1. Absent: Arenas.)

2.10 22-1173

Extension of AB 361 Implementation to Allow Teleconferenced Public Meetings and Modified COVID Sunshine Resolution and Procedures to Continue through January 12, 2023 during the Governor’s Proclaimed COVID State of Emergency.

Adopt a resolution finding the continued existence of the need to extend AB 361 implementation and amending the City’s Consolidated Open Government and Ethics (Sunshine) Resolution No. 77135 to incorporate the Governor’s proclaimed COVID state of emergency to allow City legislative bodies and Joint Power Authority legislative bodies for which the City serves as lead staffing agency to hold public meetings solely by teleconference or otherwise electronically pursuant to AB 361; to modify agenda noticing and document posting; and to incorporate all future Governor’s Executive Orders regarding the Brown Act into the City’s open government procedures, as deemed appropriate by the City Clerk and City Manager, without further Council action.

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

Action: **Resolution No. 80809** was adopted. (10-0-1. Absent: Arenas.)

2.11 22-1834

Extension of Hiring Incentive Referral Program for City Employees.

Adopt a resolution to extend the expiration date for the temporary increase to the payment provided by the Hiring Incentive Referral Program from \$500 to \$1,500 for City employees from December 31, 2022 to December 31, 2023. CEQA: Not a Project, File No. PP17 008, General Procedure and Policy Making resulting in no changes to the physical environment. (City Manager)

Action: **Resolution No. 80810** was adopted. (10-0-1. Absent: Arenas.)

2.12 22-1835

City Manager’s Travel to San Antonio, Texas.

Authorize travel for City Manager Jennifer Maguire to San Antonio, Texas on January 26-29, 2023 to participate in the Large Cities Executive Forum.

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

Action: The City Manager’s Travel to San Antonio, Texas was authorized. (10-0-1. Absent: Arenas.)

2.13 22-1837

Actions Related to the Agreement with Mission Asset Fund for Berryessa Flea Market Business Transition Program.

(a) Adopt a resolution authorizing the City Manager or designee to:
(1) Negotiate and execute a consultant agreement with Mission Asset Fund to implement a Business Transition Support Program for the Berryessa Flea Market vendors for a total compensation not-to-exceed

(Item Continued on the Next Page)

2.13 (Cont'd.)

\$500,000 for an initial term of 24 months; and

(2) Exercise an option to extend the agreement for one additional year under the same terms and conditions and with no increase in total compensation.

(b) Adopt the following 2022-2023 Appropriation Ordinance Amendments in the General Fund:

(1) Increase the Berryessa Flea Market Vendor Business Transition Fund City-Wide Expenses appropriation by \$500,000; and

(2) Decrease the Berryessa Flea Market Vendor Business Transition Fund Reserve by \$500,000.

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

(Economic Development and Cultural Affairs/City Manager)

Action: (a) **Resolution No. 80811** and (b) 2022-2023 Appropriation **Ordinance No. 30859** were adopted. (10-0-1. Absent: Arenas.)

2.14 22-1838 **Master Service Agreement with HydroScience Engineers, Incorporated for Engineering Consulting Services for the San José-Santa Clara Regional Wastewater Facility.**

Adopt a resolution authorizing the City Manager or designee to negotiate and execute a Master Service Agreement with HydroScience Engineers, Incorporated, for various operations and maintenance projects requiring engineering support and services on an as needed basis at the San José-Santa Clara Regional Wastewater Facility for a four-year term with a total not to exceed amount of \$2,500,000, subject to annual appropriation of funds. CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. (Environmental Services)

Action: (a) **Resolution No. 80812** was adopted. (10-0-1. Absent: Arenas.)

2.15 22-1839 **Revisions to Council Policy 4-6, Environmentally Preferable Procurement Policy.**

Adopt a resolution approving modifications to Council Policy 4-6, Environmentally Preferable Procurement Policy to include Short-lived Climate Pollutants: Organic Waste Reductions Regulations procurement requirements and minor updates to outdated sections.

CEQA: Not a Project, File No. PP17-008, General Procedure and Policy Making, resulting in no changes to the physical environment.

(Environmental Services)

Action: (a) **Resolution No. 80813** was adopted. (10-0-1. Absent: Arenas.)

2.16 22-1840 Actions Related to the Purchase Orders with California Roofing CO, Inc. and Roofline Builders, Inc. for as Required Roofing Repairs and Maintenance Services.

Adopt a resolution authorizing the City Manager to:

- (a) Execute purchase orders with California Roofing Co, Inc. (San José, CA) and Roofline Builders, Inc. (Pleasanton, CA) for as-required roofing repairs and maintenance services, for a one-year term beginning on or about January 1, 2023, and ending on or about December 31, 2023, for a combined not-to-exceed amount of \$1,400,000; and
- (b) Exercise up to four one-year options to extend the term of the purchase orders, with the last option ending on or about December 31, 2027, subject to annual appropriation of funds.

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

Action: (a) **Resolution No. 80814** was adopted. (10-0-1. Absent: Arenas.)

2.17 22-1841 Actions Related to the Purchase Order with Pac Machine Co, Inc. for Rental of Towable 12-Inch Diesel Dry/Self Prime Pumps.

Adopt a resolution authorizing the City Manager to exercise up to four one-year options to extend the term of the purchase order with Pac Machine Co, Inc. (Sacramento, CA) for the rental of towable 12-inch diesel dry/self-prime pumps, with the last option ending on or about December 31, 2026, subject to annual appropriation of funds.

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

Action: (a) **Resolution No. 80815** was adopted. (10-0-1. Absent: Arenas.)

2.18 22-1878 Amendment to the Purchase Order with MedVet for Pets, Inc. for 24-hour Emergency Veterinary Services.

Adopt a resolution authorizing the City Manager to:

- (a) Amend purchase order OP 61393 with MedVet For Pets, Inc. dba MedVet (Worthington, OH) for 24-hour emergency veterinary services, to increase the total compensation by \$75,000, for a maximum compensation not-to-exceed \$425,000 for the period ending December 31, 2022; and

- (b) Execute additional purchase orders for ongoing services with MedVet For Pets, Inc., through December 31, 2026, subject to the appropriation of funds.

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

Action: (a) **Resolution No. 80816** was adopted. (10-0-1. Absent: Arenas.)

2.19 22-1843 Grant Agreement with Sacred Heart Community Service for the Eviction Diversion and Settlement Program and Appropriation Amendments.

(a) Adopt a resolution authorizing the City Manager or their designee to negotiate and execute a grant agreement, including any amendments or revisions thereto, with Sacred Heart Community Services for an amount up to \$2,286,900, retroactive to October 1, 2022 and through June 30, 2023, to continue the Eviction Diversion and Settlement Program.

(b) Adopt the following 2022-2023 Appropriation Ordinance Amendments in the General Fund:

(1) Decrease the Measure E - 10% Homeless Prevention and Rental Assistance Reserve by \$1,851,565; and

(2) Increase the Measure E - Rental Assistance (10% HPRA) appropriation to the Housing Department by \$1,851,565.

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

Action: (a) **Resolution No. 80817** and (b) 2022-2023 Appropriation **Ordinance No. 30860** were adopted. (10-0-1. Absent: Arenas.)

2.20 22-1844 Actions Related to the 2023-2024 Hazardous Vegetation Commencement Report.

Adopt a resolution:

(a) Accepting the 2023-2024 Hazardous Vegetation Commencement Report (see attached Weed Abatement Program Commencement Report) compiled by the County of Santa Clara's Consumer and Environmental Protection Agency - Weed Abatement Program;

(b) Declaring that those certain noxious or dangerous seasonal and recurrent weeds, growing or likely to be growing, and refuse, situated or likely to be situated, on those properties identified in the Weed Abatement Program Commencement Report are a public nuisance; and

(c) Directing the County of Santa Clara's Consumer and Environmental Protection Agency - Weed Abatement Program to mail a notice of a public hearing to be held on February 7, 2023, at 1:30 p.m. before the City Council to property owners of affected real properties on the Weed Abatement Program Commencement Report pursuant to Chapter 9.12 of Title 9 of the San José Municipal Code and the Weed Abatement Agreement between the City of San José and the County of Santa Clara.

CEQA: Categorically Exempt, CEQA Guidelines Section 15301(h) Existing Facilities, File No. PP18-094. (Planning, Building and Code Enforcement)

Action: (a) **Resolution No. 80818** was adopted. (10-0-1. Absent: Arenas.)

2.21 22-1845

Amendment to the Master Agreement with Sasaki, Walker, and Associates Group for Landscape Architecture, Architecture, Environmental, and Engineering Services.

Adopt a resolution authorizing the City Manager or designee to negotiate and execute a second amendment to the Master Agreement with Sasaki, Walker, and Associates (SWA) Group for landscape architecture, architecture, environmental, and engineering consulting services, in order to increase the overall compensation by \$500,000, from \$1,500,000 to \$2,000,000, to complete active projects and extend the agreement from April 8, 2023 to December 31, 2025.

CEQA: Not a Project, File No. PP17-002, Consultant services for design, study, inspection, or other professional services with no commitment to future actions. Council District 3. (Parks, Recreation and Neighborhood Services)

Action: (a) **Resolution No. 80819** was adopted. (10-0-1. Absent: Arenas.)

2.22 22-1846

Amendment to the Agreements with AIClear, LLC for Transportation Security Administration Pre-Check at the Airport.

Adopt a resolution authorizing the City Manager to negotiate and execute a:

(a) Fourth Amendment to the Small Concession Agreement between the City of San José and ALCLEAR, LLC to extend the term through October 31, 2025, with a minimum annual guarantee of revenue to the City of \$670,000 and expand the services provided under the agreement to allow Transportation Security Administration Pre-Check enrollment at the Norman Y. Mineta San José Airport.

