



City Council Meeting MINUTES

Tuesday, November 9, 2021

1:30 PM

**Hybrid Meeting - Council Chambers and Virtually -
<https://sanjoseca.zoom.us/j/93052835954>**

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 CITY COUNCIL

NOVEMBER 9, 2021

Consistent with the California Governor's Executive Order No. N-29-20, Resolution No. 79450 from the City of San José and the Santa Clara County Health Officer's March 16, 2020 Shelter in Place Order, the City Council meeting was not physically open to the public. Public comments were accepted via eComment, email, by phone and webinar.

21-2341 **CLOSED SESSION. See Page 11 for Closed Session Minutes.**

- **Call to Order and Roll Call**

9:30 a.m. - Closed Session

21-2341 Closed Session – All Present.

1:30 p.m. Present: Councilmembers -Carrasco (via Zoom), Arenas (via Zoom), Esparza, Davis, Mahan, Jimenez, Jones, Cohen, Esparza, Peralez, Foley (via Zoom); Liccardo.

Absent: Councilmembers - All Present.

6:00 p.m. - Evening Session – Cancelled.

- **Pledge of Allegiance**

Mayor Sam Liccardo led the Pledge of Allegiance.

- **Invocation (District 10)**

Rabbi Dana Magat, Senior Rabbi at the Temple Emanu-El, provided the Invocation.

- **Orders of the Day**

The Orders of the Day and the Amended Agenda were approved.

- **Closed Session Report**

None provided.

1. CEREMONIAL ITEMS

- 1.1 Councilmember Maya Esparza, Mayor Sam Liccardo presented a Commendation to Sergeant Doug Tran in recognition of his being named the National Asian Pacific Islander Prosecutors Association Officer of the Year and was joined by the Police Chief and members of the SJPD. (Esparza)
- 1.2 Councilmember Sylvia Arenas presented a Proclamation recognizing National Prematurity Awareness Month and presented a commendation to Beverly White and Louise Hill who spoke on their work with the Black Infant Health Program. (Arenas)
- 1.3 Mayor Sam Liccardo presented a Proclamation declaring November 15, 2021 as America Recycles Day and commended a representative from LUNA and Director, Environmental Services, Kerrie Romanow. (Mayor)

2. CONSENT CALENDAR

Upon motion by Councilmember Pam Foley, seconded by Councilmember Dev Davis and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (11-0.)

Public Comments: Paul Soto, “Manzini” and Brian Darby provided comments.

2.1 Approval of City Council Minutes.

None provided.

2.2 Final Adoption of Ordinances.

None provided.

2.3 Approval of Council Committee Minutes.

None provided.

2.4 [21-2390](#) Mayor and Council Excused Absence Requests.

Request for an excused absence for Councilmember Cohen from the Regular Joint Meeting for the Rules and Open Government Committee and Committee of the Whole on October 27, 2021 due to illness. CEQA: Not a Project, File No. PP17-010, City Organizational and Administrative Activities resulting in no changes to the physical environment. (Cohen)
[Rules Committee referral 11/3/2021 - Item A.1.a]

Action: The excused absence was approved. (11-0.)

2.5 City Council Travel Reports.

None provided.

2.6 Report from the Council Liaison to the Retirement Boards.

None provided.

2.7 [21-2342](#) **Actions Related to the Construction Contract for 9700 - Police E-Lot Fencing Project Re-Bid at the Southwest Corner of West Mission Street and North San Pedro Street for the Police Department. - DEFERRED**

(a) Retroactively approve the Director of Public Works establishing a 15 percent construction contingency in the amount of \$34,953 for the 9700 - Police E-Lot Fencing Re-bid Project; and

(b) Approve a \$55,260 increase to the contract contingency for a revised contingency amount of \$90,213, to pay for additional work completed by the Contractor for a total revised contract amount of \$323,232.

CEQA: Exempt, File No. PP19-014, CEQA Guidelines 15301, Existing Facilities. (Public Works)

DEFERRED TO 11/16/2021 PER ADMINISTRATION

2.8 [21-2343](#) **Downtown San José Property-Based Improvement District Annual Financial Report.**

Approve the Downtown San José Property-Based Improvement District Annual Financial Report for FY 2020-2021.

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 Annual Financial Report for FY 2020-2021 was approved. (11-0.)

