

## MINUTES OF THE CITY COUNCIL

**SAN JOSÉ, CALIFORNIA**

**TUESDAY, DECEMBER 19, 2017**

The Council of the City of San José convened in Regular Session at 9:03 a.m. in the Council Chambers at City Hall.

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

Absent: Councilmembers - All Present.

### CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:07 a.m. to a Closed Session in Room W133; (A) To Confer with Legal Counsel – Anticipated Litigation – Pursuant to Section 54956.9(d)(4) of the Government Code: Number of Matters to be discussed: 2 (two); (B) To confer with Legal Counsel – Existing Litigation Pursuant to Government Code Section 54956.9(d)(1): (1) Schwartz v. City of San José; Names Of Partie(s) Involved: Edward Schwartz; City of San José, County of San Mateo; Court: Superior Court of California, County of San Mateo; Case No.: 16-CIV-02303; Amount of Money or Other Relief Sought: Petition for Writ of Mandate and Complaint for Declaratory Relief; (2) San Francisco Baykeeper v. City, et al.; Names Of Partie(s) Involved: San Francisco Baykeeper; City of San José, San José Department of Transportation; San José public Works Department; San José Environmental Services Department; Court: United States District Court, Northern District of California; Case No. 15-CV-00642-BLF; Amount of Money or Other Relief Sought: Declaratory Relief, Injunctive Relief; (3) Friends of the Willow Glen Trestle, an unincorporated association; City of San José and City Council of the City of San José; Court: Superior Court of California, County of Santa Clara, Unlimited Jurisdiction; Case No.: 1-14-CV-260439; Amount of Money or Other Relief Sought: Damages according to proof; (4) Redmond, Blair v. City of San José, et al. Names Of Partie(s) Involved: Blair Redmond; City of San José, San José Police Department, Officer Tony Diep, Officer Daniel Pfiefer, Officer Matthew Blackerby, Sergeant Richard Galea, Sergeant Donald Perrier, Officer Wendy Hoskin, Officer Alan Mishaga, Officer Andrew Wong, Officer Raquel Melo; Court: U.S. District Court, Northern District of California, San José Division; Case No. 14-CVj-02345-BLF; Amount of Money or Other Relief Sought: Damages according to proof; (5) Zhou, Yuefeng and Ying Shi v. City of San José; Names Of Partie(s) Involved: Yuefeng Zhou and Ying Shi; City of San José and Does 1-25, inclusive; Court: Superior Court of California, County of Santa Clara; Case No.: 16-CV-299426; Amount of Money or Other Relief Sought: Damages according to proof;

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

## CLOSED SESSION (Cont'd.)

(6) Ward, Debra and Patricia Tapia v. City, Fire Chief William McDonald, et al.; Names of Partie(s) Involved: Debra Ward; Patricia Tapia; City of San José; Fire Chief William McDonald; Court: Superior Court of California, County of Santa Clara; Case No.: 1-11-CV203561; (7) City of San José v. City of Santa Clara; Names Of Partie(s) Involved: City of San José, City of Santa Clara; Court: Superior Court of California, County of San Mateo; Case No.: 16-CIV-02303; Amount of Money or Other Relief Sought: Petition for Writ of Mandate and Complaint for Declaratory Relief; (8) City of Santa Clara v. City of San José, et al.; Names Of Partie(s) Involved: City of Santa Clara, City of San José, City of San José City Council, Does I through X; Federal Realty and Investment Trust, and Does 1-20; Court: Superior Court of California, County of San Mateo; Case No.: 17-CIV-00547; Amount of Money or Other Relief Sought: Petition for Writ of Mandate and Complaint for Declaratory Relief; (9) San José Retired Employee's Association, Kirk Pennington, David Armstrong, Donna Jewett, Dorothy McGinley; City of San José, the Board of Administration for the Federated City's Retirement Plan; Court: Superior Court of California, County of Santa Clara; Case No.: 1-14-CV-268085; Amount of Money or Other Relief Sought: Change to City Medical Plan; (C) Confer with Real Property Designated Representatives Pursuant to Government Code Section 54956.8: (1) Property Street Address, Parcel Number or Other Unique Reference of Property: 200 Edenvale Avenue, San José, California; Negotiating Parties: Nanci Klein for the City of San José and Johanna Welty for Long Beach Property LLC; Kevin Morgan for JMA Ventures; Jeff Traynor for ASAP Holdings, LLC; Nik Bhakta for Chalak Mitra Group; Under Negotiation: the direction will concern price and terms for payment; Likely Range of Value of Property: Negotiated price based on appraisal and comparable property values; (D) to Confer with Labor Negotiator Pursuant to Government Code Section 54957.6: City Negotiator: Jennifer Schembri, Director of Employee Relations; Employee Organizations: (1) 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 between City of San José and ABMEI; (2) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (3) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP. (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP. (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO; (6) International Association of Firefighters, Local 230 (IAFF); 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. (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW; (8) 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 between City of San José and MEF; (9) 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. (10) San José Police Officers' Association (SJPOA); Nature of Negotiations: Salaries, Hours, Working Conditions, etc.; Name of Existing Wages Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations:

## **CLOSED SESSION REPORT**

City Attorney Doyle disclosed the following Closed Session action of December 19, 2017:

### **A. Authority to Initiate Litigation:**

Authority to file a Writ in connection with the State Historic Resource Board decision to include the Willow Glen Trestle on the state historic resources list.

Council Vote:

Ayes: Arenas, Carrasco, Davis, Diep, Jimenez, Jones, Khamis, Nguyen; Liccardo.

Disqualified: None.

Noes: None.

Absent: Councilmembers Peralez, Rocha.

By unanimous consent, Council recessed from the Closed Session at 11:40 a.m. and reconvened to Regular Session at 11:06 a.m. in the Council Chambers.

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

Absent: Councilmembers - Rocha.

## **INVOCATION**

Pastor Dace provided the Invocation.

## **PLEDGE OF ALLEGIANCE**

Mayor Sam Liccardo led the Pledge of Allegiance.

## **ORDERS OF THE DAY**

Upon motion by Councilmember Johnny Khamis, seconded by Vice Mayor Magdalena Carrasco, and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (10-0-1. Absent: Rocha.)

## **CEREMONIAL ITEMS**

- 1.1 17-292** Mayor Liccardo presented a commendation to Shesha Krishnapura, IT CTO - Intel Corporation, for an exemplary partnership with the City of San José in the mission of making our City as innovative as the community we serve. (Mayor's Office of Innovation / IT Department)

## CONSENT CALENDAR

Upon motion by Vice Mayor Magdalena Carrasco, seconded by Councilmember Tam Nguyen and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (10-0-1. Absent: Rocha.)

### 2.2 17-511 Final Adoption of Ordinances.

(a) Ordinance No. 30044 - An ordinance of the City of San José amending Chapters 3.28, 3.36, 3.57 and 3.58 of Title 3 of the San Jose Municipal Code to clarify the effective date of the election by employees out of the Defined Retiree Healthcare Benefit Plan to the Voluntary Employee Beneficiary Association Plan. CEQA: Not a Project; PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment. (City Manager)

Documents Filed: Proof of Publication of the Title of Ordinance No. 30044 executed on December 15, 2017, submitted by the City Clerk.

Action: Ordinance No. 30044 was adopted. (10-0-1. Absent: Rocha.)

(b) Ordinance No. 30046 - An ordinance of the City of San José granting a commercial solid waste and recyclables collection franchise to Eco Box Recycling Inc. CEQA: Exempt, File No. PP08-228, CEQA Guidelines Section 15308, Actions by Regulatory Agencies for Protection of the Environment. (Environmental Services)

Documents Filed: Proof of Publication of the Title of Ordinance No. 30046 executed on December 15, 2017, submitted by the City Clerk.

Action: Ordinance No. 30046 was adopted. (10-0-1. Absent: Rocha.)

(c) Ordinance No. 30047 - An ordinance of the City of San José rezoning certain real property of an approximately 3.3-gross acre site located at the northeast corner of Mabury Road and Timothy Drive (967 Mabury Road), from the LI Light Industrial Zoning District to the HII Heavy Industrial Zoning District. CEQA: Determination of Consistency with the Final Program Environmental Impact Report for the Envision San José 2040 General Plan (Resolution No. 76041) and the Envision San José 2040 General Plan Supplemental Environmental Impact Report (Resolution No. 77617), and Addenda thereto. Director of Planning, Building and Code Enforcement recommends approval. (Planning, Building and Code Enforcement)  
C17-044 - Council District 4

Documents Filed: Proof of Publication of the Title of Ordinance No. 30047 executed on December 15, 2017, submitted by the City Clerk.