(b) Third Amendment to the Lease Agreement between the City of San José and ALCLEAR, LLC to extend the term through October 31, 2025, with annual revenue to the City of approximately \$83,000.

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

Action: (a) **Resolution No. 80820** was adopted. (10-0-1. Absent: Arenas.)

2.23 22-1847

Design-Build Contract for the 9308 - Norman Y. Mineta San José International Airport New Facilities Division Building(s) - Rebid Project.

RENUMBERED TO ITEM 5.1 (22-1937)

2.24 22-1848

Actions Related to the 8704-Norman Y. Mineta San José International Airport TSA Magazine Relocation Project.

(a) Report on bids and award of contract for the 8704 - Norman Y. Mineta San José International Airport TSA Magazine Relocation Project to the lowest responsive bidder, ASG Builders, in an amount of \$1,299,188.

(b) Approve a 10 percent contingency in the amount of \$129,919.

(Item Continued on the Next Page)

2.24 (Cont'd.)

(c) Adopt the following 2022-2023 Appropriation Ordinance amendments in the Airport Renewal and Replacement Fund:

(1) Increase the SJPD Magazine Room Relocation appropriation to the Airport Department by \$1,255,000; and

(2) Decrease the Unrestricted Ending Fund Balance by \$1,255,000.

CEQA: Categorical Exemption, CEQA guidelines Section 15311, Accessory Structures, File Number ER21-124. (Airport/Public Works/City Manager)

Action: (a) The report on bids and award of contract for the 8704 - Norman Y. Mineta San José International Airport TSA Magazine Relocation Project was accepted, (b) the 10 percent contingency in the amount of \$129,919 was approved, and (c) 2022-2023 Appropriation **Ordinance No. 30861** was adopted. (10-0-1. Absent: Arenas.)

2.25 22-1849

Actions Related to the 9405-Norman Y. Mineta San José International Airport Perimeter Protection Project Re-Bid II Project.

(a) Report on bids and award of contract for the 9405 - Norman Y. Mineta San José International Airport Perimeter Protection Project Re-Bid II Project to the lowest responsive bidder, Rosendin Electric, Inc., for the base bid and Bid Alternate No. 1 in an amount of \$2,999,385.75.

(b) Approve a 10 percent contingency in the amount of \$299,939.

(c) Adopt the following 2022-2023 Appropriation Ordinance amendments in the Airport Revenue Fund:

(1) Decrease the Airline Agreement Reserve by \$1,282,000; and

(2) Increase the Transfer to the Airport Surplus Revenue Fund by \$1,282,000.

(d) Adopt the following 2022-2023 Appropriation Ordinance and Funding Sources Resolution amendments in the Airport Surplus Revenue Fund:

(1) Increase the estimate for Transfers and Reimbursements by \$1,282,000; and

(2) Increase the Transfer to the Airport Renewal and Replacement Fund by \$1,282,000.

(e) Adopt the following 2022-2023 Appropriation Ordinance and Funding Sources Resolution amendments in the Airport Renewal and Replacement Fund:

(1) Increase the estimate for Transfers and Reimbursements by \$1,282,000; and

(2) Increase the Perimeter Security Projects appropriation in the amount of \$1,282,000.

CEQA: File No. PP18-103, Environmental Impact Report for the Amendment to the Norman Y. Mineta San José International Airport Master Plan (Resolution No. 79497). (Airport/Public Works/City Manager)

(Item Continued on the Next Page)

2.25 (Cont'd.)

Action: (a) The report on bids and award of contract for the 9405 - Norman Y. Mineta San José International Airport Perimeter Protection Project Re-Bid II Project was accepted, (b) the 10 percent contingency in the amount of \$299,939 was approved; (c) 2022-2023 Appropriation **Ordinance No. 30862**, (d) 2022-2023 Appropriation **Ordinance No. 30863**, (d) Funding Sources **Resolution No. 80821**, (e) 2022-2023 Appropriation **Ordinance No. 30864**, and (e) Funding Sources **Resolution No. 80822** were adopted. (10-0-1. Absent: Arenas.)

2.26 22-1850 **Acceptance of the Office of Juvenile Justice and Delinquency Prevention Program Fiscal Year 2022 Internet Crimes Against Children Task Force Invited Awards in the Amount of \$618,790 and Funding Sources Resolution and Appropriation Amendments.**

(a) Adopt a resolution accepting the 2022 Internet Crimes Against Children Task Force Invited Awards in the amount of \$618,790, and authorizing the City Manager to execute the Grant Agreement and to execute additional amendments and all related documents, including online certifications at time of reimbursement request, without further City Council action.

(b) Adopt the following 2022-2023 Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:

(1) Increase the appropriation to the Police Department for the Internet Crimes Against Children (ICAC) Task Force Invited Awards by \$618,790; and

(2) Increase the estimate for Revenue from Federal Government by \$618,790.

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

Action: (a) **Resolution No. 80823**, (b) 2022-2023 Appropriation **Ordinance No. 30865**, and (b) Funding Sources **Resolution No. 80824** were adopted. (10-0-1. Absent: Arenas.)

2.27 22-1851 **Purchase and Sale of Agreement with the County of Santa Clara for the Acquisition of Property Located at Tuers Road and Capitol Expressway.**

Adopt a resolution authorizing the City Manager to negotiate and execute a purchase and sale agreement, and all other documents necessary, to effectuate the property transfer to the City, with the County of Santa Clara for the purchase by the City of 0.85 acres of land located at the southwest corner of Tuers Road and Capitol Expressway, as described and depicted in Attachment A to the staff memorandum, for a price of \$645,000.

CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. Council District 7. (Economic Development and Cultural Affairs/Public Works/Fire/Environmental Services)

Action: **Resolution No. 80825** was adopted. (10-0-1. Absent: Arenas.)

2.28 22-1852

Agreement with the Enterprise Foundation for the San José Cannabis Equity Business Academy.

Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with the Enterprise Foundation to be the fiscal agent for the San José Cannabis Equity Business Academy who in turn will contract with the California Asian Pacific Chamber of Commerce to establish and operate the San José Cannabis Equity Business Academy in the amount not to exceed \$560,000 for an initial term from January 1, 2023 to June 30, 2024, and authorizing the City Manager to exercise up to two one-year options to extend the agreement at no increase in the compensation amount. CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment and File No. PP17-004, Government Funding Mechanism or Fiscal Activity with no commitment to a specific project which may result in a potentially significant physical impact on the environment. (Economic Development and Cultural Affairs)

Action: **Resolution No. 80826** was adopted. (10-0-1. Absent: Arenas.)

2.29 22-1854

Agreement with Caltrans for 280 Almaden Avenue Beautification Improvement Project.

(a) Adopt a resolution authorizing the City Manager, or designee, to negotiate and execute a Cooperative Agreement with the State of California (Caltrans) to receive funding up to \$2,200,000 to design and construct the 280 Almaden Ave Beautification Improvement Project as part of the Clean California Program.

(b) Adopt the following 2022-2023 Funding Sources Resolution and Appropriation Ordinance amendments in the General Fund:

(1) Increase the estimate for Revenue from the State of California by \$350,000; and

(2) Establish the 280 Almaden Ave Beautification Improvement Project Capital Improvements appropriation to the Public Works Department in the amount of \$350,000.

CEQA: Not a Project, File No. PP17-007, Preliminary direction to staff and eventual action requires approval from decision-making body. Council District 3. (Public Works/Housing/City Manager)

Action: (a) **Resolution No. 80827**, (b) 2022-2023 Funding Sources **Resolution No. 80828**, and (b) Appropriation **Ordinance No. 30866** were adopted. (10-0-1. Absent: Arenas.)

2.30 22-1855

Fiscal Year 2021-2022 Traffic Impact Fee Report.

Accept the annual and five-year report prepared in accordance with the Mitigation Fee Act (Government Code section 66000 et seq.) on the status of the City's four traffic impact fee programs: North San José, Evergreen-East Hills, US-101/Oakland/Mabury, and Interstate 280/Winchester Boulevard. CEQA: Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action. (Transportation)

Action: The Fiscal Year 2021-2022 Traffic Impact Fee Report was accepted. (10-0-1. Absent: Arenas.)

2.31 22-1856 On-Call Consulting Services with Advanced Mobility Group for Citywide Engineering and Traffic Survey Services.

Adopt a resolution authorizing the City Manager or designee to negotiate and execute a consulting service agreement with Advanced Mobility Group for engineering and traffic survey services from the date of execution with a five-year term for an amount not to exceed \$500,000.CEQA: Not a Project, File No. PP17-002, Consultant services for design, study, inspection, or other professional services with no commitment to future action. (Transportation)

Action: **Resolution No. 80829** was adopted. (10-0-1. Absent: Arenas.)

2.32 22-1913 Declaration and Recording a Statement of the Results of the November 8, 2022 General Municipal Election and Special Municipal Election.

Adopt a resolution declaring and recording a statement of the results of the November 8, 2022 General Municipal Election and Special Municipal Election per Elections Code Sections 10263, 10264, and 15400.CEQA: Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment. (City Clerk)

Action: **Resolution No. 80830** was adopted. (10-0-1. Absent: Arenas.)

2.33 22-1918 Boards and Commissions Appointment.

Approve the following Boards and Commissions appointments:

(a) Housing and Community Development Commission:

(1) Mobile Home Landlord Seat: Reappoint Ryan Jasinsky for a term ending December 31, 2026;

(2) Mobile Home Tenant Seat: Appoint Daniel Finn for a term ending December 31, 2026;

(3) Lived Experience (LE) Seat: Appoint Sketch Salazar for a term ending December 31, 2026;

(4) Lived Experience (LE) Seat (Alternate): Appoint Jerome Shaw for a term ending December 31, 2026;

(5) Citywide and Apartment Rent Ordinance Tenant Representative (ARO Tenant) Seat: Appoint Zenia Cardoza for a term ending December 31, 2026.