2.9 [21-2398](#) **Retroactive Approval of Foxdale Movie Night Sponsored by Council District 5 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 November 3, 2021:

(a) Retroactively approve the Foxdale Movie Night scheduled on October 29, 2021 as a City Council sponsored Special Event and approve the expenditure of funds.

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

Action: City Sponsored Special Event was approved. (11-0.)

2.10 [21-2414](#) **Reproductive Freedom Resolution.**

As recommended by the Rules and Open Government Committee on November 3, 2021, adopt a resolution affirming the City of San José's support for reproductive freedom and rights, and calling on Congress to protect reproductive freedom nationwide as prescribed in Roe v. Wade. CEQA: Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment. (Carrasco, Davis, Esparza, Arenas, Foley)[ROGC referral 11/3/2021 - Item G.3]

Councilmember Dev Davis pulled Item 2.10 to offer support to the Reproductive Freedom resolution.

Public Comments: "Caller #2", Jonathan Karpf, Dianna Zamora, Kim Bick-Maurischat, Jenny Higgins, Paul Soto, Becca Horwitz, Gabriela Chavez-Lopez, Lisha Li, Elizabeth Kanya, Claudia and Ashley Dargert provided comments.

Action: Upon motion by Councilmember Maya Esparza, seconded by Councilmember Dev Davis and carried unanimously, **Resolution No. 80285** affirming the City of San José's support for reproductive freedom and rights was adopted. (11-0.)

3. STRATEGIC SUPPORT

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

City Manager Jennifer Maguire promoted Viva Escuela SJ - International Walk 2 School Day and San José's Walk & Roll event and offered appreciation to staff and everyone who make these events possible.

3.2 Labor Negotiations Update.

None provided.

3.3 [21-2344](#) **Acceptance of Retirement Plans' Comprehensive Annual Investment Fee Reports for Calendar Year 2020.**

Accept the following reports:

(a) Police and Fire Retirement Plan Comprehensive Annual Fee Report for calendar year 2020.

(b) Federated City Employees' Retirement System Comprehensive Annual Fee report for calendar year 2020.

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

Director of Retirement Services Roberto Peña provided the presentation.

Action: Upon motion by Councilmember Matt Mahan, seconded by Vice Mayor Chappie Jones and carried unanimously, the Retirement Plans' Comprehensive Annual Investment Fee Reports for Calendar Year 2020 were accepted. (11-0.)

3.4 [21-2345](#) **Definition of Racial Equity.**

Discuss the City Administration’s proposed definition of Racial Equity, defined by the Government Alliance on Race and Equity as: When race no longer predicts life outcomes and when outcomes for all groups are improved.

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)

Zulma Maciel, Director, Office of Racial Equity and staff offered a presentation.

Motion: Councilmember Sylvia Arenas moved the memorandum she coauthored with Councilmembers Jimenez, Peralez, Carrasco and Esparza dated November 5, 2021. Councilmember Maya Esparza seconded the motion.

Discussion was held, and Zulma Maciel, Director, Office of Racial Equity responded on how we are embedding this work into the City of San José and how it may be included in the report.

Action: On a call for the question, the joint memorandum from Councilmembers Arenas, Jimenez, Peralez, Carrasco and Esparza was included, to:

1. Recommend Council discuss a more complete definition for Racial Equity (as defined by GARE), seek input from community stakeholders, and return to Council with a recommendation for Council adoption:

WHAT IS RACIAL EQUITY?

Racial equity is realized when race can no longer be used to predict life outcomes, and outcomes for all groups are improved.

Racial equity means we eliminate racial disproportionalities so that race can no longer be used to predict success, and we increase the success of all communities.

We set goals and measures to track our progress, with the recognition that strategies must be targeted to close the gaps. Systems and structures that are failing communities of color are actually failing all of us, economically and psychologically. Advancing racial equity is to our collective benefit.

(<https://www.racialequityalliance.org/faq/racial-equity-strategy/>)

2. Direct Staff to include in their next report to NSE initial plans for a comprehensive Citywide Equity Framework to be spearheaded by our Office of Racial Equity, and coordinated through the City Manager’s Office with all City departments. (a) This Framework should provide a path to achieving the goals and strategies adopted by Council in our adoption of the Equity Pledge in June 2020 that will enable us to make measurable, substantive, and transformative change in our communities of highest need through providing baseline service outcomes in delivery of city services. This should include benchmarks to measure tangible results in our communities.
b. This Framework should be informed by best practices including those within the GARE framework, as well as other frameworks and strategic plans such as the King County Equity and Social Justice Strategic Plan.