Action: Ordinance No. 30047 was adopted. (10-0-1. Absent: Rocha.)

**Final Adoption of Ordinances (Cont'd.)**

(d) Ordinance No. 30048 - An ordinance of the City of San José rezoning certain real property of approximately 0.41 gross acre situated on the south side of West San Carlos Street, approximately 500 feet east of Sunol Street (750 West San Carlos Street) from the HI Heavy Industrial Zoning District to the R-M(PD) Planned Development Zoning District. CEQA: Addendum to Diridon Station Area Plan Final Environmental Impact Report (Resolution No. 77096), Envision San José 2040 General Plan Final Environmental Impact Report (Resolution No. 76041), Envision San Jose 2040 General Plan Final Environmental Impact Report (Resolution No. 77617) and Addenda thereto. (Planning, Building and Code Enforcement)  
PDC16-045 & PD16-031 - Council District 6

Documents Filed: Proof of Publication of the Title of Ordinance No. 30048 executed on December 15, 2017, submitted by the City Clerk.

Action: Ordinance No. 30048 was adopted. (10-0-1. Absent: Rocha.)

(e) Ordinance No. 30049 - An ordinance of the City of San José rezoning certain real property of approximately 0.48 gross acre situated on the south side of Carlton Avenue, approximately 290 feet westerly of National Avenue (15980 Carlton Avenue) from the R-M Multiple Residence Zoning District to the R-M (PD) Planned Development Zoning District. CEQA: 15980 Carlton Avenue Residential Project Initial Study/Mitigated Negative Declaration. Planning Commission recommends approval (6-0-1; Ballard absent). (Planning, Building and Code Enforcement)  
PDC17-049, PD17-023 & PT17-050 - Council District 9

Documents Filed: Proof of Publication of the Title of Ordinance No. 30049 executed on December 15, 2017, submitted by the City Clerk.

Action: Ordinance No. 30049 was adopted. (10-0-1. Absent: Rocha.)

(f) Ordinance No. 30051 - An ordinance of the City of San José rezoning certain real property of approximately 1.07 acres situated at the northwestern corner of Julian Street and Stockton Avenue (715 and 739 West Julian Street), from the LI Light Industrial Zoning District to the CP Commercial Pedestrian Zoning District. CEQA: Julian Street General Plan Amendment, Diridon Station Area Plan Amendment & Rezoning Project Addendum to the Diridon Station Area Plan FEIR (Resolution No. 77096) and Addendum thereto. Planning Commission recommends approval (6-0-1, Ballard absent). (Planning, Building and Code Enforcement)  
GP17-006, GPT17-008 & C17-031 - Council District 6

**2.2 17-511 Final Adoption of Ordinances (Cont'd.)**

Documents Filed: Proof of Publication of the Title of Ordinance No. 30051 executed on December 15, 2017, submitted by the City Clerk.

Action: Ordinance No. 30051 was adopted. (10-0-1. Absent: Rocha.)

(g) Ordinance No. 30052 - An ordinance of the City of San José amending Section 20.50.110 relating to commercial support uses in the IP Industrial Park Zoning District and Table 20-110, of Title 20 (Zoning) of the San José Municipal Code relating to commercial support uses within the boundaries of the North San José Area Development Policy Area. CEQA: Determination of Consistency with the Final Program EIR for the North San José Development Policies Update (Resolution No. 72768) and Addenda thereto, and the Envision San José 2040 General Plan EIR (Resolution No. 76041) and Supplemental EIR to the Envision San José General Plan EIR (Resolution No. 77617), and Addenda thereto. (Planning, Building and Code Enforcement)  
GPT17-007 & PP17-051 - Council Districts 3 & 4

Documents Filed: Proof of Publication of the Title of Ordinance No. 30052 executed on December 15, 2017, submitted by the City Clerk.

Action: Ordinance No. 30052 was adopted. (10-0-1. Absent: Rocha.)

**2.3 17-481 Approval of Council Committee Minutes.**

(a) Rules and Open Government Committee Minutes of June 14, 2017. (Mayor)  
(b) Rules and Open Government Committee Minutes of June 21, 2017. (Mayor)  
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 Clerk)

Documents Filed: Rules and Open Government Committee Minutes, dated June 14 and June 21, 2017.

Action: The Council Committee Minutes were accepted. (10-0-1. Absent: Rocha.)

**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 17-479 Boards and Commissions Appointments.

Approve the following Boards and Commissions appointments.

(a) Arts Commission:

(1) District 3 Seat: Appoint Tamiko Rast to a term expiring 6/30/20.

(b) Clean Energy Community Advisory Commission: DEFERRED

(1) CAAC-Nominated Seat 1: Appoint to a seat for the term 1/1/18 to 12/31/19;

(2) CAAC-Nominated Seat 2: Appoint to a seat for the term 1/1/18 to 12/31/19;

(3) CAAC-Nominated Seat 3: Appoint to a seat for the term 1/1/18 to 12/31/19;

(4) CAAC-Nominated Seat 4: Appoint to a seat for the term 1/1/18 to 12/31/21;

(5) CAAC-Nominated Seat 5: Appoint to a seat for the term 1/1/18 to 12/31/21;

(6) CAAC-Nominated Seat 6: Appoint to a seat for the term 1/1/18 to 12/31/21;

(7) At-Large Seat 1: Appoint to a seat for the term 1/1/18 to 12/31/19;

(8) At-Large Seat 2: Appoint to a seat for the term 1/1/18 to 12/31/21;  
and

(9) At-Large Seat 3: Appoint to a seat for the term 1/1/18 to 12/31/21.

PART (b) DEFERRED TO 1/23/18

(c) Downtown Parking Board:

(1) Downtown Parking Representative Seat: Appoint to a term expiring 6/30/20.

(d) Housing and Community Development Commission:

(1) Mobilehome Resident Representative Seat: Appoint Martha O'Connell to a term expiring 12/31/18.

(e) Human Services Commission:

(1) District 6 Seat: Appoint Rita Holiday to a term expiring 12/31/20.

(f) Parks and Recreation Commission:

(1) District 3 Seat: Appoint Larry Ames to a term expiring 6/30/21.

(g) Senior Citizens Commission:

(1) District 5 Seat: Appoint Robert Gill to a term expiring 6/30/21.

CEQA: Not a Project, File No. PP17-010, City Organizational &

Documents Filed: (1) Memorandum from Mayor Sam Liccardo, dated December 18, 2017, recommending appointments to Committees and Commissions for 2018. (2) Two (2) memoranda from City Clerk Toni J. Taber, CMC, dated December 1 and December 8, 2017, recommending appointments. (3) Supplemental memorandum from City Clerk Toni J. Taber, CMC, dated December 15, 2017, providing additional nominations.

Action: The Board and Commission appointments were accepted. (10-0-1. Absent: Rocha.)

- 2.8 17-429** Adopt a resolution approving the terms of a Side Letter Agreement between the City of San José and the Municipal Employees' Federation, AFSCME Local 101 (MEF) to provide employees in the Public Safety Radio Dispatcher class series with overtime or compensatory time at 2.0 times the hourly rate for all hours worked past twelve (12) hours in a single shift for a period of fifteen (15) consecutive pay periods, effective December 3, 2017, and expiring on June 30, 2018. CEQA: Not a Project, File No. PP17-010, City Organizational & Administrative Activities resulting in no changes to the physical environment. (City Manager)

Documents Filed: Memorandum from Director of Employee Relations, Jennifer Schembri, dated December 5, 2017, recommending adoption of a resolution.

Action: Resolution No. 78461, entitled: "A Resolution of the Council of the City of San José Approving the Terms of Agreement Between the City of San José and the Municipal Employees' Federation, AFSCME, Local 101 (MEF) Related to the Public Safety Radio Dispatcher Classification Series", was adopted. (10-0-1. Absent: Rocha.)