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

[Rules Committee referral 12/7/2022 - Item A.1.a]

Action: The Boards and Commissions appointments were approved. (10-0-1. Absent: Arenas.)

2.34 22-1939 Request for Travel and Excused Absence.

(a) Authorize travel and related expenses for Councilmember Mahan to attend a newly elected mayors meeting at the White House on December 16, 2022, in Washington, DC. (Source of Funds: District 10 Funds and/or Personal Funds)

(b) Request for an excused absence from the regular meeting of Public

(Item Continued on the Next Page)

2.34 (Cont'd.)

Safety, Finance and Strategic Support Committee on December 15, 2022 due to Authorized City Business for travel to attend the newly elected mayors meeting at the White House on December 16, 2022. CEQA: Not a Project, File No. PP17-010, City Organizational and Administrative Activities resulting in no changes to the physical environment. (Mahan) [Rules Committee referral 12/7/2022 - Item A.1.a]

Action: The request for travel and excused absence was approved. (10-0-1. Absent: Arenas.)

2.35 22-1940 Participation in the Law Enforcement Support Office Program.

Approve the San José Police Department's request to continue participation in the Law Enforcement Support Office Program and the authorization to acquire certain items without returning to City Council prior to acquisition. CEQA: Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment. (Police) [Rules Committee referral 12/7/2022 - Item A.1.a]

Action: The San José Police Department's request to continue participation in the Law Enforcement Support Office Program was approved. (10-0-1. Absent: Arenas.)

2.36 22-1947 Resolutions Denouncing Hate Crimes and Islamophobia.

As recommended by the Rules and Open Government Committee on December 7, 2022:

(a) Adopt a resolution condemning hate crimes.

(b) Adopt a resolution denouncing Islamophobia.

CEQA: Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment. (Jones)

[Rules Committee referral 12/7/2022 - Item C.4]

Action: (a) **Resolution No. 80831** and (b) **Resolution No. 80832** were adopted. (10-0-1. Absent: Arenas.)

2.37 22-1920 Retroactive Approval of Multiple Special Events Sponsored by Council District 5 as City Council Sponsored Special Events to Expend City Funds and Accept Donations of Materials and Services for the Events.

(a) Retroactively approve the Autumn Litter Harvest event scheduled on October 1, 2022 as a City Council sponsored Special Event and approve the expenditure of funds;

(b) Retroactively approve the Senior Zumba event scheduled on October 27, 2022, as a City Council sponsored Special Event and approve the expenditure of funds;

(c) Retroactively approve the Autumn Fun Fest event scheduled on October 29, 2022, as a City Council sponsored Special Event and approve the expenditure of funds;

(Item Continued on the Next Page)

2.37 (Cont'd.)

- (d) Retroactively approve the Cimarron Park Dumpster Day event scheduled on October 29, 2022, as a City Council sponsored Special Event and approve the expenditure of funds;
- (e) Retroactively approve the Senior Zumba event scheduled on November 3, 2022, as a City Council sponsored Special Event and approve the expenditure of funds;
- (f) Retroactively approve the Warmsprings Dumpster Day event scheduled on November 5, 2022, as a City Council sponsored Special Event and approve the expenditure of funds;
- (g) Retroactively approve the Delano Manongs Park Ribbon Cutting event scheduled on November 5, 2022, as a City Council sponsored Special Event and approve the expenditure of funds;
- (h) Retroactively approve the Senior Zumba event scheduled on November 10, 2022, as a City Council sponsored Special Event and approve the expenditure of funds;
- (i) Retroactively approve the Pet Vaccination and Wellness events scheduled on November 13, 2022, as a City Council sponsored Special Event and approve the expenditure of funds;
- (j) Retroactively approve the Councilmember Magdalena Carrasco Farewell Address event scheduled on November 12, 2022, as a City Council sponsored Special Event and approved the expenditure of funds;
- (k) Retroactively approve the Senior Zumba event scheduled on November 17, 2022, as a City Council sponsored Special Event and approve the expenditure of funds;
- (l) Retroactively approve the Senior Zumba event scheduled on November 23, 2022, as a City Council sponsored Special Event and approve the expenditure of funds;
- (m) Retroactively approve the Senior Zumba event scheduled on December 1, 2022, as a City Council sponsored Special Event and approve the expenditure of funds;
- (n) Retroactively approve the Emma Prusch All Inclusive Playground Groundbreaking event scheduled on December 3, 2022, as a City Council sponsored Special Event and approved the expenditure of funds;
- (o) Retroactively approve the Fiesta Navideña event scheduled on December 10, 2022, as a City Council sponsored Special Event and approve the expenditure of funds;
- (p) Approve the Youth Vision Board Workshop event scheduled on December 15, 2022, as a City Council sponsored Special Event and approve the expenditure of funds; and
- (q) Approve and accept donations from various individuals, businesses or community groups to support the events.

CEQA: Not a Project, File No. PP17-011, Temporary Special Events resulting in no changes to the physical environment. (Carrasco)
[Rules Committee referral 12/7/2022 - Item A.1.a]

Action: The City Council Sponsored Special Events were retroactively approved. (10-0-1. Absent: Arenas.)

2.38 22-1925 Approval of the End of Term Celebration Event Sponsored by the Mayor's Office 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 December 7, 2022:

(a) Approve the End of Term Celebration scheduled in December 2022 as a City Council sponsored Special Event and approve the expenditure of funds; and

(b) 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. (Mayor)

[Rules Committee referral 12/7/2022 - Item B.3]

Action: The City Council Sponsored Special Event was approved. (10-0-1. Absent: Arenas.)

2.39 22-1929 Retroactive Approval of the Tree Planting Event at Orchard School 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 December 7, 2022:

(a) Retroactively approve the Tree Planting Event at Orchard School scheduled on November 30, 2022 as a City Council sponsored Special Event and approve the expenditure of funds; and

(b) 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. (Cohen)

[Rules Committee referral 12/7/2022 - Item B.4]

Action: The City Council Sponsored Special Event was retroactively approved. (10-0-1. Absent: Arenas.)

2.40 22-1936 Approval of Multiple Special Events Sponsored by Council District 7 as City Council Sponsored Special Events to Expend City Funds and Accept Donations of Materials and Services for the Events.

As recommended by the Rules and Open Government Committee on December 7, 2022:

(a) Retroactively approve the International Children's Assistance Network Toy Drive scheduled on December 3, 2022 as a City Council sponsored Special Event and approve the expenditure of funds;

(b) Retroactively approve the Mariposa Park Celebration scheduled on December 10, 2022 as a City Council sponsored Special Event and approve the expenditure of funds;

(c) Approve the Franklin Family Giving Tree scheduled on December 16, 2022 as a City Council sponsored Special Event and approve the

(Item Continued on the Next Page)

2.40 (Cont'd.)

expenditure of funds;

(d) Approve the Santee Posada scheduled on December 16, 2022 as a City Council sponsored Special Event and approved the expenditure of funds;

(e) Approve the Tropicana-Lanai Posada scheduled on December 16, 2022 as a City Council sponsored Special Event and approve the expenditure of funds; and

(f) Approve and accept donations from various individuals, businesses or community groups to support the events.

CEQA: Not a Project, File No. PP17-011, Temporary Special Events resulting in no changes to the physical environment. (Esparza)

[Rules Committee referral 12/7/2022 - Item B.5]

Action: The City Council Sponsored Special Events were approved. (10-0-1. Absent: Arenas.)

2.41 22-1948 **Response to 2022 Santa Clara County Civil Grand Jury Report regarding Election Ballot Language.**

Approve the response to the 2022 Santa Clara County Civil Grand Jury Report entitled, "If You Only Read the Ballot, You're Being Duped."

CEQA: Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment. (City Attorney)

Action: The response to the 2022 Santa Clara County Civil Grand Jury Report entitled, "If You Only Read the Ballot, You're Being Duped." was approved. (10-0-1. Absent: Arenas.)

3. STRATEGIC SUPPORT

3.1 **Report of the City Manager, Jennifer Maguire (Verbal Report)**

City Manager, Jennifer Maguire announced that the Closed Session Conference Room in the City Council Chambers will be named in honor of the late City Attorney, John Richard Doyle, also known as "Rick". The Closed Session Conference Room was where Rick provided his expert legal advice to City Staff, Mayors, and Councilmembers from the opening of the San José City Hall until his retirement in 2020. City Manager, Jennifer Maguire spoke on his tenure and offered kind words on who he was and what he did for the City during his 26 years of service.

3.2 **Labor Negotiations Update.**

None provided.

3.3 22-1857

2022-2023 City Initiatives Roadmap First Quarter Status Report.

Accept the first quarter status report on the implementation of the Fiscal Year 2022-2023 City Initiatives Roadmap. 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 Manager)

Assistant to the City Manager, Erik Chiarella Jensen; City Manager's Chief of Staff, Dolan Beckel; and Assistant City Manager, Lee Wilcox offered the presentation and responded to questions.

Public Comments: Paul Soto, Brian, and Blair Beekman offered public testimony regarding the item.

Action: Upon motion by Councilmember Matt Mahan, seconded by Councilmember Sylvia Arenas and carried unanimously, the first quarter status report on the implementation of the Fiscal Year 2022-2023 City Initiatives Roadmap was accepted. (11-0.)

3.4 22-1842

San José Clean Energy Revolving Credit Agreement.