(11-0.)

4. PUBLIC SAFETY SERVICES

5. TRANSPORTATION & AVIATION SERVICES

6. ENVIRONMENTAL & UTILITY SERVICES

6.1 [21-2346](#) **San José Clean Energy Application to Become a Scheduling Coordinator with the California Independent System Operator.**

Adopt a resolution:

(a) Authorizing the City Manager, or her authorized designee, to:

(1) Execute a Scheduling Coordinator Agreement, and a Meter Service Agreement and to negotiate and execute any other necessary agreements with the California Independent System Operator to establish the City of San José as a Scheduling Coordinator and perform obligations as Scheduling Coordinator for San José Clean Energy;

(a) (2) Negotiate and execute an amendment to the Professional Services Agreement for Wholesale Energy Services with the Northern California Power Agency, in coordination with the City Attorney's Office, to detail the payment and collateral requirements and make any other changes needed for Northern California Power Agency to act as the City's Scheduling Agent; provided that the amendment will not increase the cost of Northern California Power Agency services or the term of the agreement; and

(b) Repealing Resolution No. 78980.

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

(Community Energy)

Director, Community Energy Department, Lori Mitchell, offered a presentation.

Action: Upon motion by Councilmember David Cohen, seconded by Councilmember Dev Davis and carried unanimously, **Resolution No. 80286** regarding San José Clean Energy Application to Become a Scheduling Coordinator with the California Independent System Operator was adopted.

(10-0-1. Absent: Carrasco.)

7. NEIGHBORHOOD SERVICES

7.1 [21-2347](#) Long-Term Use Agreement for the Operation of a Six Acre Portion of Emma Prusch Farm Park.

Adopt a resolution authorizing the City Manager to negotiate and execute a long-term Agreement for up to 25 years with selected service provider, VeggieLution, for the purposes of producing food and providing educational programming to enhance and support existing Emma Prusch Farm Park programs for the benefit of the community. CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no significant physical changes to the environment. Council District 5. (Parks, Recreation and Neighborhood Services)

Public Comments: Paul Soto, Brian Darby; Maricella Fuentes, Cynthia Colmenares, Cayce Hill, and another speaker (representing VeggieLution); James Reber (San José Parks Foundation), Gabriel (Si Se Puede), Manzini, Blair Beekman and Mary Helen Doherty spoke to equity, support and collaboration.

Action: Upon motion by Councilmember Magdalena Carrasco, seconded by Councilmember Maya Esparza and carried unanimously, **Resolution No. 80287** regarding a Long-Term Use Agreement for the Operation of a Six Acre Portion of Emma Prusch Farm Park was adopted. (11-0.)

8. COMMUNITY & ECONOMIC DEVELOPMENT

8.1 [21-2348](#) Thomas Fallon Statue Deaccession.

(a) Approve the deaccession and removal of the Thomas Fallon Statue by artist Robert Glen located at W. Julian Street.

(b) Adopt the following 2021-2022 Appropriation Ordinance Amendments in the General Fund:

(1) Decrease the Unanticipated/Emergency Maintenance Capital Improvements appropriation to the Public Works Department in the amount of \$450,000; and

(2) Establish the Thomas Fallon Statue Deaccession City-wide appropriation to the Department of Public Works in the amount of \$450,000.

CEQA: Categorically Exempt, File No. ER20-225, CEQA Guidelines Section 15301, Existing Facilities. Council District 3. (Economic Development and Cultural Affairs/Public Works/City Manager)

Deputy City Manager, Angel Rios, Jr., introduced the topic, and Kerry Adams Hapner, Director of Cultural Affairs and Michael Ogilvie, Public Art Director offered a presentation.

Kerry Adams Hapner, Director of Cultural Affairs responded to questions and presented additional options for deaccession and removal of the Thomas Fallon Statue. She indicated it could be made exclusively available for educational settings, such as museums and places of higher education, only at the approval and full public review of the Public Art Committee, Arts Commission, and City Council.

8.1 (Cont'd.)