- 2.9 17-494** Adopt a resolution approving the terms of preexisting agreements as follows:
- (a) Approve the terms of a preexisting agreement dated February 26, 2007, on unclassified temporary operating engineers between the City of San José and the International Union of Operating Engineers, Local No. 3 (OE#3); and
  - (b) Approve the terms of a preexisting agreement dated April 27, 1998, on unclassified temporary electricians between the City of San José and the International Brotherhood of Electrical Workers, Local No. 332 (IBEW).
- CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. (City Manager)

Documents Filed: Memorandum from Director of Employee Relations, Jennifer Schembri, dated December 5, 2017, recommending adoption of a resolution.

Action: Resolution No. 78462, entitled: "A Resolution of the Council of the City of San José Approving the Terms of Preexisting Agreements Relating to Unclassified Temporary Employees", was adopted. (10-0-1. Absent: Rocha.)

- 2.10 17-475** Adopt a resolution authorizing the City Manager or his designee to execute the Second Amendment to the temporary construction easement for Nordale Sewer Pump Station Replacement Project, between the City of San José and Bich L. Nguyen (Grantor), allowing for continued use of approximately 452 square feet of easement area to complete the project construction. CEQA: Exempt, File No. PP14-038, CEQA Guidelines Section 15302, Replacement or Reconstruction. Council District 7. (Economic Development)



## 2.10 (Cont'd.)

Documents Filed: City Council Action Request from Deputy City Manager/Director of Economic Development Kim Walesh, dated December 7, 2017, recommending adoption of a resolution.

Action: Resolution No. 78463, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager or His Designee to Execute the Second Amendment to the Temporary Construction Easement for the Nordale Sewer Pump Station Replacement Project, between the City of San José and Bich L. Nguyen (Grantor) Allowing for Continued Use of Approximately 452 Square Feet of Easement Area to Complete the Project Construction for a Total 37 Month Term", was adopted. (10-0-1. Absent: Rocha.)

## 2.11 17-473

Adopt the following Fiscal Year 2017-2018 Appropriation Ordinance and Funding Sources Resolution Amendments in the General Fund to recognize grant funding received from the California State Library (\$118,000), First 5 of Santa Clara County (\$75,000), and Knight Foundation (\$2,500):

- (a) Increase the estimate for Revenue from State of California by \$118,000;
- (b) Increase the estimate for Revenue from Local Agencies by \$75,000;
- (c) Increase the estimate for Other Revenue by \$2,500; and
- (d) Increase the City-Wide Library Grants appropriation in the amount of \$195,500.

CEQA: Not a Project, 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; and File No. PP17-006, Grant Application with no commitment or obligation to enter into an agreement at the time of application. (Library/City Manager)

Documents Filed: Joint memorandum from City Librarian Jill Bourne and Budget Director Margaret McCahan, dated November 27, 2017, recommending adoption of a resolution and ordinance.

Action: Resolution No. 78464, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 78229 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2017-2018 to Adjust Revenues in the General Fund"; and Ordinance No. 30053, entitled: "A Ordinance of the Council of the City of San José Amending Ordinance No. 29962 to Appropriate Moneys in the General Fund for Library Grants; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", were adopted. (10-0-1. Absent: Rocha.)

## 2.12 17-457

Adopt a resolution authorizing the City Manager to submit, negotiate, and execute grant Agreements with the Santa Clara Valley Open Space Authority for an amount up to \$100,000 for the following projects:

- (a) Guadalupe Oak Grove Park Vegetation Management Project for \$50,000; and
- (b) Viva CalleSJ (placemaking) for \$50,000.

CEQA: Exempt, File No. PP17-073, CEQA Guidelines Section 15308, Actions by Regulatory Agencies for Protection of Natural Resources. Council Districts 3 & 10. (PRNS)

## 2.12 (Cont'd.)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services, Angel Rios, Jr., dated November 27, 2017, recommending adoption of a resolution.

Councilmember Sergio Jimenez pulled item 2.12 for further clarification.

Action: Upon motion by Councilmember Sergio Jimenez, seconded by Councilmember Tam Nguyen and carried unanimously, Resolution No. 78465, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Submit Applications for Grant Funding up to \$100,000 to the Santa Clara Valley Open Space Authority's Measure Q Urban Open Space Grant Program for the Guadalupe Oak Grove Park Vegetation Management Project and the Viva Calle (Placemaking) Project and Negotiate and Execute Grant Agreements with the Santa Clara Valley Open Space Authority", was adopted. (10-0-1. Absent: Rocha.)

### 2.13 17-460 Adopt the following 2017-2018 Appropriation Ordinance amendments in the Subdivision Park Trust Fund:

(1) Increase the Bramhall Park Restroom and Concession Building Project appropriation to the Parks, Recreation and Neighborhood Services Department by \$86,000; and

(2) Decrease the Future PDO/PIO Projects Reserve appropriation by \$86,000.

CEQA: Exempt, File No. PP15-065, CEQA Guidelines Section 15301, Existing Facilities. Council District 6. (Public Work/Parks, Recreation and Neighborhood Services/City Manager)

Documents Filed: Joint memorandum from Director of Public Works, Barry Ng, Director of Parks, Recreation and Neighborhood Services, Angel Rios, Jr., and Budget Director Margaret McCahan, dated November 27, 2017, recommending adoption of appropriation ordinance amendments.

Action: Ordinance No. 30054, entitled: "A Ordinance of the Council of the City of San José Amending Ordinance No. 29962 to Appropriate Moneys in the Subdivision Park Trust Fund for the Bramhall Park Restroom and Concession Building; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. (10-0-1. Absent: Rocha.)

### 2.14 17-461 Accept staff report on the status of the reauthorized San José Curb Café pilot program and contemplated administrative regulations pursuant to San José Municipal Code Chapter 13.37 to create a formal Parklet Program. CEQA: Exempt, PP17-080, CEQA Guidelines Section 15301, Existing Facilities. (Public Works)

Documents Filed: Memorandum from Director of Public Works, Barry Ng, dated November 27, 2017, recommending acceptance of the staff report.

Councilmember Johnny Khamis pulled item 2.14 with questions for staff.

Action: Upon motion by Councilmember Johnny Khamis, seconded by Councilmember Dev Davis and carried unanimously, the staff report was accepted. (9-0-2. Absent: Arenas, Rocha.)

- 2.15 17-462** Adopt a resolution to consider the establishment of a Rule 20B Underground Utility District along McKee Road between Jose Figueres and North Jackson Avenues and setting a Public Hearing on January 23, 2018, at 1:30 p.m. CEQA: Determination of Consistency to the Mitigated Negative Declaration for the Citywide Utility Undergrounding Program and City-Issued Excavation/Encroachment Permits Project (approved in January 22, 2009), PP08-257. Council District 5. (Public Works)

Documents Filed: Memorandum from Director of Public Works, Barry Ng, dated November 27, 2017, recommending adoption of a resolution.

Action: Resolution No. 78466, entitled: "A Resolution of the Council of the City of San José Setting the Time and Place for a Public Hearing to Consider the Establishment of a Rule 20B Underground Utility District Along McKee Road between José Figueres and North Jackson Avenues on January 23, 2018 at 1:30 p.m., was adopted. (10-0-1. Absent: Rocha.)

- 2.16 17-458** Report on bids and award of contract for the 8589 - Cast Iron Replacement 2017-2018 Package I Project to the low bidder, Casey Construction, Inc., in the amount of \$1,133,346 and approve a contingency in the amount of \$113,335. CEQA: Exempt, File No. PP17-031, CEQA Guidelines Section 15301 Existing Facilities, dated April 25, 2017; Expiration Date: April 20, 2022. Council District 9. (Public Works)

Documents Filed: Memorandum from Director of Public Works, Barry Ng, dated November 27, 2017, recommending acceptance of a report and award of a contract.

Action: The report on bids and award of a contract were accepted. (10-0-1. Absent: Rocha.)

***Councilmember Donald Rocha arrived at the Council meeting prior to item 2.17.***

- 2.17 17-466** 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 Jose, 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)

Documents Filed: Memorandum from Director, Department of Transportation, Jim Ortbal, dated November 27, 2017, recommending acceptance of the report.

Action: Upon motion by Vice Mayor Magdalena Carrasco, seconded by Councilmember Sylvia Arenas and carried unanimously, the report was accepted. (11-0.)