(a) Adopt a resolution authorizing the City Manager, the Director of Finance, the Assistant Director of Finance, and their authorized designees to negotiate, execute, and deliver a revolving credit agreement, promissory note, and fee agreement related thereto with JPMorgan Chase Bank, N.A., providing for a commitment to issue revolving loans and standby letters of credit in an aggregate principal amount not to exceed \$250,000,000 outstanding at any one time to support the operations of San José Clean Energy including, without limitation, to provide collateral to meet regulatory obligations; to terminate and pay off the existing revolving credit agreement, and execute and deliver related documents with Barclays Bank PLC; and to take other related actions in connection therewith.

(b) Adopt the following 2022-2023 Appropriation Ordinance amendments in the San José Clean Energy Fund:

(1) Increase the Letter of Credit Fees appropriation to the Finance Department by \$2,500,000; and

(2) Decrease the Unrestricted Ending Fund Balance by \$2,500,000.

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

(Finance/Community Energy/City Manager)

Director of Finance, Julia H. Cooper and Director of Community Energy, Lori Mitchell offered the presentation and responded to questions.

Public Comments: Brian, Paul Soto, and Blair Beekman offered public testimony regarding the item.

Action: Upon motion by Councilmember Dev Davis, seconded by Vice Mayor Chappie Jones and carried unanimously, (a) **Resolution No. 80833** and (b) 2022-2023 Appropriation **Ordinance No. 30867** were adopted. (11-0.)

3.5 22-1919 Appeals Hearing Board Interview.

Interview applicant for appointment to the Appeals Hearing Board:

(a) Appoint Karen Parsons to the Appeals Hearing Board for a full term from January 1, 2023 to December 31, 2026;

(b) If any vacancy remains, direct the City Clerk to continue recruitment efforts and bring forward additional applicants for consideration within 90 days.

CEQA: Not a Project, File No. PP17-010, City Organizational and Administrative Activities resulting in no changes to the physical environment. (City Clerk) [Rules Committee referral 12/7/2022 - Item A.1.a]

Public Comments: Brian and Paul Soto offered public testimony regarding the item.

Action: Upon motion by Councilmember Sergio Jimenez, seconded by Councilmember Dev Davis and carried unanimously, Karen Parsons was appointed to the Appeals Hearing Board for a full term from January 1, 2023 to December 31, 2026. (11-0.)

3.6 22-1941 Approval of the Terms of an Agreement with the San Jose Police Officers' Association (SJPOA) for the Term of July 1, 2022 Through June 30, 2025.

Adopt a resolution approving the terms of a collective bargaining agreement between the City and the SJPOA for the term of July 1, 2022 through June 30, 2025, and authorizing the City Manager to execute the agreement with those terms. CEQA: Not a Project, File No. PP17-010, City organizational and administrative activities resulting in no changes to the physical environment. (City Manager) [Rules Committee referral 12/7/2022 - Item A.1.a]

City Manager, Jennifer Maguire discussed the joint efforts of both the City and the San José Police Officer's Association (SJPOA) regarding the overall tentative agreement on a successor memorandum of agreement for a term of July 1, 2022 through June 30, 2025. She stated the agreement has been ratified by the SJPOA members. She expressed her appreciation to the SJPOA negotiating team; the entire SJPOA Board; SJPOA President, Sean Pritchard; SJPOA Labor Consultant, Tom Saggau; Officer of Employee Relations, Bill Gold; SJPD Chief, Anthony Mata; SJPD Assistant Chief, Paul Joseph; the Cities negotiating team; Director of Employee Relations and Human Resources, Jennifer Schembri; and Assistant to the City Manager, Elsa Cordova for their collective time and efforts.

Public Comments: Paul Soto and Brian offered public testimony regarding the item.

Due to his conflict of interest, Councilmember Raul Peralez stated he would recuse himself from this item.

Action: Upon motion by Councilmember Maya Esparza, seconded by Councilmember Dev Davis and carried unanimously, **Resolution No. 80834** was adopted. (10-0-0-1. Recused: Peralez.)

3.7 22-1944 Waiver of Revolving Door Restrictions.

As recommended by the Rules and Open Government Committee on December 7, 2022, approve the request by Christina Ramos, the former Chief of Staff for Councilmember Raul Peralez, for a Waiver of the Revolving Door Restrictions for the work described in the attached memo previously submitted to the Rules Committee, and adopt the *(Item Continued on the Next Page)*

3.7 (Cont'd.)

findings adopted by the Rules Committee as outlined in the memo that such waiver is in the best interest of the City and consistent with the purpose of San José Municipal Code Chapter 12.10.

CEQA: Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment, Title 12 (Ethics Provisions). (City Attorney)
[Rules Committee referral 12/7/2022 - Item C.2]

Public Comments: (In person) Chris Ramos and (Zoom) Paul Soto offered public testimony regarding the item.

Action: Upon motion by Councilmember Sergio Jimenez, seconded by Councilmember Maya Esparza and carried unanimously, the request for Councilmember Raul Peralez regarding a Waiver of the Revolving Door Restrictions was approved. (11-0.)

4. PUBLIC SAFETY SERVICES

4.1 22-1879 Report on the Investigations of Police Misconduct in San Jose by Moeel Lah Fakhoury, LLP.

(a) Accept the report on the Investigations of Police Misconduct in San Jose By Moeel Lah Fakhoury, LLP.

(b) Refer responses to the Investigations of Police Misconduct in San José report from the Independent Police Auditor and the Administration to the Public Safety, Finance and Strategic Support Committee meeting in April 2023 and direct staff to provide with additional analysis. CEQA: Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action. (Independent Police Auditor/City Manager)

Attorney, Lecturer, Andrew Lah; Strategist and Facilitator, Rania Adwan; Investigator, Bay Area Rapid Transit District BART Police Department, Russell Bloom; and Independent Police Auditor, Shivaun Nurre offered the presentation and responded to questions.

Public Comments: (In person speakers) Sean Pritchard (SPOA San Jose Police Officers Association), Gregg Adam, (Zoom speakers) Paul Soto, Issa, and Brian offered public testimony regarding the item.

Motion: Councilmember Sergio Jimenez moved the December 12, 2022 memorandum from Mayor Sam Liccardo, *excluding recommendation 1*. Councilmember Pam Foley seconded the motion.

City Manager, Jennifer Maguire spoke to her memorandum, dated November 29, 2022, in response to the report.

Friendly Amendment: Councilmember Dev Davis referred the recommendations from the Mayor's Memorandum to the Public Safety, Finance and Strategic Support (PSFSS) Committee for further discussion, analysis, and input from both the City Manager's Office (CMO) and the City Attorney's Office (CAO).

(Item Continued on the Next Page)

4.1 (Cont'd.)

Action: On a call for the question, the motion passed unanimously to accept the report on the Investigations of Police Misconduct in San Jose By Moeel Lah Fakhoury, LLP. Including acceptance of the memorandum from Mayor Sam Liccardo, *excluding recommendation 1*, dated December 12, 2022, recommending to: Accept the memoranda and recommendations from the City Manager and Independent Police Auditor (IPA), with the following modifications: (1) ~~Accept the report on the Investigations of Police Misconduct in San Jose by Moeel Lah Fakhoury, LLP (MLF), but as amended to strike any language in the consultant's report suggesting that either: (a) The IPA lacks the legal authority under the City Charter to independently investigate allegations of misconduct (e.g., on p. 8 of the consultants' report) as directly rebutted by prior public pronouncements of our City Attorney's Office (e.g., on August 4, 2020, as discussed below), or (b) The San Jose Police Officers' Association (SJPOA) must agree prior to any grant of investigatory duties to the IPA (e.g., p. 60 of the consultant's report), as that subject lies within the exclusive province of the City Attorney to advise this Council.~~ (2) Direct the City Attorney to determine whether the grant of investigatory authority to the IPA constitutes a "change to officers' working conditions," requiring negotiation with the SJPOA. If so, then direct the City Manager to commence union negotiations, consistent with the side letter in the current and pending collective bargaining agreement with SJPOA to discuss police reforms. (3) Upon resolution of any SJPOA negotiation requirements, the City Manager and IPA shall move forward generally with MLF's recommendation to implement a "Hybrid" model, but with variations on details as deemed appropriate by the City Manager, IPA, and Council. Specifically, the IPA and City Manager should: (a) Hire a limited number of investigators (Recommendations 1.2 and 2.1) for an initial phase of implementation, contingent on Council budgetary authorization, and: (i) Explore and provide analysis to Council how hiring of IPA investigators may provide cost savings for the City with expansion of SJPD enforcement capacity, insofar as IPA investigator hiring could facilitate redeployment of SJPD officers from IA to patrol and other duties; (ii) Explicitly engage the Council in considering whether to hire experienced and professional law enforcement investigators, either sworn or nonsworn, for IPA investigatory roles. (iii) Ensure uniformity of investigatory training for IA and IPA investigators (iv) Grant IPA investigators the ability to make findings including, but not limited to, sustained, not sustained, exonerated, and unfounded. (v) All discipline will remain within the authority of the Chief of Police and the City Manager's Office. (b) Define the initial scope of IPA investigatory authority, identify misconduct cases by allegation type for a three-year phase of implementation (Recommendation 9.1), with: (i) A recognition that the scope may change with the benefit of experience and iterative adjustment; (ii) A coordinated process that mitigates risk of parallel, conflicting, wasteful, or unduly burdensome investigations addressing the same misconduct allegation (pp.47-48) (c) Enable the IPA to have access to needed investigatory tools (Recommendations 1.4 and 11.1), including access to IAPro and evidence.com, SJPD records, and a grant of subpoena power. (i) Should the IPA be unable to employ sworn investigators, consider a formal agreement between the City Manager and IPA that authorizes the SJPD's IA to file affidavits for search warrants or other investigatory tools upon request by the IPA. (d) Review both the IA and the IPA oversight structure, processes, and outcomes every three years (Recommendations 3.1 and 3.2) to learn and make adjustments. (e) Honor all employment protections under existing law and under the City's collective bargaining agreement with the SJPOA. (p. 55) (4) As the IPA urges (December 2, 2022 IPA report p. 4), decline to accept any recommendation that might implicitly or explicitly limit the IPA's ability to appeal a decision by the Chief of Police (MLF Report p.54), and continue the current model whereby the IPA may appeal first to the Chief of Police and then, if warranted, to the City Manager. (5) Refer the proposed hybrid workplan to the Public Safety, Finance and Strategic Support (PSFSS) Committee meeting in April 2023, and upon approval of an initial workplan, return to PSFSS in one year with their results in a report that will be cross-referenced to the full City Council. (11-0.)

