



City Council Meeting Agenda

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



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

Welcome to the San José City Council meeting!

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

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

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

- o **Fill out a Yellow Speaker's Card and submit it to the City Clerk seated at the front table. Do this before the meeting or before the item is heard.** This will ensure that the name on the card is called for the item(s) that you wish to address, and it will help ensure the meeting runs smoothly for all participants by calling speakers in an orderly manner.
- o When the Council reaches your item on the agenda, the Mayor will open the public hearing and call your name. Please address the Council from the podium, which is located to the left of the City Clerk's table.

- o Each speaker generally has two minutes to speak per item. The total amount of time allocated for public testimony for each public speakers or for an agenda item may be limited at the Mayor's discretion, depending on the number of speakers or the length of the agenda. (California Government Code Section 54954.3; Council Policy 0-37)
- o To assist you in tracking your speaking time, there is a display on the podium. The green light turns on when you begin speaking; the yellow light turns on when you have 30 seconds left; and the red light turns on when your speaking time is up.

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

The San José City Council meets every Tuesday at 1:30 p.m. and Tuesday at 6 p.m. as needed, unless otherwise noted. The City Council, or less than a quorum, may adjourn any regular, special or adjourned meeting to a later date, time and place specified in the order of adjournment. If all members are absent, the City Clerk may declare the meeting adjourned to a stated date, time and place. If you have any questions, please direct them to the City Clerk's staff seated at the tables just below the dais. Thank you for taking the time to attend today's meeting. We look forward to seeing you at future meetings.

Agendas, Staff Reports and some associated documents for City Council items may be viewed on the Internet at <https://www.sanjoselegistar.com/Calendar.aspx>. Council Meetings are televised live and rebroadcast on Channel 26.

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the Office of the City Clerk at San José City Hall, 200 E. Santa Clara Street, Tower 14th Floor, San José, CA 95113 at the same time that the public records are distributed or made available to the legislative body. Any draft contracts, ordinances and resolutions posted on the Internet site or distributed in advance of the Council meeting may not be the final documents approved by the City Council. Please go to the Clerk's Records Database <https://records.sanjoseca.gov/Pages/Search.aspx> for the final document, or you may also contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov.

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

Accommodations: Any member of the public who needs accommodations should email the ADA Coordinator at ADA@sanjoseca.gov or by calling (408) 535-8430. The ADA Coordinator will use their best efforts to provide reasonable accommodations to provide as much accessibility as possible while also maintaining public safety in accordance with the City procedure for resolving reasonable accommodation requests.

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

*** 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.

How to observe the Meeting (no public comment):

- 1) Cable Channel 26,
- 2) <https://www.sanjoseca.gov/news-stories/watch-a-meeting>, or
- 3) <https://www.youtube.com/CityofSanJoseCalifornia>

How to submit written Public Comment before the City Council Meeting:

- 1) Use the eComment tab located on the City Council Agenda page. eComments are also directly sent to the legislate application used by City Council and staff.
- 2) By email to city.clerk@sanjoseca.gov by 10:00 a.m. the day of the meeting. Those emails will be attached to the Council Item under “Letters from the Public.” Please identify the Agenda Item Number in the subject line of your email.

How to submit written Public Comment during the City Council Meeting:

- 1) Email during the meeting to councilmeeting@sanjoseca.gov, identifying the Agenda Item Number in the email subject line. Comments received will be included as a part of the meeting record but will not be read aloud during the meeting.

How to provide spoken Public Comment during the City Council Meeting:

- 1) By Phone: (888) 475 4499. Webinar ID is 889 5708 4529. Click *9 to raise a hand to speak. Click *6 to unmute when called.
Alternative phone numbers are: US: +1 (213) 338-8477 or +1 (408) 638-0968 or (877) 853-5257 (Toll Free)
- 2) Online at: <https://sanjoseca.zoom.us/j/88957084529>
 - a. Use a current, up-to-date browser: Chrome 30+, Firefox 27+, Microsoft Edge 12+, Safari 7+. Certain functionality may be disabled in older browsers including Internet Explorer. Mute all other audio before speaking. Using multiple devices can cause an audio feedback.
 - b. Enter an email address and name. The name will be visible online and will be used to notify you that it is your turn to speak.
 - c. When the Mayor calls for the item on which you wish to speak, click on “raise hand.” Speakers will be notified shortly before they are called to speak.
 - d. When called, please limit your remarks to the time limit allotted.