- 2.18 17-425** Approve the following Board and Commission appointments:
- (a) Human Services Commission:
    - (1) District 1 Seat: Appoint Franklin Elieh to a term expiring 12/31/2018;
    - (2) District 2 Seat: Appoint Jessica Dickinson Goodman to a term expiring 12/31/2018.
  - (b) Neighborhoods Commission:
    - (1) District 1 Seat: Appoint Franklin Nguyen to a term expiring 6/30/2018;
    - (2) District 3 Seat: Appoint Nia Celestin to a term expiring 6/30/2018;
    - (3) District 4 Seat: Appoint Alan Hinman, Jr. to a term expiring 6/30/2020;
    - (4) District 7 Seat: Appoint Bruce Sullivan to a term expiring 6/30/2018;
    - (5) District 9 Seat: Appoint Michael Young to a term expiring 6/30/2018.

Documents Filed: (1) Memorandum from Mayor Sam Liccardo, dated December 18, 2017, recommending appointments to Committees and Commissions for 2018. (2) Two (2) memoranda from City Clerk Toni J. Taber, CMC, dated December 1 and December 8, 2017, recommending appointments. (

Action: The Neighborhoods Commission appointment for District 7 was renoticed to a later date, per the City Clerk; the remainder of Board and Commission appointments were accepted. (11-0.)

- 2.19 17-525** (a) Apprise the Council of the Mayor's appointments for each of the standing committees, as described in Exhibit "A" of the Memorandum to Council.
- (b) Appoint councilmembers to each of the committees and assignments, as described in Exhibit "B" of the Memorandum to Council.
- CEQA: Not a Project, File No. PP17-010, City Organizational & Administrative Activities resulting in no changes to the physical environment. (Mayor)

Documents Filed: Memorandum from Mayor Sam Liccardo, dated December 18, 2017, recommending appointments to Committees and Commissions for 2018.

Action: The City Council Committee and Board and Commission appointments were accepted. (11-0.)

- 2.20 17-526** Approve request from the Youth Commission to send letter to Assemblymember Evan Low's office opposing ACA10 bill to lower the voting age. CEQA: Not a Project, File No. PP17-010, (City Clerk)

Documents Filed: Letter from City of San José Youth Commission to Assemblymember Evan Low, dated October 3, 2017, reaffirming their stance of opposition to ACA 10.

Action: The request was approved. (11-0.)

## **END OF CONSENT CALENDAR**

## STRATEGIC SUPPORT

- 3.3 17-445** As recommended by the Community and Economic Development Committee on November 27, 2017, accept the audit of the Team San José's Performance 2016-2017. CEQA: Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City actions. (City Auditor)

Documents Filed: Memorandum from City Clerk Toni J. Taber, dated December 7, 2017, transmitting the recommendations of the Community and Economic Development Committee.

Action: Upon motion by Councilmember Donald Rocha, seconded by Councilmember Sergio Jimenez and carried unanimously, the audit of the Team San José's Performance 2016-2017 was accepted. (11-0.)

- 3.4 17-476** Adopt a resolution:
- (a) Authorizing the City Manager or designee to execute an Updated Memorandum of Understanding (MOU) with the Urban Area Security Initiative; and
  - (b) Authorizing the City Manager or designee to execute amendments to the MOU to extend the term of the Agreement for up to four years and to make minor amendments to the Agreement for governance, operational efficiencies, and transfer of funds within the established City Manager authority.
- 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)

Documents Filed: Memorandum from Director, Office of Emergency Management, Ray Riordan, dated November 30, 2017, recommending adoption of a resolution.

Action: Upon motion by Councilmember Donald Rocha, seconded by Councilmember Sergio Jimenez and carried unanimously, Resolution No. 78467, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute an Updated Memorandum of Understanding with the Bay Area Urban Area Initiative and to Negotiate and Execute Amendments to the MOU to Extend the Term of the Agreement Up to Four Years and to Make Minor Amendments to the Agreement for Governance, Operational Efficiencies, and Transfer of Funds Within the Established City Manager Authority", was adopted. (11-0.)

- 3.5**
- (a) Adopt a resolution in support of adopting the principles of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, referred to as the Women's Bill of Rights.
  - (b) Approve an ordinance amending Chapter 2.08 of Title 2 of the San José Municipal Code to add a new Part 49 for the local implementation of the Women's Bill of Rights.
- CEQA: Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment. (City Attorney)

### 3.5 (Cont'd.)

Documents Filed: (1) Memorandum from Vice Mayor Magdalena Carrasco, dated December 19, 2017, offering support to staff's recommendations. (2) Memorandum from City Attorney Richard Doyle, dated December 7, 2017, recommending adoption of a resolution and approval of an ordinance.

Public Comments: Offering comments, questions and suggestions, were: Melissa Luke, Taraneh Roosta, Lisa Liddle, Suzanne Doty and Ruth Silver Taube (Silicon Valley CEDAW Task Force); Charles Melton (Silicon Valley Leadership Group); Mackenzie Mossing, and Blair Beekman.

Motion: Vice Mayor Magdalena Carrasco moved approval of her memorandum, dated December 19, 2017. Councilmember Dev Davis seconded the motion.

Councilmember Sylvia Arenas offered a friendly amendment, asking that the term 'prostitute' be changed to 'sex worker'. The friendly amendment was included.

Action: On a call for the question, the motion carried unanimously, and Resolution No. 78468, entitled: "A Resolution of the Council of the City of San José in Support of Adopting the Principles of the Convention on the Elimination of All Forms of Discrimination Against Women", was adopted, and Ordinance No. 30055, entitled: "A Ordinance of the Council of the City of San José Amending Chapter 2.08 of Title 2 of the San José Municipal Code to Add a New Part 49 for the Local Implementation of the Women's Bill of Rights", was passed for publication. (11-0.)

- 3.6 17-446** As recommended by the Community and Economic Development Committee on November 27, 2017, accept the Audit of Airport Financial Projections: Balancing Ongoing Debt-Service Obligations with Increasing Operational Needs. CEQA: Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City actions. (City Auditor)

Documents Filed: Memorandum from City Clerk Toni J. Taber, dated December 7, 2017, transmitting the recommendations of the Community and Economic Development Committee.

City Auditor Sharon W. Erickson provided results of the audit, and discussion followed.

Action: Upon motion by Councilmember Johnny Khamis, seconded by Councilmember Chappie Jones and carried unanimously, the audit of Audit of Airport Financial Projections was accepted. (11-0.)

- 3.7 17-468** Approve an ordinance amending Chapter 4.70 of Title 4 of the San José Municipal Code to (1) extend the Cap Program for the Telecommunications Users Tax three years through December 31, 2020; and (2) change the 2% annual increase increment to an annual increase of 3% to take effect retroactively on January 1, 2018. CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. (Finance)

### 3.7 (Cont'd.)

Documents Filed: (1) Joint memorandum from Mayor Sam Liccardo and Councilmembers Jimenez, Peralez, Arenas and Rocha, dated December 15 2017, with approval of staff recommendations with additional direction. (2) Memorandum from Vice Mayor Magdalena Carrasco, dated December 19, 2017, offering support to the Mayor and Councilmembers' memorandum. (3) Memorandum from Director of Finance, Julia Cooper, dated November 27, 2017, recommending approval of an ordinance.

Public Comments: Charles Melton, representing Silicon Valley Leadership Group, offered support, and Blair Beekman encouraged community input.

Director of Finance, Julia Cooper responded to questions.

Councilmember Donald Rocha moved approval of the memorandum he coauthored with Mayor Sam Liccardo and Councilmembers Jimenez, Peralez, and Arenas, dated December 15 2017. Councilmember Sergio Jimenez seconded the motion.

Action: On a call for the question, the motion carried unanimously, and Ordinance No. 30056, entitled: "A Ordinance of the Council of the City of San José Amending Various Sections of Chapter 4.70 Of Title 4 of the San José Municipal Code to Extend the Cap Program for the Telecommunications Users Tax Through December 31, 2022 and Change the 2% Annual Increase Increment to an Annual Increase of 3%, to Take Effect Retroactively on January 1, 2018", was passed for publication, including the joint memorandum from Mayor Sam Liccardo and Councilmembers Jimenez, Peralez, Arenas and Rocha, dated December 15, 2017, approving recommendations outlined in the staff report dated December 8, 2017 with direction to the City Manager to modify recommendation (1) to extend the Cap Program to five years through December 31, 2022, and comply with legal requirements to allow eligible new entrants to apply for the program. (11-0.)