5. TRANSPORTATION & AVIATION SERVICES

5.1 22-1937 Design-Build Contract for the 9308 - Norman Y. Mineta San José International Airport New Facilities Division Building(s) - Rebid Project. RENUMBERED FROM ITEM 2.23

Adopt a resolution:

(a) Finding that the award of the proposed design-build contract for the 9308 - SJC New Facilities Division Building(s) - Rebid (Project) at the Norman Y. Mineta San José International Airport will result in lower costs and/or faster Project completion than if the City used the traditional design-bid-build method of project delivery.

(b) Approving the final ranking of the design-build (D-B) Entities that responded to the Request For Proposals for the Project;

(c) Authorizing the Director of Public Works to negotiate a D-B Contract for the Project as follows:

(1) Begin negotiating with the highest ranked D-B Entity, C. Overaa & Co.;

(2) Begin negotiating with the next highest D-B Entity, if after having negotiated with C. Overaa & Co, the Director determines that the City's interests are best served by beginning negotiations with the next highest ranked D-B Entity;

(3) Begin negotiating with each of the other D-B Entities in order of their ranking as the Director determines appropriate.

(d) Authorizing the Director of Public Works to:

(1) Award and Execute the D-B Contract for the Project in an amount not to exceed \$30,400,000 with the successfully negotiated D-B Entity; and

(2) Negotiate and execute Task Orders up to the Contract not to exceed amount as necessary to meet project completion.

(e) Approving a contingency in the amount of 15 percent of the negotiated D-B Contract not to exceed amount for City approved changes to the design scope and unforeseen conditions that might arise in the construction; and

(f) Authorizing the Director of Public Works to negotiate and execute any single and/or multiple contracts change orders for the Project up to the contingency amount. CEQA: File No. PP18-103, Environmental Impact Report for the Amendment to the Norman Y. Mineta San José International Airport Master Plan (Resolution No. 79497). (Airport/Public Works)

Action: Upon motion by Councilmember Sergio Jimenez, seconded by Vice Mayor Chappie Jones and carried unanimously, **Resolution No. 80835** was adopted. (11-0.)

6. ENVIRONMENTAL & UTILITY SERVICES

6.1 22-1858 Action Related to Long Term Renewable Energy and Resource Adequacy Contracts.

(a) Adopt a resolution authorizing the Director of the Community Energy Department or the Director's designee to negotiate and execute:

(Item Continued on the Next Page)

6.1 (Cont'd.)

(1) An amendment to the power purchase agreement by and between the City of San José and RE Scarlet LLC, a subsidiary of EDP Renewables North America LLC, to buy renewable energy, resource adequacy, renewable energy credits, and attributes associated with a solar photovoltaic and battery storage facility for a term of 20 years beginning 2023 through 2043, in an amount not to exceed \$8,781,000 annually and \$175,620,000 in the aggregate, to be paid solely from the San José Clean Energy Operating Fund and subject to the annual appropriation of funds; and

(2) An agreement with EDPR Scarlet 2 BESS LLC, a subsidiary of EDP Renewables North America LLC, to buy resource adequacy associated with a solar photovoltaic and battery storage facility for a term of 10 years beginning 2024 through 2034, in an amount not to exceed \$6,075,000 annually and \$60,750,000 in the aggregate, to be paid solely from the San José Clean Energy Operating Fund and subject to the annual appropriation of funds.

(b) Adopt a resolution authorizing the Director of the Community Energy Department or the Director's designee to negotiate and execute an agreement with BCE Seal Beach, LLC, a subsidiary of Bright Canyon Energy Corporation, to buy renewable energy, resource adequacy, renewable energy credits, and attributes associated with a solar photovoltaic and battery storage facility for a term of 10 years beginning 2024 through 2034, in an amount not to exceed \$3,300,000 annually and \$33,000,000 in the aggregate, to be paid solely from the San José Clean Energy Operating Fund and subject to the annual appropriation of funds. CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. (Community Energy)

Public Comments: (Zoom speaker) Paul Soto offered public testimony regarding the item.

Action: Upon motion by Councilmember Dev Davis, seconded by Councilmember Pam Foley and carried unanimously, (a) **Resolution No. 80836** and (b) **Resolution No. 80837** were adopted. (11-0.)

6.2 22-1836 **Amendment to San José Municipal Code Titles 2, 4, and 26 and Title 28 for Electric Service.**

Approve an ordinance amending Titles 2, 4, and 26 and adding Title 28 to the San José Municipal Code to establish a municipal utility for electric service. CEQA: Not a Project, File No. PP17-008. General Procedure and Policy Making resulting in no changes to the physical environment. (Community Energy)

DROPPED.

6.3 22-1859 **Amendment to the Master Consultant Agreement with Stantec Consulting Services Inc. for Program Management Services for the San José-Santa Clara Regional Wastewater Facility Capital Improvement Program.**

(a) Approve the second amendment to the Master Consultant Agreement with Stantec Consulting Services Inc. for program management services for the San José-Santa Clara Regional Wastewater Facility Capital Improvement Program, increasing the not-to-exceed

(Item Continued on the Next Page)

6.3 (Cont'd.)

agreement amount from \$78,000,000 to a revised not-to-exceed agreement amount of \$92,000,000; and extending the term of the agreement from June 30, 2023 to June 30, 2026.

(b) Adopt a resolution authorizing the City Manager to exercise the City's option to extend the agreement for up to two additional one-year terms, with compensation for each additional one-year term not to exceed \$4,000,000, depending on program needs and subject to the appropriation of funds. CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. (Environmental Services)

Action: Upon motion by Councilmember Dev Davis, seconded by Councilmember David Cohen and carried unanimously, (a) The second amendment to the Master Consultant Agreement with Stantec Consulting Services Inc. for program management services for the San José-Santa Clara Regional Wastewater Facility Capital Improvement Program was approved and (b) **Resolution No. 80838** was adopted. (11-0.)

6.4 22-1860 **Award of Dewatered Biosolids Transportation and Beneficial Use Service Agreements for the San José-Santa Clara Regional Wastewater Facility.**

(a) Adopt a resolution adopting the Addendum to the Environmental Impact Report for the San José-Santa Clara Water Pollution Control Plant Master Plan (SCH #2011052074), Biosolids Disposition Project, File No. ER20-129, in accordance with the California Environmental Quality Act (CEQA), as amended.

(b) Approve and execute the following dewatered biosolids transportation and beneficial use service agreements to manage the dewatered biosolids produced annually by the San José-Santa Clara Regional Wastewater Facility:

(1) Denali Water Solutions, LLC to manage approximately 35% of the dewatered biosolids produced annually by the San José-Santa Clara Regional Wastewater Facility through June 30, 2029, with options to extend through June 30, 2033, and a maximum compensation of \$18,400,000, subject to the appropriation of funds.

(2) Synagro West, LLC to manage approximately 57% of the dewatered biosolids produced annually by the San José-Santa Clara Regional Wastewater Facility through June 30, 2029, with options to extend through June 30, 2033, and a maximum compensation of \$29,600,000, subject to the appropriation of funds.

(3) Lystek International Limited to manage approximately 8% of the dewatered biosolids produced annually by the San José-Santa Clara Regional Wastewater Facility through June 30, 2029, with options to extend through June 30, 2033, and a maximum compensation of \$7,300,000, subject to the appropriation of funds.

(c) Adopt a resolution delegating authority to the City Manager or their designee to negotiate and execute amendments to the biosolid transportation and beneficial use service agreements with Denali Water Solutions, LLC, Synagro West, LLC, and Lystek International Limited to account for necessary changes to the percentage of the

(Item Continued on the Next Page)

6.4 (Cont'd.)

dewatered biosolids managed under each agreement and the corresponding compensation and/or execute extensions to the initial term of the agreement so long as such amendments do not exceed the combined total of \$55,300,000. CEQA: Addendum to the Environmental Impact Report for the San José - Santa Clara Water Pollution Control Plant Master Plan (SCH #2011052074), Biosolids Disposition Project, File No. ER20-129. (Environmental Services)

ESD Deputy Director, Mariana Chavez-Vazquez and ESD Assistant Director, Napp Fukuda offered the presentation and responded to questions.

Public Comment: (In person speaker) Jim Dunbar offered public testimony regarding the item.

Action: Upon motion by Councilmember David Cohen, seconded by Councilmember Pam Foley and carried unanimously, (b) the dewatered biosolids transportation and beneficial use service agreements to manage the dewatered biosolids produced annually by the San José-Santa Clara Regional Wastewater Facility was approved; (a) **Resolution No. 80839** and (c) **Resolution No. 80840** were adopted. (11-0.)

6.5 22-1861 **Approval of the Updated Direct Discharge Trash Control Plan.**

Adopt a resolution approving the updated Direct Discharge Trash Control Plan and directing staff to submit the Plan to the San Francisco Bay Regional Water Quality Control Board (Water Board) by January 3, 2023, as required under the Municipal Regional Stormwater Permit provision C.10.f.ii; and further authorizing the City Manager to modify the plan as necessary after Water Board review.