• Call to Order and Roll Call

9:30 a.m. - Closed Session

See Separate Agenda

11:00 a.m. - Regular Session

- **Pledge of Allegiance**

- **Invocation (Mayor)**

Pastor Jason Reynolds, Senior Pastor of Emmanuel Baptist Church

- **Orders of the Day**

To be heard after Ceremonial Items

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

- **Closed Session Report**

To be heard after Ceremonial Items

1. CEREMONIAL ITEMS

1.1 Presentation of a proclamation declaring December 6, 2022 to December 10, 2022 as Older Driver Safety Awareness Week to raise awareness of the many resources available to older drivers and their families to promote safety behind the wheel and ensure that seniors remain active in their communities. (Carrasco)

1.2 Presentation of a commendation recognizing Estella Inda and Lowrider. (Perez)

1.3 Presentation of a commendation recognizing Lowrider. (Perez)

1.4 Presentation of a commendation to the COVID-19 Recovery Task Force and Lived Experience Group for their service to our community. (Perez)

1.5 Special presentation to Library literacy and reading programs. (Mayor)

2. CONSENT CALENDAR

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

2.1 Approval of City Council Minutes.

2.2 Final Adoption of Ordinances.

2.3 Approval of Council Committee Minutes.

2.4 Mayor and Council Excused Absence Requests.

2.5 City Council Travel Reports.

2.6 Report from the Council Liaison to the Retirement Boards.

2.7 [22-1827](#) Settlement with County of Santa Clara Related to North San José.

Recommendation: Approve a Settlement Agreement between the County of Santa, City of Santa Clara, and the City of San José related to the North San José Development Policy Amendments, CEQA, 2006 Settlement Agreement, and other allegations, and authorize the City Manager and City Attorney to execute the Settlement Agreement.

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)

2.8 [22-1828](#) Settlement with City of Sunnyvale Related to Sewer Service (Tract 1379).

Recommendation: Approve a Settlement Agreement between the City of Sunnyvale and the City of San José in the amount of \$800,000 related to sewer service for approximately 151 single family homes located within West San José known as Tract 1379, and authorize the City Manager and City Attorney to execute the Settlement Agreement.

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

2.9 [22-1833](#) Team San José and the Convention and Visitors Bureau Performance Report Annual Review.

Recommendation: 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 and cross reference to the December 13, 2022 City Council Meeting.
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]

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.

Recommendation: 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)

2.11 [22-1834](#) Extension of Hiring Incentive Referral Program for City Employees.

Recommendation: 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)

2.12 [22-1835](#) City Manager's Travel to San Antonio, Texas.

Recommendation: 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)

2.13 [22-1837](#) Actions Related to the Agreement with Mission Asset Fund for Berryessa Flea Market Business Transition Program.

Recommendation: (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 \$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 Funding Sources Resolution and 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)

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

Recommendation: Adopt a resolution delegating authority to the City Manager or designee to 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)

2.15 [22-1839](#) Revisions to Council Policy 4-6, Environmentally Preferable Procurement Policy.

Recommendation: 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)

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.

Recommendation: 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)

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.

Recommendation: 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)

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

Recommendation: 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)

2.19 [22-1843](#)**Grant Agreement with Sacred Heart Community Service for the Eviction Diversion and Settlement Program and Appropriation Amendments.****Recommendation:**

(a) Adopt a resolution authorizing the Director of Housing or her 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)

2.20 [22-1844](#)**Actions Related to the 2023-2024 Hazardous Vegetation Commencement Report.****Recommendation:**

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 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 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)

2.21 [22-1845](#) Amendment to the Master Agreement with Sasaki, Walker, and Associates Group for Landscape Architecture, Architecture, Environmental, and Engineering Services.