## COMMUNITY & ECONOMIC DEVELOPMENT

### 4.1 17-455

As recommended by the Community and Economic Development Committee on November 27, 2017, accept a status report on implementing the work plan to investigate removing existing barriers to off-premise (off-site) commercial advertising on City-owned and non-City-owned sites in the City of San José, and recommend that the City Council direct staff to implement a phased work plan which could allow:

- (a) New off-site advertising on City-owned sites throughout the City, including exchange of existing legal static billboards on other sites for new electronic billboards on city-owned sites;
- (b) Exchange of existing legal static to electronic billboards on non-City-owned existing freeway facing sites and new freeway facing sites in the North San José Development Policy Area;
- (c) New offsite advertising on non-City-owned sites in the Downtown Sign Zone, including exchange of existing legal static billboards on other sites for new electronic billboards in the Downtown Sign Zone.

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

#### 4.1 (Cont'd.)

environment. (Economic Development/Planning, Building & Code Enforcement)

[Community and Economic Development Committee referral 11/27/17

- Item (d)(2)]

Documents Filed: (1) Joint memorandum from Councilmember Raul Peralez, Councilmember Sylvia Arenas and Councilmember Donald Rocha, dated December 15, 2017, offering approval with additional direction. (2) Memorandum from City Clerk Toni J. Taber, dated December 7, 2017, transmitting the recommendations of the Community and Economic Development Committee. (3) Supplemental memorandum from Deputy City Manager/Director of Economic Development Kim Walesh and Director, Planning, Building and Code Enforcement, Rosalynn Hughey, dated December 15, 2017, providing additional analysis.

Director, Planning, Building and Code Enforcement, Rosalynn Hughey provided a presentation.

Public Comments: Offering comments on environmental concerns, flexibility in phasing and support, were: Alex Belenson (Outfront Allvision); Ron Golem (VTA); Mackenzie Mossing, Shani Kleinhaus, Brian Darby, Larry Ames; and Bruce Qualls (Clear Channel Outdoor).

Motion: Councilmember Raul Peralez moved acceptance of the staff report, including the memorandum he coauthored with Councilmember Sylvia Arenas and Councilmember Donald Rocha, dated December 15, 2017. Councilmember Donald Rocha seconded the motion.

Action: The audit of the Team San José's Performance 2016-2017 was accepted, with the following additional direction as outlined in the joint memorandum from Councilmembers Peralez, Arenas and Rocha, dated December 15, 2017:

1. Allow replacement of existing traditional billboards with a new electronic programmable billboard at a ratio of 4:1.
  2. That staff continue to proactively consult with industry experts on the overall changes to the ordinance and the implementation of the program including
    - a. The list of feasible sites for project development, and,
    - b. Require a take-down requirement for all new billboards on City and non-City owned property.
  3. Report back no later than the first quarter of 2018 to the Community & Economic Development (CED) Committee with an update including current expenditures of the funding that has been allocated for this policy development.
- (11-0.)



**4.2 17-456**

Consideration of an ordinance of the City of San José amending Chapter 13.32 of the San José Municipal Code to revise and add provisions pertaining to tree removal controls on private property, including amending Section 13.32.020 to add a definition of the term “Invasive Tree,” revise how height, tree diameter and circumference are measured to trigger application of tree removal controls, and expand the definition of “Unsuitable Tree” to include certain trees on land use types beyond single family dwellings, amending Sections 13.32.090 to and 13.32.120 to streamline the process for review of applications for removal of all trees that are not Unsuitable Trees, amending Sections 13.32.041, 13.32.110 and 13.32.130 to clarify tree removal permit requirements included as part of another Planning permit, requirements for tree replacement as a condition of approval for tree removal and provisions for safeguarding trees during construction, and making other technical, non-substantive, or formatting changes within Sections of Title 13 to add and amend regulations pertaining to Tree Removal Controls. CEQA: Pursuant to Section 15168 (c) (2) of the CEQA Guidelines, the City of San José has determined that the project described below is pursuant to or in furtherance of the Final Program Environmental Impact Report (Final Program EIR) and Supplemental Program Environmental Impact Report (Supplemental Program EIR) for the Envision San José 2040 General Plan and addenda thereto, and does not involve new significant impacts beyond those analyzed in the above EIRs. Therefore, the City of San José may take action on the project as being within the scope of both the Final and Supplemental Program EIRs. Planning Commission recommends approval (7-0). (Planning, Building and Code Enforcement)  
PP17-072 – Citywide

Documents Filed: (1) Memorandum from Councilmember Dev Davis, dated December 19, 2017, offering support to staff’s recommendations with modifications. (2) Memorandum from Planning Commission Secretary Rosalynn Hughey, dated December 15, 2017, transmitting the Planning Commission recommendation. (3) Transmittal memorandum from Director, Planning, Building and Code Enforcement, Rosalynn Hughey, dated November 30, 2017 providing Planning staff recommendations.

Public Comments: Offering Comments and suggestions were Wallace S. Gardner, Rhonda Berry (Our City Forest), Chuck Hagenmaier and Larry Ames.

Motion: Councilmember Dev Davis moved approval of staff recommendations, including her memorandum dated December 19, 2017. Councilmember Sylvia Arenas seconded the motion.

Action: On a call for the question, the motion carried unanimously, and Ordinance No. 30057, entitled: “A Ordinance of the Council of the City of San José Amending Chapter 13.32 Of Title 13 of the San Jose Municipal Code to Revise and Add Provisions Pertaining to Tree Removal Controls On Private Property, Including Amending Section 13.32.020 to Add Definitions of the Terms “Invasive Tree,” “Hazardous Condition,” and Imminently Dangerous Condition,” Revise How Height, Tree Diameter and Circumference Are Measured to Trigger Application Of Tree Removal Controls, and Expand the Definition Of “Unsuitable Tree” to Include Trees That Create and Imminently Hazardous Condition, Certain Trees On Land Use Types Beyond One Family Dwelling, Amending Sections 13.32.090 and

## 4.2 (Cont'd.)

13.32.120 to Streamline the Process For Review Of Applications For Removal Of All Trees That Are Not Unsuitable Trees, So That A Director's Hearing Will Only Be Held Upon Request and Allowing An Appeal to Be Filed Only Where A Director's Hearing Has Been Requested, Amending Sections 13.32.041, 13.32.110 and 13.32.130 to Clarify Tree Removal Permit Requirements Included As Part Of Another Planning Permit, Requirements For Tree Replacement As A Condition Of Approval For Tree Removal and Provisions For Safeguarding Trees During Construction, and Making Other Technical, Non-Substantive, Or Formatting Changes Within Chapter 13.32 Of Title 13 to Add and Amend Regulations Pertaining to Tree Removal Controls", was passed for publication, including the memorandum from Councilmember Dev Davis, dated December 19, 2017, to accept staff recommendations to update the City's Tree Permitting and Removal Process and add:

- 1) An automated subscription e-mail noticing system for tree removals by Council District be included in the PBCE Department's current AMANDA Permit System upgrade.
- 2) Discourage illegal tree removals by revisiting illegal tree removal fines for trees on private property (non-street trees) when corresponding permit fees are changed, such that fines for illegal removals be at least five times the cost of a tree removal permit.

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

The City Council recessed at 5:45 p.m. from the afternoon Council Session and reconvened at 6:15 p.m. in the Council Chambers, City Hall.

Present: Council Members - Diep, Jones, Jimenez, Peralez, Davis, Nguyen, Arenas, Rocha, Khamis; Liccardo.

Absent: Council Members - Carrasco.

## 4.3 17-489

Adopt a resolution:

- (a) Accepting the 2018-2019 Hazardous Vegetation Commencement Report compiled by the Office of Santa Clara Environmental Resource Agency, Department of Agriculture and Resource Management, Division of Hazardous Vegetation;
- (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 Office of Santa Clara Environmental Resource Agency, Department of Agriculture and Resource Management, Division of Hazardous Vegetation to mail notices of a public hearing on January 30, 2018, at 1:30 p.m. before the City Council on the Report to property owners of affected real properties pursuant to Chapter 9.12 of Title 9 of the San Jose Municipal Code and the Weed Abatement Agreement between the City of San Jose and the County of Santa Clara.  
CEQA: Exempt, File No. PP13-097, CEQA Guidelines Section 15301, Existing Facilities. (Planning, Building and Code Enforcement)

Documents Filed: Memorandum from Director, Planning, Building and Code Enforcement, Rosalynn Hughey, dated November 30, 2017, recommending adoption of a resolution.