CEQA: Not a Project, File No. PP17-007, Preliminary direction to staff and eventual action requires approval from a decision-making body. (Environmental Services/Housing/Parks, Recreation and Neighborhood Services)

Director, Environmental Services Department, Kerrie Romanow; Deputy Director, Environmental Services Department, Rajani Nair; Deputy Director, Housing, Ragan Henninger; and Deputy Director, Parks and Recreation Neighborhood Services, Andrea Flores Shelton offered the presentation and responded to questions.

Public Comment: (Zoom speaker) Paul Soto offer public testimony regarding the item.

Action: Upon motion by Councilmember Sergio Jimenez, seconded by Councilmember Pam Foley and carried unanimously, **Resolution No. 80841** was adopted. (9-0-2. Absent: Esparza, Arenas.)

7. NEIGHBORHOOD SERVICES

8. COMMUNITY & ECONOMIC DEVELOPMENT

8.1 22-1862 Community Stabilization and Opportunity Pathways Fund Commission.

Approve staff's recommended appointments to the Community Stabilization and Opportunity Pathways Fund Commission, in accordance with Section 2.08 of the San José Municipal Code. CEQA: Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment. (Economic Development and Cultural Affairs)

Director of Economic Development and Cultural Affairs, Nanci Klein and Assistant to the City Manager, Lori Severino offered the presentation and responded to questions.

Public Comment: (Zoom speaker) Araceli Rueda offered public testimony regarding the item.

Action: Upon motion by Councilmember Sergio Jimenez, seconded by Councilmember Pam Foley and carried unanimously, the appointments to the Community Stabilization and Opportunity Pathways Fund Commission were approved. (11-0.)

8.2 22-1868 Electronic Billboards on City-Owned Property Status Report.

As recommended by the Community and Economic Development Committee on October 24, 2022:

(a) Accept the status report on efforts to advance the placement of Electronic Billboards on City-owned property.

(b) Direct staff to return to City Council to amend City Council Policy 6-4 Billboards on City-Owned Land to include the tree replacement ratio and 100% renewable San José Clean Energy requirements that were part of the Council-approved Project Plan for two Outdoor Advertising Digital Billboards under the Norman Y. Mineta San José International Airport City of San José Advertising Concession Agreement by and between the City of San José and Clear Channel Outdoors Inc. CEQA: Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action. (Economic Development and Cultural Affairs/Planning, Building, and Code Enforcement) [Community and Economic Development Committee referral 10/24/22 - (d)4]

Deputy City Manager, Rosalynn Hughey; Deputy Director, Office of Economic Development and Cultural Affairs, Blage Zelalich; and assistant to the City Manager, Nora Chin offered the presentation and responded to questions.

Public Comment: (Zoom speakers) Caller '13th Street NAC', Jason Hemp, John Miller, Les Levitt, Paul Lynam, and Paul Soto offer public testimony regarding the item.

(Item Continued on the Next Page)

8.2 (Cont'd.)

Motion: Councilmember David Cohen moved the stricter requirements in the proposal of the staff recommendations. Councilmember Maya Esparza seconded the motion.

Friendly Amendment: Mayor Sam Liccardo requested that any future Request for Proposals (RFP) be subject to the stricter requirements of the new takedown ratio as well. It was accepted by the maker of the motion and seconder.

Action: On a call for question, the motion passed unanimously to accept *the staff recommendation with the stricter requirements in the proposal, also including that any future Request for Proposals (RFP's) under the Policy would be subject to the new takedown ratio.* (a) The status report on efforts to advance the placement of Electronic Billboards on City-owned Property was accepted and (b) staff was directed to return to City Council to amend City Council Policy 6-4 Billboards on City-Owned Land to include the tree replacement ratio and 100% renewable San José Clean Energy requirements that were part of the Council-approved Project Plan for two Outdoor Advertising Digital Billboards under the Norman Y. Mineta San José International Airport City of San José Advertising Concession Agreement by and between the City of San José and Clear Channel Outdoors Inc. (11-0.)

8.3 22-1863 Approval of a Funding Commitment for Second Street Studios Development Located at 1144 Second Street.

(a) Adopt a resolution:

- (1) Approving a construction-permanent loan commitment of \$13,000,000 to Second Street Studios, LP, an affiliate of First Community Housing, for Second Street Studios Development located at 1144 South Second Street (Development);
- (2) Authorizing the Director of Housing to negotiate with Second Street Studios, LP for the refinance and payoff of the outstanding \$12,000,000 senior Silicon Valley Bank loan to the Development and fund \$1,000,000 to pay for other operating expenses of the Development; and
- (3) Authorizing the Director of Housing to negotiate and execute either the amendment of existing loan documents or new loan documents and all other documents regarding an increase to the City of San José construction and permanent financing for the Development or a new construction and permanent financing commitment in the amount of \$13,000,000, including any amendments or modifications thereto.

(b) Adopt the following 2022-2023 Appropriation Ordinance amendments in the Low- and Moderate-Income Housing Asset Fund:

- (1) Decrease the Housing Project Reserve by \$13,000,000; and
- (2) Increase the Housing Loans and Grant appropriation to the Housing Department by \$13,000,000. CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment; and File No. PP17-004, Government Funding Mechanism or Fiscal Activity with no commitment to a specific project which may result in a potentially significant physical impact on the environment. Council District 3.
(Housing/City Manager)

Action: Upon motion by Councilmember Sylvia Arenas, seconded by Councilmember Raul Peralez and carried unanimously, (a) **Resolution No. 80842** and (b) 2022-2023 Appropriation **Ordinance No. 30868** were adopted. (11-0.)

8.4 22-1864

Actions Related to the Homekey Program Round 2 Funds for Capital Acquisition and Rehabilitation of the Pacific Motor Inn Site Located at 455 South Second Street.

(a) Adopt a resolution:

(1) Authorizing the City Manager to accept an award of approximately \$19,868,250 in Homekey Program Round 2 funds from the California Department of Housing and Community Development, if awarded, to address the housing needs of individuals and families experiencing homelessness or at risk of experiencing homelessness through the acquisition of and operation of the Pacific Motor Inn located at 455 South Second Street;

(2) Authorizing the City Manager to negotiate and execute a California Department of Housing and Community Development Standard Agreement and all necessary related documents to accept approximately \$19,868,250 in Project Homekey acquisition funding and operating subsidy; and

(3) Authorizing the Director of Housing to negotiate and execute grant documents and all other documents with PMI Partners LLC regarding the acquisition, rehabilitation, operations, and services for the Pacific Motor Inn for a grant award in the amount up to \$19,868,250 in Project Homekey funds and \$25,026,939 from Measure E funds, subject to the appropriation of funds.

(b) Adopt the following Appropriation Ordinance amendments in the General Fund:

(1) Decrease the Measure E - 40% Extremely Low-Income Households Reserve by \$5,756,250; and

(2) Increase the Measure E - Project HomeKey 2.0 (40% ELI) appropriation to the Housing Department by \$5,756,250.

(c) Approve the Pacific Motor Inn as a “Committed Addition” to the 2023-2024 Base Budget, certifying that all associated operating and maintenance costs will be included in future Five-Year General Fund Forecasts, beginning with the 2024-2028 Forecast.

CEQA: Exempt from CEQA Review, File No. ER21-159, Public Health and Safety Code Section 50675.1.4. Council District 3. (Housing/City Manager)

Public Comment: (Zoom speakers) Blair Beekman, Satish Nandi, and Madhukar Thakur offered public testimony regarding the item.

Action: Upon motion by Councilmember Sergio Jimenez, seconded by Councilmember Pam Foley and carried unanimously, the (a) **Resolution No. 80843** and (b) Appropriation **Ordinance No. 30869** were adopted; and (c) the Pacific Motor Inn as a “Committed Addition” to the 2023-2024 Base Budget was approved. (11-0.)

9. REDEVELOPMENT – SUCCESSOR AGENCY

- Open Forum

No members of the public spoke.

- Council recessed until 6:00 p.m.

10. LAND USE

Mayor Sam Liccardo opened the third cycle of the general plan hearing.

Public Comment: (Zoom speakers) Paul Soto, Blair Beekman, and Brian spoke to the items on the Land Use Consent Calendar.

Action: Upon motion by Councilmember Maya Esparza, seconded by Councilmember Magdalena Carrasco and carried unanimously, the Land Use Consent Calendar as a whole was approved and the below listed actions were taken as indicated. (11-0.)

Mayor Sam Liccardo closed the third cycle of the general plan hearing

10.1(a) 22-1869 GPT22-003 & ER22-0269- City-Initiated General Plan Text Amendment to Amend the Envision San José 2040 General Plan State that Commercial Space Requirement no Longer Applies to Affordable Housing Citywide and Association Revisions.

Adopt a resolution amending the Envision San José 2040 General Plan pursuant to Title 18 of the San José Municipal Code to update Housing Policy H-2.11 and make related clarifying revisions to no longer apply the commercial space requirement to 100% affordable housing developments citywide.

CEQA: Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (FEIR), adopted through Resolution No. 76041, and Supplemental EIR Resolution No. 77617, adopted on December 15, 2015, and Addenda thereto. Planning Commission recommended approval [12/7/2022 - Item 7.a (9-1-0, Garcia absent)]. (Planning, Building and Code Enforcement)

Action: Upon motion by Councilmember Maya Esparza, seconded by Councilmember Magdalena Carrasco and carried unanimously, (a) **Resolution No. 80844** was adopted. (11-0.)

10.1(b) 22-1870 GPT22-004 - City-Initiated General Plan Text Amendment for Privately-Initiated General Plan Application and Associated Minor Revisions.