Public Comments: Offering comments were: Paul Soto, Gina Gates-Lopez, Javier Salazar (Aztlán Academy), Guillermo Tlacayaotzin Suarez (San José Chicano Moratorium Resistance Council), Caller “User 3”, Jessica Arguello, Gayle Frank, Kathy Chavez Napo, Tom McEnery, and Fernando Zazueto.

Motion: Councilmember Raul Peralez moved approval of the staff recommendations, with the inclusion that all alternatives be explored with the artist, and if there are circumstances requiring money to be spent (i.e. moving, storage) it be returned to Council for further discussion, with an info memo/update to be provided by staff. Councilmember Maya Esparza seconded the motion.

Action: On a call for the question, the motion carried unanimously, and (a) The deaccession and removal of the Thomas Fallon Statue by artist Robert Glen located at W. Julian Street was approved; and (b) Appropriation **Ordinance No. 30685** was adopted, with the inclusion that all alternatives be explored with the artist, and if there are circumstances requiring money to be spent (i.e. moving, storage) it be returned to Council for further discussion, with an info memo/update to be provided by staff. (11-0.)

9. REDEVELOPMENT – SUCCESSOR AGENCY

10. LAND USE

10.1 Land Use on Consent Calendar

No Land Use items.

- **Notice of City Engineer's Pending Decision on Final Maps**

FOR APPROVAL:

Tract: 10526

Location: West side of Water Street, approximately 130 feet southerly of Southside Drive

District: 7

Lots/Units: 6/5

Type: SFA

Proposed Decision: Approved

Developer: DCITDP.LLC

OPEN FORUM

1. Paul Soto thanked Mayor McEnery for showing up and addressed manifestations of redlining.
2. Jill Borders addressed the Envision 2040 General Plan, calling it a displacement plan targeting low-income rental communities and spoke to her misplacement as a mobile home resident.
3. Darlene Tenes emphasized the importance of history and encouraged creating a history of San José museum and establishing public educational opportunities and school curriculum.
4. Brian Schmidt, Green Foothills, addressed proposed general plan changes affecting Coyote Valley, and added that POST has been impartial on its land purchases.
5. Gail Osmer addressed the homeless crisis and complained of poor porta potty /washing station placement and lighting, creating safety concerns.
6. Caller #3 expressed complaints about the City's approach to equity.
7. Sri addressed security issues at the 71 Vista Montana site and urged that it be shut down.
8. Roland LeBrun spoke to government structure.
9. Krishna spoke on the 71 Vista Montana site and failure of city to address the issue, claiming the City is not managing the site as promised.
10. Blair Beekman addressed efforts to make the vaccine process understandable and his hopes that AI statistic gathering involves civil protections.
11. Sheena M spoke to the 71 Vista Montana site and complained of lack of security, especially with a children's park nearby. She cited accumulation of trash, fire hazards, grey water dumping etc.

ADJOURNMENT

The Council of the City of San José adjourned at 6:58 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Ruth Krantz

Ruth Krantz, CMC

Deputy City Clerk, City of San Jose

Approved at Council _____

Attest:

Toni J. Taber, CMC
City Clerk

rmk/11-09-2021 MIN



SAN JOSÉ CITY COUNCIL CLOSED SESSION

NOVEMBER 9, 2021

The Council of the City of San José convened into Closed Session at 9:30 a.m.
This meeting was teleconferenced from remote locations.

Present: Councilmembers - Arenas, Carrasco, Davis, Esparza Mahan, Jimenez,
Jones, Cohen, Peralez, Foley; Liccardo.

Absent: Councilmembers - All Present.

Closed Session Item(s) discussed:

A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION:

Initiation of litigation pursuant to Section 54956.9(d)(4) of the Government Code:

Number of matter(s) to be discussed: 3

B. 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: **Association of Building, Mechanical and Electrical Inspectors (ABMEI)**

Nature of negotiations: wages/salaries, hours, working conditions, etc.