#### 4.3 (Cont'd.)

Public Comments: Mayor Sam Liccardo opened the public hearing. There was no public testimony from the floor. Mayor Sam Liccardo closed the public hearing.

Action: Upon motion by Councilmember Donald Rocha, seconded by Councilmember Sergio Jimenez and carried unanimously, Resolution No. 78469, entitled: "A Resolution of the Council of the City of San José Accepting and Confirming the 2018-2019 Hazardous Vegetation Commencement Report Compiled by the Office of the Santa Clara Environmental Resource Agency, Department of Agriculture and Resource Management, Division of Hazardous Vegetation, Declaring that those Certain Noxious or Dangerous Seasonal and Recurrent Weeds, Growing or Likely to be Growing, and Refuse to be a Public Nuisance, and Directing Notices of January 30, 2018 Public Hearing at 1:30 P.M. be Sent to Affected Property Owners", was adopted. (8-0-3. Absent: Arenas, Carrasco, Jimenez.)

- 4.4 17-459** Conduct a Public Hearing and adopt a resolution:
- (a) Approving the report of the Director of Public Works setting forth the facts justifying the vacation of the 25-foot and 15-foot light and air easements ("setback easements") located at 1199 Crescent Drive;
  - (b) Vacating the 25-foot and 15-foot setback easements located at 1199 Crescent Drive; and
  - (c) Directing the City Clerk to record a certified copy of the resolution of vacation with the Office of the Recorder, County of Santa Clara.
- CEQA: Exempt, File No. PP17-069, CEQA Guidelines Section 15305, Minor Alterations in Land Use Limitation. Council District 6. (Public Works)

Documents Filed: Memorandum from Director of Public Works, Barry Ng, dated November 28, 2017, recommending conducting a public hearing and adoption of a resolution.

Public Comments: Mayor Sam Liccardo opened the public hearing. There was no public testimony from the floor. Mayor Sam Liccardo closed the public hearing.

Action: Upon motion by Councilmember Donald Rocha, seconded by Councilmember Sergio Jimenez and carried unanimously, Resolution No. 78470, entitled: "A Resolution of the Council of the City of San José Vacating 25' and 15' Light and Air Easements Located at 1199 Crescent Drive", was adopted. (7-0-4. Absent: Arenas, Carrasco, Davis, Jimenez.)

- 4.5 17-497** Adopt a resolution:
- (a) Authorizing an exception to the City's Policy for the issuance of Multifamily Housing Revenue Bonds for the Leigh Avenue Senior Apartments project, thereby allowing issuance by the California Housing Finance Agency; and
  - (b) Authorizing the Director of Housing to negotiate and execute such documents, and to take the other necessary actions to facilitate First Community Housing's participation in a limited-time opportunity to obtain tax credit financing for the Leigh Avenue Senior Apartments project.
- CEQA: Not a Project File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. Council District 6. (Housing)

#### 4.5 (Cont'd.)

Documents Filed: Memorandum from Director of Housing, Jacky Morales-Ferrand, dated December 11, 2017, recommending adoption of a resolution.

Director of Housing, Jacky Morales-Ferrand responded to questions from Council.

Action: Upon motion by Councilmember Dev Davis, seconded by Councilmember Johnny Khamis and carried unanimously, Resolution No. 78471, entitled: "A Resolution of the Council of the City of San José (1) Allowing an Exception to the City's Policy for the Issuance of Multifamily Housing Revenue Bonds to Permit The California Housing Finance Agency to Issue Bonds for the Leigh Avenue Senior Apartments Affordable Project and (2) Authorizing the Director of Housing to Take Such Actions as are Necessary to Facilitate First Community Housing's Limited Term Opportunity to Obtain Tax Credits for the Project", was adopted. (8-0-3. Absent: Arenas, Carrasco, Jimenez.)

#### 4.6 17-464

(a) Adopt a resolution amending the 2017-2018 City of San José Schedule of Fees and Charges (Resolution No. 72737, as amended) to establish an In-Lieu Fee of \$158,343 per unit for rental developments subject to the Inclusionary Housing Ordinance Program effective January 1, 2018.

(b) Adopt a resolution that amends Resolution No. 77218 as previously amended by Resolutions No. 78010 and 78392 (collectively the "Housing Impact Fee Resolution") to address the transition between the Affordable Housing Impact Fee and Inclusionary Housing Ordinance Programs providing that new rental projects whose applications for first approval are completed after March 31, 2018, will be subject to the Inclusionary Housing Ordinance; and that additional guidance will be provided in the regulations.

(c) Accept staff report and direct staff to bring to the City Manager for approval amendments to the Inclusionary Housing Ordinance Guidelines regarding (1) rental developments; (2) the transition from Affordable Housing Impact Fee including alternative process for projects built on land leased from a public agency; and (3) coordination with the existing Inclusionary Housing Policy.

CEQA: Not a Project, 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. (Housing/City Manager)

Documents Filed: (1) Joint memorandum from Mayor Sam Liccardo, Vice Mayor Magdalena Carrasco and Councilmembers Davis, Nguyen and Arenas, dated December 15, 2017. (2) Memorandum from Councilmember Sergio Jimenez, dated December 19, 2017, providing recommendations. (3) Replacement memorandum from Councilmember Donald Rocha, dated December 19, 2017, providing a recommendation to accept the Mayor, Vice-Mayor and all Councilmembers memoranda with amendments. (4) Joint memorandum from Director of Housing, Jacky Morales-Ferrand and Budget Director Margaret McCahan, dated December 7, 2017, recommending adoption of resolutions.

Director of Housing, Jacky Morales-Ferrand provided a presentation and staff responded to questions.

#### 4.6 (Cont'd.)

Motion: Councilmember Dev Davis moved approval of the joint memorandum she coauthored with Mayor Sam Liccardo, Vice Mayor Magdalena Carrasco and Councilmembers Nguyen and Arenas, dated December 15, 2017 and the memorandum from Councilmember Donald Rocha, dated December 19, 2017. Councilmember Sylvia Arenas seconded the motion.

Councilmember Sergio Jimenez requested a friendly amendment to include item #2 from his memorandum dated December 19, 2017. The amendment was accepted.

Public Comments: Matthew Reed and Brian Darby offered support to staffs' recommendations.

Action: On a call for the question, the motion carried, and Staffs' recommendations were approved, with modifications as outlined in the joint memorandum from Mayor Sam Liccardo, Vice Mayor Magdalena Carrasco and Councilmembers Davis, Nguyen and Arenas, dated December 15, 2017, and amended in the memoranda from Councilmember Donald Rocha and from Councilmember Sergio Jimenez, indicated below.

1. Adopt a resolution amending the 2017-18 City of San Jose Schedule of Fees and Charges to establish an In Lieu Fee of \$125,000 per unit for rental development (based on the Housing Department's unit subsidy for the most recent funding commitments) subject to the Inclusionary Housing Ordinance Program effective January 1, 2018.
2. Convene a Council study session prior to March 31, 2018 to discuss the aggregate impact of all of the fees - to fund parks, affordable housing, transportation improvement, and other needs - that the City imposes on housing development and construction. The study session should enable the Council to:
  - a. Assess and compare fees across the most commonly constructed building types;
  - b. Assess and compare fees from other comparative cities in the region or state;
  - c. Identify and bring transparency to the pro formas of housing projects that developers report are "not financeable" or "won't pencil";
  - d. Address the question of whether the City should assess fees - including inclusionary fees - on a square footage basis, rather than per-unit basis, to properly account for the substantial distinction between building 800 square foot studios and a 2,100 square foot single-family homes;
  - e. Utilize financial information drawn from actual housing developers, lenders, and contractors, vetted by a trusted independent consultant. Given the concerns about proprietary financial data becoming a public record, explore working with a competent and trusted third party, such as SPUR or a local university, to guide the work and collect the data.