Adopt a resolution amending the Envision San José 2040 General Plan pursuant to Title 18 of the San José Municipal Code to amend Implementation Policy IP-3.3 and add a new Implementation Policy 3.11 to require concurrent review and consideration of privately-initiated General Plan Amendments applications with development permit applications. CEQA: Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (FEIR), adopted through Resolution No. 76041, and Supplemental EIR Resolution No. 77617, adopted on December 15, 2015, and Addenda thereto Planning Commission recommended approval

(Item Continued on the Next Page)

10.1(b) (Cont'd.)

[12/7/2022 – Item 8.a (9-1-0, Garcia absent)]. (Planning, Building and Code Enforcement)

Action: Upon motion by Councilmember Maya Esparza, seconded by Councilmember Magdalena Carrasco and carried unanimously, (b) **Resolution No. 80845** was adopted. (11-0.)

10.1(c) 22-1871 PDC21-017, PD21-004 & ER21-079 - Planned Development Rezoning and Planned Development Permit for Certain Real Property Located at 500 Piercy Road.

(1) Approve an ordinance rezoning the Project Site from the IP Industrial Park Zoning District to the IP(PD) Planned Development Zoning District on an approximately 10.6-gross acre site.

(2) Adopt a resolution approving, subject to conditions, a Planned Development Permit to allow the construction of a fleet maintenance and repair facility incidental to the existing warehouse distribution use, on the approximately 10.6-gross acre Project Site.

CEQA: Exempt pursuant to CEQA Guidelines Section 15303(d) for New Construction of Small Structures. Planning Commission recommended approval 11/16/2022- Item 4.d. (9-0-1, Aluwalia absent). Council District: 2 (Planning, Building and Code Enforcement)

Action: Upon motion by Councilmember Maya Esparza, seconded by Councilmember Magdalena Carrasco and carried unanimously, (c)(1) **Ordinance No. 30870** was passed for publication and (c)(2) **Resolution No. 80846** was adopted. (11-0.)

10.1(d) 22-1872 PDC21-019, PD21-006, PT21-002 & ER21-086 - Planned Development Rezoning, Planned Development Permit and Vesting Tentative Map for Certain Real Property Located at the East Side of Camden Avenue, between Malpas Drive and Canna Lane (APN 567-26-014).

(1) Adopt a resolution adopting the Camden Avenue Residential 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.

(2) Approve an ordinance rezoning the Project Site from the R-2 Two Family Residence Zoning District to the R-2(PD) Planned Development Zoning District on a 1.0-gross acre site.

(3) Adopt a resolution approving, subject to conditions, a Vesting Tentative Map to subdivide the 1.0-gross acre lot to nine lots, including seven single-family lots and two private street lots.

(4) Adopt a resolution approving, subject to conditions, a Planned Development Permit to allow the construction of seven single-family detached residences on the 1.0-gross acre site.

CEQA: Initial Study and Mitigated Negative Declaration (IS/MND) for

(Item Continued on the Next Page)

10.1(d) (Cont'd.)

the Camden Avenue Residential Project. Planning Commission recommended approval [12/7/2022 - Item 4.d (9-1-0, Garcia absent). Council District 10 (Planning, Building and Code Enforcement)

Action: (d)(1) **Resolution No. 80847**, (d)(3) **Resolution No. 80848**, and (d)(4) **Resolution No. 80849** were adopted; (d)(2) **Ordinance No. 30871** was passed for publication. (11-0.)

10.1(e) 22-1873

C22-100, C22-102, C22-103, C22-105, C22-106, C22-107, C22-108, C22-109 - City-Initiated Rezoning of 250 Parcels to Align a Property's Zoning Designation to Its General Plan Land Use Designation in Response to Senate Bill 1333.

Approve an ordinance of the City of San José rezoning one property from the LI Light Industrial Zoning District to the CIC Combined Industrial/Commercial Zoning District; 67 properties from the CG Commercial General Zoning District to the DC Downtown Primary Commercial Zoning District, two properties from the CN Commercial Neighborhood Zoning District to the DC Downtown Primary Commercial Zoning District; 16 properties from the CO Commercial Office Zoning District to the DC Downtown Primary Commercial Zoning District; one property from the PQP Public /Quasi-Public Zoning District to the DC Downtown Primary Commercial Zoning District; 61 properties from the R-M Multiple Residence Zoning District to the DC Downtown Primary Commercial Zoning District; four properties from the LI Light Industrial Zoning District to the MUC Mixed Use Commercial Zoning District; one property from the R-M Multiple Residence Zoning District to the MUC Mixed Use Commercial Zoning District; two properties from the DC Downtown Primary Commercial Zoning District to the OS Open Space Zoning District; two properties from the LI Light Industrial Zoning District to the OS Open Space Zoning District; 12 properties from the CG Commercial General Zoning District to the PQP Public/Quasi-Public Zoning District; one property from the DC Downtown Primary Commercial Zoning District to the PQP Public/Quasi-Public Zoning District; one property from the R-2 Two-Family Residential Zoning District to the PQP Public/Quasi-Public Zoning District; 16 properties from the R-M Multiple Residence Zoning District to the PQP Public/Quasi-Public Zoning District; six properties from the CG Commercial General Zoning District to the R-1-8 Single-Family Residential Zoning District; one property from the CP Commercial Pedestrian Zoning District to the R-1-8 Single-Family Residential Zoning District; one property from the HI Heavy Industrial Zoning District to the TR Transit Residential Zoning District; 32 properties from the R-M Multiple Residence Zoning District to the TR Transit Residential Zoning District; 16 properties from the R-M Multiple Residence Zoning District to the UR Urban Residential Zoning District; one property from the split zoned LI Light Industrial and HI Heavy Industrial Zoning Districts to the CIC

(Item Continued on the Next Page)

10.1(e) (Cont'd.)

Combined Industrial/Commercial Zoning District; one property from the split zoned CG Commercial General and CO Commercial Office Zoning Districts to the DC Downtown Primary Commercial Zoning District; three properties from the split zoned CG Commercial General and R-M Multiple Residence Zoning Districts to the DC Downtown Primary Commercial Zoning District; one property from the split zoned CG Commercial General and R-M Multiple Residence Zoning Districts to the PQP Public/Quasi-Public Zoning District; and one property from the R-M Multiple Residence Zoning District to the split zoned TR Transit Residential and UR Urban Residential Zoning Districts, all located on those certain real properties throughout the Downtown and Diridon Station Area Plan areas. CEQA: Determination of Consistency with the Envision San José 2040 General Plan EIR (Resolution No. 76041) and the Envision San José General Plan Supplemental EIR (Resolution No. 77617), and Addenda thereto. (Planning, Building and Code Enforcement)

Action: (e) **Ordinance No. 30872** was passed for publication. (11-0.)

END OF CONSENT CALENDAR

10 Land Use - Regular Agenda

10.2 22-1874 **H20-037 & ER20-242 - Site Development Permit for Certain Real Property Located on the South Corner of Fountain Alley and South 2nd Street (35 South 2nd Street).**

(a) Adopt a resolution certifying the Fountain Alley Mixed Use Project Supplemental Environmental Impact Report to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942), and making certain findings concerning significant impacts, mitigation measures, alternatives, Statement of Overriding Considerations, and adopting a related Mitigation Monitoring and Reporting Plan, in accordance with the California Environmental Quality Act (CEQA).

(b) Adopt a resolution approving, subject to conditions, a Site Development Permit, to allow the removal of two ordinance-size trees and 10 non-ordinance-size trees, and the construction of a 21-story mixed residential and commercial building with a total of approximately 721,286 square feet, including 30,790 gross square feet of commercial/retail space on the ground floor and second floor, 194 residential units, 368,093 square feet of office space, and one level of below-grade loading area and three levels of below grade parking, with extended construction hours from 7 AM to 10 PM, Monday to Friday, and 7 AM to 7 PM on Saturdays over a period of approximately 34 months on an approximately 1.25-gross acre site.

CEQA: Fountain Alley Mixed Use Project Final Supplemental Environmental Impact Report (File Nos. H20-037; ER20-) to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942). Planning Commission recommended approval 11/16/2022-

(Item Continued on the Next Page)

10.2 (Cont'd.)

Item 5.a. (6-3-1, Barocio, Cantrell, and Ornelas-Wise opposed; Aluwalia absent). Council District 3. (Planning, Building and Code Enforcement)

Director, Department of Planning, Building, and Code Enforcement (PBCE), Chris Burton; Historic Preservation Officer, Dana Peak Edwards; Deputy Director for Development Review, Robert Manford; and Principal Planner for Environmental Review, David Keon offered the presentation and responded to questions.

Public Comment: (Zoom speakers) Mark Ritchie, Louis Mirante (Bay Area Council), Kelilah Federman, Corey Quevedo, Mike Sodergren, Blair Beekman, and Brian offered public testimony regarding the item.

Action: Upon motion by Councilmember Raul Peralez, seconded by Councilmember Sylvia Arenas and carried unanimously, (a) **Resolution No. 80850** and (b) **Resolution No. 80851** were adopted. (10-0-1. Absent: Davis.)

10.3 22-1875 **H20-026 - Administrative Hearing on the Environmental Appeal of the Eterna Tower Mixed-Use Development Project Addendum to the Downtown Strategy 2040 Final Environmental Impact Report.**

(a) Conduct an Administrative Hearing to consider the environmental appeal of the Planning Director's reliance on the Eterna Tower Mixed-Use Development Project Addendum to the Downtown Strategy 2040 Final Environmental Impact Report in accordance with the California Environmental Quality Act (CEQA) for a Site Development Permit (File No. H20-026), to allow the demolition of two on-site two-story buildings and allow the construction of a 26-story, approximately 184,667-gross square foot mixed-use building consisting of 192 residential units and 6,644 square feet of commercial space, on an approximately 0.18-acre site.