Recommendation: 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)

2.22 [22-1846](#) Amendment to the Agreements with AIClear, LLC for Transportation Security Administration Pre-Check at the Airport.

Recommendation: 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)

2.23 [22-1847](#)**Design-Build Contract for the 9308 - Norman Y. Mineta San José International Airport New Facilities Division Building(s) - Rebid Project.****Recommendation:**

Adopt a resolution:

- (a) Finding that the award of the proposed design-build contract for the 9308 - SJC New Facilities Division Building(s) - Rebid (the “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 RFP 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. and
 - (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, and
 - (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 fifteen (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)

2.24 [22-1848](#)**Actions Related to the 8704-Norman Y. Mineta San José International Airport TSA Magazine Relocation Project.****Recommendation:**

- (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.
 - (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)

2.25 [22-1849](#)**Actions Related to the 9405-Norman Y. Mineta San José International Airport Perimeter Protection Project Re-Bid II Project.****Recommendation:**

- (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)

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.

Recommendation: (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) Amend 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)

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.

Recommendation: 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)

2.28 [22-1852](#) Agreement with the Enterprise Foundation for the San José's Cannabis Equity Business Academy.

Recommendation: 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)

2.29 [22-1854](#) Agreement with Caltrans for 280 Almaden Avenue Beautification Improvement Project.

Recommendation: (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)

2.30 [22-1855](#) Fiscal Year 2021-2022 Traffic Impact Fee Report.

Recommendation: 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)

2.31 [22-1856](#) On-Call Consulting Services with Advanced Mobility Group for Citywide Engineering and Traffic Survey Services.

Recommendation: 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 three year initial term and two additional one-year options to extend 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)

3. STRATEGIC SUPPORT**3.1 Report of the City Manager, Jennifer Maguire (Verbal Report)****3.2 Labor Negotiations Update.**

Accept Labor Negotiations Update.
TO BE HEARD AT 9:30 A.M.

3.3 [22-1857](#) 2022-2023 City Initiatives Roadmap First Quarter Status Report.

Recommendation: 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)

3.4 [22-1842](#) **Revolving Credit Agreement with JPMorgan Chase Bank for San José Clean Energy.**

Recommendation: Adopt a resolution authorizing the City Manager, the Director of Finance and other authorized officers to negotiate, execute, and deliver a revolving credit agreement 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 for the purpose of working capital and other operational needs of San José Clean Energy, including posting of collateral to secure purchase of power products and to satisfy regulatory obligations, and to take other related actions in connection therewith.
CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.
(Finance)

4. PUBLIC SAFETY SERVICES

4.1 [22-1879](#) **Report on the Investigations of Police Misconduct in San Jose by Moeel Lah Fakhoury, LLP.**

Recommendation: (a) Accept the report on the Investigations of Police Misconduct in San Jose By Moeel Lah Fakhoury, LLP.
 (b) Refer responses from the Independent Police Auditor and the Administrations to the Investigations of Police Misconduct in San José report and direct staff to return to Public Safety, Finance and Strategic Support Committee in April 2023 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)

5. TRANSPORTATION & AVIATION SERVICES

6. ENVIRONMENTAL & UTILITY SERVICES

6.1 [22-1858](#)**Action Related to Long-Term Renewable Energy Contracts.****Recommendation:**

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

(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 \$165,767,000 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 II 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 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)

6.2 [22-1836](#)**Amendment to San José Municipal Code Titles 2, 4, and 26 and Title 28 for Electric Service.****Recommendation:**

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)

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.

Recommendation: (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 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)

6.4 [22-1860](#)**Award of Dewatered Biosolids Transportation and Beneficial Use Service Agreements for the San José-Santa Clara Regional Wastewater Facility.****Recommendation:**

(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 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)

6.5 [22-1861](#) Approval of the Revised Direct Discharge Trash Control Plan.