Also including Councilmember Donald Rocha's memorandum, dated December 19, 2017 to: Approve the memo issued by the Mayor, Vice Mayor and Councilmembers Davis Nguyen and Arenas with the following amendments:

1. Direct staff to clarify how the inclusionary rules apply to mixed use projects where the affordable requirement is built on-site. In particular, staff should clarify whether the deed restriction for affordable housing needs to be recorded against just the residential component of the mixed-use project instead of the entire site, and whether the affordable component needs to be completed prior to

the commercial component of a mixed use project. These clarifications can be accomplished either through revised implementation guidelines or ordinance amendments.

2. Approve the revised fee level of \$ 125,000 as recommended by the Mayor and his cosigners, but only for the period between January 1 and June 30, 2019. Direct staff to analyze additional affordable housing projects that achieve construction closings during the next six months and return to Council through the budget process to recommend a revised fee number based on those construction closings that would take effect on July 1, 2019.

3. Direct staff to return to Council with an analysis of the municipal code section 5.08.470, which sets out the standards for satisfying the inclusionary requirement by building affordable units on site. Staffs analysis should provide additional information as to how they would interpret the provisions of this section and offer a recommendation as to whether it should be modified or clarified. In particular, it would be useful to understand whether affordable housing units that are in a separate building from market rate units, but still located on the same site, should qualify as on-site units.

And including Item 2 from the memorandum from Councilmember Sergio Jimenez, dated December 19, 2017 to extend the timeline for staff to bring back the analysis in the form of a Study Session to a date no later than June 30, 2018.

Additionally, Resolution No. 78472, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 72737, As Previously Amended By Resolutions Nos. 73019, 73056, 73242, 73637, 73831, 73879, 73881, 74035, 74047, 74452, 74839, 74841, 74981, 75135, 75334, 75338, 75442, 75502, 75509, 75600, 75610, 75639, 75641, 75684, 75725, 75783, 75863, 75913, 76085, 76230, 76282, 76397, 76476, 76611, 76663, 76953, 77018, 77102, 77110, 77137, 77253, 77382, 77558, 77784, 78032, 78163, 78210 And 78415 To Establish A Rental Development In-Lieu Fee Of \$158,343 Per Unit For Rental Developments Subject To The Inclusionary Housing Ordinance Program, To Be Effective January 1, 2018", and Resolution No. 78473, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 77218 to Provide for a Transition to the Inclusionary Housing Ordinance", were adopted.

(9-1-1. Noes: Jimenez. Absent: Carrasco.)

## NEIGHBORHOOD SERVICES

### 5.1 17-474

Adopt a resolution effective March 1, 2018 to:

(a) Establish the annual Schedule of Parkland Fees and Credits that sets forth the fees and credits charged to residential projects subject to Municipal Code Chapters 14.25 (Park Impact Ordinance) and 19.38 (Parkland Dedication Ordinance) pursuant to Ordinance number 27949;

(b) Authorize the City Manager to determine the applicable parkland in-lieu fees for any residential units in the City of San José that are not included in the Schedule of Parkland Fees and Credits based on the nearest Multiple Listing Service districts;

(c) Establish a new permanent park impact in-lieu fee rate within the Proposed Parkland Schedule of Fees and Credits for new Downtown Core Area high-rise units, based upon observed occupancy; and

(d) Amend Section 2 of Exhibit B of Resolution No. 73587, as amended, temporarily setting the park impact fees charged for high-rise multi-family residential projects of twelve (12) stories or more located in the Downtown Core at fifty percent (50%) of the applicable parkland fees for multi-family 5 plus units in the Downtown Area to:

(1) Redefine the 'Downtown Core Area' in Section 2.A.1 as the boundaries depicted in Attachment D of this memorandum and to align the definition of 'Downtown Core Area' in Section 2.A.1 to read "or as defined by the Envision San José 2040 General Plan and the Downtown Strategy 2000, as may be amended"; and

(2) Remove Section 2.E.2 for the Expiration of Temporary Reduction and Deferred Payment, which incorrectly set a cap on the maximum number of units eligible for the Downtown High-Rise Incentive Program, as consistent with Council direction adopted on December 13, 2016.

CEQA: Exempt, File No. PP17-005, CEQA Guidelines Section 15273 - Rates, Tolls, Fares, and Charges. (Parks, Recreation and Neighborhood Services/Economic Development)

Documents Filed: (1) Memorandum from Councilmember Sergio Jimenez, dated December 19, 2017, recommending deferral of action on proposed permanent reduction of fees for high-rise developments in the new Downtown Core Area. (2) Joint memorandum from Director of Parks, Recreation and Neighborhood Services, Angel Rios, Jr., dated November 27, 2017, recommending adoption of resolutions. (3) Supplemental memorandum from Director of Parks, Recreation and Neighborhood Services, Angel Rios, Jr., dated December 15, 2017, providing updated feedback from the PRNS Commission with corrections to Attachment B.

Director of Parks, Recreation and Neighborhood Services, Angel Rios, Jr., and Assistant Director of Parks, Recreation and Neighborhood Services, Matt Cano provided a presentation.

Public Comment: Matthew Reed, representing SV@Home, suggested waiving park fees for accessory dwelling units. Offering additional comments were Mackenzie Mossing and Larry Ames.

## 5.1 (Cont'd.)

Action: Upon motion by Councilmember Sergio Jimenez, seconded by Councilmember Johnny Khamis and carried unanimously, Resolution No. 78474, entitled: “A Resolution of the Council of the City of San José Setting Forth the Schedule of Parkland Fees Charged Pursuant to Chapters 14.25 and 19.38 of the San Jose Municipal Code to Reflect the 2011 Residential Land Value Study, Amend Section 2.B of Exhibit B of Resolution No. 73587, as Amended, and Removing the Cap on the Number of Units Eligible for and Re-Defining the Area Eligible for the Downtown High Rise Incentive”, was adopted.  
(10-0-1. Absent: Carrasco.)

## TRANSPORTATION & AVIATION SERVICES

- 6.1 17-465** (a) Approve the Funding Agreement between the City of San José and the Santa Clara Valley Transportation Authority (VTA) to initiate final design for the U.S. 101/De La Cruz Boulevard - Trimble Road Interchange Improvement Project (Project) to provide the City’s share of funding in the not to exceed amount of \$3,000,000 for a term beginning at the date of full execution to June 30, 2020.  
(b) Adopt a resolution authorizing the City Manager or his designee to negotiate and execute amendments to the Funding Agreement to include VTA’s share of funding for the Project.  
CEQA: Exempt, File No. PP17-001, CEQA Guidelines Section 15262, Feasibility and Planning Studies. Council District 4. (Transportation)

Documents Filed: Memorandum from Director, Department of Transportation, Jim Ortbal, dated November 27, 2017, recommending approval of a funding agreement and adoption of a resolution.

Action: Upon motion by Councilmember Tam Nguyen, seconded by Councilmember Johnny Khamis and carried unanimously, the funding agreement was approved, and Resolution No. 78475, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager or His Designee to Negotiate and Execute Amendments to the Funding Agreement with Santa Clara Valley Transportation Authority (“VTA”) to include VTA’s Share of Funding for the U.S. 101/De La Cruz Boulevard-Trimble Road Interchange Improvements Project”, was adopted. (10-0-1. Absent: Carrasco.)

## ENVIRONMENTAL & UTILITY SERVICES

- 7.1 17-463** (a) Accept staff report which provides information about labor standards applicable to residential garbage and recycling contracts.  
(b) Direct staff to return to the City Council with a recommendation for Modified Living Wages for Recycle Plus Facility Workers for future residential solid waste service contracts.  
CEQA: Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment. (Public Works/ESD)

Documents Filed: (1) Joint memorandum from Councilmembers Rocha, Peralez and Jimenez, dated December 15, 2017 offering additional direction to staff. (2) Joint memorandum from Director of Public Works, Barry Ng and Director, Environmental Services, Kerrie Romanow, dated November 27, 2017.



## 7.1 (Cont'd.)

Director, Environmental Services, Kerrie Romanow provided a presentation.

Public Comments: Offering comments and suggestions, were Doug Bloch (Teamsters Joint Council 7); Rich De La Rosa (California Waste Solutions), and Emily Finn (Green Waste Recovery, Inc.).

Motion: Councilmember Raul Peralez moved approval of the memorandum he cosigned with Councilmember Donald Rocha and Jimenez, dated December 15 2017, including staff recommendations. Councilmember Donald Rocha seconded the motion.