(b) Adopt a resolution denying the environmental appeal and upholding the Planning Director's reliance on the Eterna Tower Mixed-Use Development Project Addendum to the Downtown Strategy 2040 Final Environmental Impact Report in accordance with the California Environmental Quality Act, as amended, and finding that:

(1) The City Council has independently reviewed and analyzed the Addendum for the Eterna Tower Mixed-Use Development Project, and related administrative record related to Site Development Permit H20-026; and

No.

(2) The Addendum for the Eterna Tower Mixed-Use Development Project was prepared and completed in full compliance with the CEQA of 1970, as amended, together with State and local implementation guidelines; and

(3) Reliance on the Addendum for the Eterna Tower Mixed-Use Project reflects the independent judgment and analysis of the City of San José, as lead agency for the Project; and

(Item Continued on the Next Page)

10.3 (Cont'd.)

(4) Preparation of a new, subsequent, or supplemental environmental document is not required because the appeal does not raise any new significant impacts that have not already been analyzed or addressed in the Eterna Tower Mixed-Use Project Addendum and none of the following events occurred as outlined in Section 21166 of Public Resources Code (PRC):

- (i) substantial changes are proposed in the project which will require major revisions of the environmental report;
- (ii) substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report; or
- (iii) new information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

Further, a new, subsequent, or supplemental environmental impact report is not required because no impacts outside the scope of the Downtown Strategy 2040 EIR were identified in Section 15168 of the CEQA Guidelines. CEQA: Eterna Tower Mixed-Use Development Project Addendum. Council District 3. (Planning, Building and Code Enforcement)

Public Comment: (Zoom speakers) Kelilah Federman (Silicon Valley Residents for Responsible Development), Albert Lustre (NorCal Carpenters), Brian, Corey Quevedo, Kurt Anderson, Chuck Hammers, and Blair Beekman offered public testimony regarding the item.

Action: Upon motion by Councilmember Raul Peralez, seconded by Councilmember Sylvia Arenas and carried unanimously, (a) The administrative hearing was conducted and (b) **Resolution No. 80852** was adopted. (10-0-1. Absent; Davis.)

• Open Forum

1. Blair Beekman stated more grace could have been used regarding the projects discussed.
2. Vicky stated her objections with VTA EIH (Emergency Interim Housing) location near Cottle Rd. and encouraged staff to look for a better area.
3. Brian thanked the Councilmembers and Mayor for their hard work.
4. Katie (D.10) stated her concerns with the EIH VTA location.
5. Neida (D.10) stated her oppositions with the Cottle VTA EIH location.
6. Mike requested if the City could display a progress monitor regarding the envision 2040 goals.
7. Madhukar (D.10) stated he's in support of transient housing but expressed that the Cottle Rd. VTA EIH site is not the best fit.
8. Tauber stated the EIH site on Cottle is a disproportionate use of South San José neighborhoods.
9. Ruth stated the wage theft policy in place should include a CBA grievance procedure.
10. Arceli Rueda (SEIU-USWW) requested that Council support good union jobs that support security officers who are contracted by the City of San José.
11. Brittney Smith (SEIU-USWW) requested if security officers could be covered under a union contract.
12. Caller 'Music India Foundation' spoke to Tiny Homes and EIH sites being located in South San Jose and not evenly distributed throughout the City.

(Item Continued on the Next Page)

Open Forum (Cont'd.)

13. A caller spoke to her concerns with the Cottle VTA EIH location.
14. Caller 'R. Pham' expressed why he disapproves the Cottle VTA EIH location.
15. Venkatesh (D.10) expressed his many concerns with the Cottle VTA station EIH location.
16. Isaac stated the Cottle VTA EIH site is not the correct location and gave his reasons as to why.
17. Yuki stated he uses the Cottle VTA station for commuting and addressed his concerns with the location.
18. A caller voiced his concerns and opposition of the Cottle VTA EIH location.
19. Amanda requested if Council could reconsider the Cottle VTA EIH location and stated she uses that station for commuting.
20. Huascar Castro (Working Partnerships) requested that Council consider a contractor that is covered by a union in the upcoming collective bargaining agreement.
21. Matt Piasecki (SEIU-USWW) spoke to the importance of union protections for the workers of the City.
22. Keven Adams (SEIU-USWW) spoke to his termination as a security officer and the importance of being covered by a union.
23. Ariel Park (SEIU-USWW) urged Council to select a company that has a union collective bargaining agreement and would also enforce the wage theft policies.
24. Kunta addressed his concerns with the Cottle VTA EIH location.
25. Tejinder (SEIU-USWW) requested that City staff consider a union contract to protect their rights and middle class families.

• Adjournment

The Council of the City of San José adjourned at 7:32 p.m. in memory of Commander Francis "Fran" McVey, who served as President of the United Veterans Council of Santa Clara County and worked for the City of San Jose for 31 years, most recently as Chief Deputy Director of Environmental Services. A decorated Naval flight officer during the Vietnam War and Cold War, Fran was a tireless advocate for his fellow veterans in our community. Fran's life was dedicated to service-to his country, to his city, and to our veterans. He leaves behind a grateful community.

Minutes Recorded, Prepared and Respectfully Submitted by,



Yasmin Johnson, Deputy City Clerk

yj/12-13-23/MIN

CLOSED SESSION MINUTES

SAN JOSE, CALIFORNIA

TUESDAY, DECEMBER 13, 2022

The Council of the City of San José convened into Closed Session at 9:31 a.m.
The meeting was held in Council Chambers Conference Room, W133.

Present: Councilmembers - Batra, Candelas, Cohen, Doan, Davis, Foley,
Jimenez, Ortiz, Torres, Kamei, Mahan.

Absent: Councilmembers - All present.

CLOSED SESSION ITEM(S) DISCUSSED:

A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(d)(1):

1. Case Name: In re: Claim of Augustine
Name(s) of Parties(s)
Court: Workers Compensation Appeals Court
Case No: ADJ12845328; ADJ12845329
Amount of Money or Benefits
Other Relief Sought:
2. Case Name: In re: Claim of Brugge
Name(s) of Parties(s)
Court: Workers Compensation Appeals Court
Case No: ADJ10421467; ADJ10132750
Amount of Money or Benefits
Other Relief Sought:
3. Case Name: In re: Claim of Mank
Name(s) of Parties(s)
Court: Workers Compensation Appeals Court
Case No: ADJ13281800, ADJ13281318
Amount of Money or Benefits
Other Relief Sought:
4. Case Name: In re: Claim of Sheppard
Name(s) of Parties(s)
Court: Workers Compensation Appeals Court
Case No: ADJ11687172; ADJ12998845; ADJ13799022
Amount of Money or Benefits
Other Relief Sought:
5. Case Name: Chavez, Cynthia v. City of San José
Name(s) of Parties(s) CINDY CHAVEZ, CITY OF SAN JOSE
Court: Superior Court of California, County of Santa Clara
Case No: 22CH011119
Amount of Money or Restraining order.
Other Relief Sought:

6. Case Name: Blevins, Lisa v. City of San José
 Name(s) of Parties(s) LISA BLEVINS, CITY OF SAN JOSÉ
 Court: Superior Court of California, County of Santa Clara
 Case No: 1-14-CV270060
 Amount of Money or Appeal
 Other Relief Sought:
7. Case Name: City of San Jose v. All Persons Interested in the Matter of the Issuance and sale of Pension Obligation Bonds, etc.
 Name(s) of Parties(s) CITY OF SAN JOSE, ALL PERSONS INTERESTED IN THE MATTER OF THE ISSUANCE AND SALE OF PENSION OBLIGATION BONDS FOR THE PURPOSE OF REFUNDING CERTAIN PENSION OBLIGATIONS OWED BY THE CITY OF SAN JOSE TO AND ALL PROCEEDINGS LEADING THERETO, INCLUDING THE ADOPTION OF A RESOLUTION THAT AUTHORIZES ISSUANCE OF PENSION OBLIGATION BONDS, THE EXECUTION AND DELIVERY OF A TRUST AGREEMENT AND BOND PURCHASE AGREEMENT, AND THE SALE OF SUCH BONDS
 Court: Superior Court, County of Santa Clara
 Case No: 21CV391517
 Amount of Money or Validation of legislative action authorizing issuance of
 Other Relief Sought: bonds for the purpose of refinancing City pension obligations

B. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION:
 Significant exposure to litigation pursuant to Sections 54956.9(d)(2) and (e)(1) of the Government code:

Number of matter(s) to be discussed: 4

C. CONFERENCE WITH LABOR NEGOTIATOR PURSUANT TO GOVERNMENT CODE SECTION 54957.6:

City Negotiator: Jennifer Schembri, Director of Employee Relations

Employee Organizations:

1. Organization or Name and Title of Unrepresented Employees: **Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF)**
 Nature of negotiations: wages/salaries, hours, working conditions, etc.
 Name of Existing Contract or MOA: Memorandum of Agreement — City of San José and Municipal Employees' Federation, AFSCME Local 101, AFL-CIO

How to Obtain a copy of Existing Contract or MOA:

Web: <https://www.sanjoseca.gov/your-government/departments/employee-relations/labor-relations-information/bargaining-units-labor-contract-info>

Telephone – Employee Relations: (408) 535-8150

2. Organization or Name and Title of Unrepresented

San José Police Officers’ Association (SJPOA)

Employees:

Nature of

wages/salaries, hours, working conditions, etc.

negotiations:

Name of Existing Contract or MOA:

Memorandum of Agreement — City of San José and San José Polices’ Association

How to Obtain a copy of Existing Contract or MOA:

Web: <https://www.sanjoseca.gov/your-government/departments/employee-relations/labor-relations-information/bargaining-units-labor-contract-info>

Telephone – Employee Relations: (408) 535-8150

By unanimous consent, Council recessed from the Closed Session at 10:40 a.m.; to reconvene in Regular Open Session at 11:30 a.m. in Council Chambers.