Recommendation: Adopt a Resolution approving revised 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)

7. NEIGHBORHOOD SERVICES

8. COMMUNITY & ECONOMIC DEVELOPMENT

8.1 [22-1862](#) Community Stabilization and Opportunity Pathways Fund Commission.

Recommendation: 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)

8.2 [22-1868](#) Electronic Billboards on City-Owned Property Status Report.

Recommendation: As recommended by the Community and Economic Development Committee on October 24, 2022, accept the status report on efforts to advance the placement of Electronic Billboards on City-owned property.
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]

8.3 [22-1863](#) Approval of a Funding Commitment for Second Street Studios Development Located at 1144 Second Street.

Recommendation:

- (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)

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.****Recommendation:**

(a) Adopt a resolution:

(1) Authorizing staff 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. (Housing/City Manager)

9. REDEVELOPMENT – SUCCESSOR AGENCY

- Open Forum

If the Regular Session agenda items end after 6:00 p.m., this Open Forum will be held at the end of the full meeting concurrently with the Evening Session Open Forum. Members of the Public are invited to speak on any item that does not appear on today's Agenda and that is within the subject matter jurisdiction of the City Council.

- Council will recess until 6:00 p.m.

10. LAND USE

Notice to the public: There will be no separate discussion of Land Use Consent Calendar (Item 10.1) as they are considered to be routine by the City Council and will be adopted by one motion. If a member of the City Council requests discussion on a particular item, that item will be removed from the Land Use Consent Calendar (Item 10.1) and considered separately.

10.1 Land Use on Consent Calendar

- (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.

Recommendation: 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/denial] [12/7/2022] - Item X.X (X-X-X). (Planning, Building and Code Enforcement)

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

Recommendation:

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/denial] [12/7/2022]- Item X.X (X-X-X). (Planning, Building and Code Enforcement)

- (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.**

Recommendation:

(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)

- (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).**

Recommendation:

(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 the Camden Avenue Residential Project. Planning Commission recommended [approval/denial] 12/7/2022- Item X.X (X-X-X). Council District 10 (Planning, Building and Code Enforcement)

- (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.**

Recommendation:

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 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)

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).

Recommendation:

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

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.

Recommendation:

(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

(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)

- Open Forum

Members of the Public are invited to speak on any item that does not appear on today's Agenda and that is within the subject matter jurisdiction of the City Council.

- Adjournment

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

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

1. Public Meeting Decorum:

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

2. Signs, Objects or Symbolic Material:

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

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

3. Addressing the Council, Committee, Board or Commission:

- a) Persons wishing to speak on an agenda item or during open forum are requested to complete a speaker card and submit the card to the City Clerk or other administrative staff at the meeting.
- b) Meeting attendees are usually given two (2) minutes to speak on any discussion item and/or during open forum; the total amount of time allocated for public testimony for each public speaker or for an agenda item is in the discretion of the Chair of the meeting and may be limited when appropriate. (California Government Code Section 54954.3; Council Policy 0-37) Applicants and appellants in land use matters are usually given more time to speak. Speakers using a translator will be given twice the time allotted to ensure non-English speakers receive the same opportunity to directly address the Council, Committee, Board or Commission.
- c) Speakers should discuss only the agenda item when called to speak for that item, and only topics related to City business when called to speak during open forum on the agenda.
- d) Speakers' comments should be addressed to the full body. Requests to engage the Mayor, Council Members, Board Members, Commissioners or Staff in conversation will not be honored. Abusive language is inappropriate.
- e) Speakers will not bring to the podium any items other than a prepared written statement, writing materials, or objects that have been inspected by security staff.
- f) If an individual wishes to submit written information, he or she may give it to the City Clerk or other administrative staff at the meeting.
- g) Speakers and any other members of the public will not approach the dais at any time without prior consent from the Chair of the meeting.

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