Mayor Sam Liccardo requested a friendly amendment that staff be given the flexibility to engage with other area cities to encourage them to follow our lead regarding wage standards, and not requiring neutrality statement but allowing the submittal. The amendment was incorporated into the motion.

Action: On a call for the question, the motion carried unanimously, and the staff report was accepted, with direction as outlined in the joint memorandum from Councilmembers Rocha, Jimenez and Peralez, dated December 15, 2017, as follows:

1. As staff negotiates new contracts with solid waste contractors, pursue a modified living wage standard for customer service representatives, mechanics and MRF workers who work at the main facilities of residential solids waste contractors. The modified living wage would be based on the percentage of time a given classification spends on San Jose work.
2. In 2018, return to City Council with an update on the cost of implementing the direction outlined in recommendation 1, but do not bring back an amendment to Council Policy 3-3.
3. As part of the negotiation of solid waste contract extensions, require that contractors provide the City with an updated labor peace plan that demonstrates how labor peace will be maintained for the extended contract term.

Also, allow the staff flexibility to engage with other area cities to encourage them to follow our lead regarding wage standards, and not requiring neutrality statement but allowing the submittal.

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

## 7.2 17-478

- (a) Accept the report on storm sewer funding alternatives to address obligations under the San Francisco Baykeeper Consent Decree.
  - (b) Direct staff to complete further analysis of the recommended funding mechanisms that will meet obligations under the Consent Decree, as well as other Stormwater funding needs, and return to Council in spring 2018, with recommendations for implementation of funding alternatives.
- CEQA: Exempt, File No. PP17-001, CEQA Guidelines Section 15262, Feasibility and Planning Studies; and File No. PP17-002, Consultant Services for design, study, inspection, or other professional services with no commitment to future action. (Environmental Services/Public Works/Transportation)

## 7.2 (Cont'd.)

Documents Filed: Joint memorandum from Director, Environmental Services, Kerrie Romanow, Director, Department of Transportation, Jim Ortbal and Director of Public Works, Barry Ng, dated December 5, 2017, recommending acceptance of the report with further analysis.

Staff provided a brief presentation and responded to questions.

Public Comments: Offering comments and suggestions, were: Eileen McLaughlin (Citizens Committee to Complete the Refuge) and Ben Eichenberg (San Francisco Baykeeper), Chuck Hagenmaier and Michelle Cook.

Action: Upon motion by Councilmember Chappie Jones, seconded by Councilmember Lan Diep and carried, the report on storm sewer funding alternatives to address obligations under the San Francisco Baykeeper Consent Decree was accepted, with direction to staff to complete further analysis of the recommended funding mechanisms that will meet obligations under the Consent Decree, as well as other Stormwater funding needs, and return to Council in spring 2018, with recommendations for implementation of funding alternatives.

(9-1-1. Noes: Khamis. Absent: Carrasco.)

## REDEVELOPMENT – SUCCESSOR AGENCY

The meeting of the City Council was recessed, and the Successor Agency to the Redevelopment Agency of the City of San José was convened.

- 9.1 17-496** Successor Agency Board adopt resolutions approving:
- (a) The Amended Administrative Budget for July 1, 2017 through June 30, 2018;
  - (b) The proposed adjustments to the Recognized Obligation Payment Schedule 17-18 and authorizing payment for the amended amounts in the “B” period.
- CEQA: Not a Project, File No. PP17-004, Government Funding Mechanism or Fiscal Activity with no commitment to a specific project which may result in potentially significant physical impact on the environment. (Successor Agency)

Documents Filed: Joint memorandum from Director of Finance, Julia Cooper and Successor Agency Managing Director, Richard Keit, dated November 27, 2017, recommending adoption of resolutions.

Action: Upon motion by Councilmember Donald Rocha, seconded by Councilmember Raul Peralez and carried unanimously, Successor Agency Resolution No. 7069, entitled: “A Resolution of the Successor Agency of the Redevelopment Agency of the City of San José Approving the Amended Administrative Budget for July 1, 2017 through June 30, 2018”; and Successor Agency Resolution No. 7070, entitled: “A Resolution of the Successor Agency of the Redevelopment Agency of the City of San José Approving Adjustments to the Recognized Obligation Payment Schedule 17-18 and Authorizing Payment for the Amended Amounts in the “B” Period of January 1 through June 30, 2018”, were adopted. (10-0-1. Absent: Carrasco.)

The meeting of the Successor Agency to the Redevelopment Agency of the City of San José was adjourned, and the meeting of the City Council of the City of San José was reconvened.

## LAND USE

### 10.1 17-207

(a) Conduct an Administrative Hearing and consider the Permit Appeal of the Planning Commission's approval of the Conditional Use Permit and Site Development Permit to allow the demolition of an existing 1,276-square foot gas station convenience store with incidental service and vehicle repair, and the construction of a new 5,754-square foot convenience store and fully automated car wash, and early morning use for the gas station and convenience store only (one hour extension between 5:00 a.m. and 6:00 a.m.), a temporary use trailer, and an exceedance of the Zoning Ordinance noise performance standards by two decibels.

(b) Adopt a resolution denying the permit appeal and approving the Conditional Use Permit and Site Development Permit, subject to conditions, to allow the demolition of an existing 1,276-square foot gas station convenience store with incidental service and vehicle repair, and the construction of a new 5,754-square foot convenience store and fully automated car wash, and early morning use for the gas station and convenience store only (one hour extension between 5:00 a.m. and 6:00 a.m.), a temporary use trailer, and an exceedance of the Zoning Ordinance noise performance standards by two decibels on an approximately on a 0.81-gross acre site located at 3702 South Bascom Avenue (southeast corner of South Bascom Avenue and Woodard Road).

CEQA: Exempt per CEQA Guidelines Section 15302 for Replacement or Reconstruction and 15332 for Infill Development Projects. Planning Commission approved the Conditional Use Permit and Site Development Permit (4-3-0; Phan, Bit-Badal opposed). (Planning, Building and Code Enforcement)

CP16-035 - Council District 9

(Deferred from 10/24/17 - Item 10.4 and 11/28/17 - Item 10.2)

(Continued from 12/12/17 - Item 10.2)

Documents Filed: (1) Supplemental memorandum from Director, Planning, Building and Code Enforcement, Rosalynn Hughey, dated December 14, 2017, providing an updated resolution. (2) Letter from Benjamin R. Levins to Kathleen Flynn, dated December 12, 2017, regarding research on car wash chemicals and odors.

Mayor Sam Liccardo opened the public hearing.

Public Comments: Applicant, Tony Andary, addressed noise concerns and indicated a need for further discussion with the appellant to alleviate these concerns.

Mayor Sam Liccardo closed the public hearing.

## 10.1 (Cont'd.)

Motion: Councilmember Donald Rocha moved the revised resolution provided by staff with approval of convenience store use that does not include the car wash and a denial of the appeal. Councilmember Chappie Jones seconded the motion.

Substitute Motion: Councilmember Johnny Khamis moved deferral of this item for one month. Councilmember Dev Davis seconded the motion.

Action: On a call for the question, the substitute motion passed, and this item was deferred for 30 days, to January 2018. (6-4-1. Noes: Jones, Jimenez, Peralez, Rocha. Absent: Carrasco.)

## OPEN FORUM

1. Brian Darby discussed greater outreach to the homeless, individuals and children.
2. Kimberly Cheng and Maxx Rodriguez, representing Primal Canine, indicated they were unfairly denied a permit exception for their canine training facility.
3. Alice Cruz discussed unfair code enforcements, including ADA adaptations, and was offered to discuss with City staff.
4. Blair Beekman discussed the need for transparency.
5. Michelle Cook represented the Weed for Warriors Project.

## ADJOURNMENT

The meeting of the City Council was adjourned at 9:52 p.m. in memory of Dajuana Lashon Wilson. Dajuana passed away on November 29, 2017. She touched the lives of so many people with her smile, wit, generosity, and strength. She was a woman of God, and her faith carried her through her three-year battle with cancer. Left to cherish her memories are her loving husband, Donald Wilson, their beloved son, Donovan Wilson, her parents, Estis and Dorothy, her sister Kim, the rest of her family members, and a host of neighbors, colleagues, classmates, and friends. (Rocha)

Minutes Recorded, Prepared and Respectfully Submitted by,



Toni J. Taber, CMC  
City Clerk

rmk/12-19-17 MIN