Name of Existing Contract or MOA: Memorandum of Agreement – City of San José and Association of Building, Mechanical and Electrical Inspectors (ABMEI)

How to Obtain a copy of Existing Contract or MOA: Web: <http://www.sanjoseca.gov/index.aspx?NID=508>
Telephone – Employee Relations: (408) 535-8150

2. Organization or Name and Title of Unrepresented Employees: **Association of Engineers & Architects (AEA)**
- Nature of negotiations: wages/salaries, hours, working conditions, etc.
- Name of Existing Contract or MOA: Memorandum of Agreement — City of San José and Association of Engineers & Architects (AEA)
- How to Obtain a copy of Existing Contract or MOA: Web: <http://www.sanjoseca.gov/index.aspx?NID=508>
Telephone – Employee Relations: (408) 535-8150
3. Organization or Name and Title of Unrepresented Employees: **Association of Maintenance Supervisory Personnel (AMSP)**
- Nature of negotiations: wages/salaries, hours, working conditions, etc.
- Name of Existing Contract or MOA: City of San José - Association of Maintenance Supervisory Personnel (AMSP) Benefit & Compensation Summary
- How to Obtain a copy of Existing Contract or MOA: Web: <http://www.sanjoseca.gov/index.aspx?NID=508>
Telephone – Employee Relations: (408) 535-8150
4. Organization or Name and Title of Unrepresented Employees: **City Association of Management Personnel Agreement (CAMP)**
- Nature of negotiations: wages/salaries, hours, working conditions, etc.
- Name of Existing Contract or MOA: Benefit & Compensation Summary — City of San José and City Association of Management Personnel Agreement
- How to Obtain a copy of Existing Contract or MOA: Web: <http://www.sanjoseca.gov/index.aspx?NID=508>
Telephone – Employee Relations: (408) 535-8150
5. Organization or Name and Title of Unrepresented Employees: **International Association of Firefighters (IAFF), Local 230 (IAFF#230)**

- Nature of negotiations: wages/salaries, hours, working conditions, etc.
- Name of Existing Contract or MOA: Memorandum of Agreement Between City of San José and International Association of Firefighters (IAFF), Local 230
- How to Obtain a copy of Existing Contract or MOA: Web: <http://www.sanjoseca.gov/index.aspx?NID=508>
Telephone – Employee Relations: (408) 535-8150
6. Organization or Name and Title of Unrepresented Employees: **International Brotherhood of Electrical Workers, Local 332 (IBEW)**
- Nature of negotiations: wages/salaries, hours, working conditions, etc.
- Name of Existing Contract or MOA: Memorandum of Agreement Between City of San José and International Brotherhood of Electrical Workers, Local 332 (IBEW)
- How to Obtain a copy of Existing Contract or MOA: Web: <http://www.sanjoseca.gov/index.aspx?NID=508>
Telephone – Employee Relations: (408) 535-8150
7. 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: <http://www.sanjoseca.gov/index.aspx?NID=508>
Telephone – Employee Relations: (408) 535-8150
8. Organization or Name and Title of Unrepresented Employees: **International Union of Operating Engineers, Local No. 3 (OE#3)**
- Nature of negotiations: wages/salaries, hours, working conditions, etc.

Name of Existing Contract or MOA: Memorandum of Agreement Between City of San José and International Union of Operating Engineers, Local No. 3 (OE#3)

How to Obtain a copy of Existing Contract or MOA: Web: <http://www.sanjoseca.gov/index.aspx?NID=508>
Telephone – Employee Relations: (408) 535-8150

9. Organization or Name and Title of Unrepresented Employees: **Peace Officer Park Ranger Association (POPRA)**
Nature of negotiations: wages/salaries, hours, working conditions, etc.

Name of Existing Contract or MOA: Memorandum of Agreement — City of San José and Peace Officer Park Ranger Association

How to Obtain a copy of Existing Contract or MOA: Web: <http://www.sanjoseca.gov/index.aspx?NID=508>
Telephone – Employee Relations: (408) 535-8150

10. Organization or Name and Title of Unrepresented Employees: **San José Police Officers' Association (SJPOA)**
Nature of negotiations: wages/salaries, hours, working conditions, etc.

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: <http://www.sanjoseca.gov/index.aspx?NID=508>
Telephone – Employee Relations: (408) 535-8150

11. Organization or Name and Title of Unrepresented Employees: **Association of Legal Professionals of San José (ALP)**
Nature of negotiations: wages/salaries, hours, working conditions, etc.

Name of Existing Contract or MOA: Memorandum of Agreement – City of San José and Association of Legal Professionals of San José

How to Obtain a copy of Existing Contract or MOA: Web: <http://www.sanjoseca.gov/index.aspx?NID=508>
Telephone – Employee Relations: (408) 535-8150