

## MINUTES OF THE CITY COUNCIL

**SAN JOSÉ, CALIFORNIA**

**TUESDAY, MARCH 5, 2019**

The Council of the City of San José convened in Regular Session at 9:30 a.m. in the Council Chambers at City Hall.

**9:30 a.m.-** Closed Session, Call to Order in Council Chambers

**Absent Councilmembers: Arenas, Jimenez.**

**18-1775** Closed Session Agenda

**1:33 p.m.-** Regular Session, Council Chambers, City Hall (special time)

**Absent Councilmembers: All Present.**

### CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:34 a.m. to a Closed Session in Room W133; (A) To confer with Legal Counsel – Anticipated Litigation Pursuant to Government Code Section 54956.9(d)(4): Matter(s) to be discussed: 1 (one); (B) To confer with Legal Counsel – Existing Litigation/Initiated Litigation Pursuant to Government Code Section 54956.9(d)(1): (1) Preservation of Benefit Plan Retirees Association, et al. v. City of San José, et al.; Names Of Partie(s) Involved: Preservation of Benefit Plan Retirees Association, Joseph Bass, David Boggini, Lawrence Jay Castellano, Richard Coco, Leslye Corsiglia, Harry Freitas, Michael Guisti, Linda Horwedel (the Beneficiary of Deceased City Retiree Joseph Horwedel), William Hughes, Danny Jordan, Evet Loewen, David Maas, Barry Ng, Anita Phagan, George Rios, Gary Schoenauer, Ken Tanase, Wayne Tanda, Nina Tobin, Randal Turner, Steven Turner, Robert Wilson, City of San José, Board of the Administration of the Federated City Employees' Retirement System; Norberto Duenas, in his Official Capacity as the City Manager of the City of San José, and Does 1-50; Court: Superior Court of California, County of Santa Clara, Unlimited Jurisdiction; Case No.: 17CV312610; Amount of Money or Other Relief Sought: Petition for Writ of Mandate; (2) Sutter's Place, Inc. dba Bay 101 v. City of San José; Names Of Partie(s) Involved: Sutter's Place, Inc., dba Bay 101; City of San José; the Division of Gaming Control; Court: Superior Court of California, County of Santa Clara; Case No.: 1-13-CV-258057; Amount of Money or Other Relief Sought: Damages according to proof; (C) to Confer with Labor Negotiator Pursuant to Government Code Section 54957.6: City Negotiator: Jennifer Schembri, Director of Employee Relations; Employee Organizations: (1) 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. Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Web: <http://www.sanjoseca.gov/?nid=186>; Telephone for Employee Relations: 408-535-8150.

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

## **CLOSED SESSION (Cont'd.)**

By unanimous consent, Council recessed from the Closed Session at 11:50 a.m.; Council reconvened to Regular Session at 1:32 p.m. in the Council Chambers.

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

Absent: Councilmembers - All Present.

## **INVOCATION (District 3)**

Reverend Fannie Davis from Antioch Baptist Church provided the Invocation.

## **PLEDGE OF ALLEGIANCE**

Mayor Sam Liccardo led the Pledge of Allegiance accompanied by students from Rosemary Elementary School.

## **ORDERS OF THE DAY**

Upon motion by Councilmember Johnny Khamis, seconded by Councilmember Raul Peralez and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (11-0.)

## **CEREMONIAL ITEMS**

- 1.1 Kaiser Permanente presented a \$12,000 Check to the City of San José for it's senior community centers to provide mobility fitness equipment. (Khamis)
- 1.2 Mayor Sam Liccardo and Councilmembers Arenas, Esparza, Davis, Clark and Foley offered a proclamation to Marjorie Clark proclaiming March as Women's History Month. (Arenas)
- 1.3 Mayor Sam Liccardo and Councilmember Dev Davis offered a proclamation, acknowledging March 6, 2019 as World Lymphedema Day. (Davis)

## **CONSENT CALENDAR**

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

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

None provided.

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

None provided.

## **2.3 19-024 Approval of Council Committee Minutes.**

(a) Regular Public Safety, Finance and Strategic Committee Meeting Minutes of June 21, 2018.

(b) Regular Public Safety, Finance and Strategic Committee Meeting Minutes of August 16, 2018.

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

Documents Filed: Regular Public Safety, Finance and Strategic Committee Meeting Minutes dated June 21, 2018 and August 16, 2018.

Public Comments: Blair Beekman offered comments regarding the OES Workplan.

Action: The Committee Meeting Minutes were approved. (11-0.)

## **2.4 19-024 Mayor and Council Excused Absence Requests.**

(a) Request for an excused absence for Councilmember Esparza, from the Regular Meeting of the Transportation and Environment Committee on February 4, 2019, due to illness.

(b) Request for an excused absence for Councilmember Davis, from the Regular Meeting of City Council on February 26, 2019, due to illness.

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

Documents Filed: Memorandum from Councilmember Maya Esparza, dated February 15, 2019, request approval of an excused absence.

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 19-012 Amendment to Agreement with Hanson Bridgett LLP for Legal Services.**

Adopt a resolution authorizing the City Attorney to negotiate and execute a Third Amendment to the agreement with Hanson Bridgett LLP for legal services related to Preservation of Benefit Plan Retirees Association, et al v. City of San José, et al, to increase the compensation by \$300,000, for a total amount not to exceed \$700,000, and extend the term of the agreement through June 30, 2020.

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

Documents Filed: Memorandum from City Attorney Richard Doyle, dated February 21, 2019, recommending adoption of a resolution.

Action: Resolution No. 78997, entitled: “A Resolution of the Council of the City of San José Authorizing the City Attorney to Negotiate and Execute a Third Amendment to the Agreement with Hanson Bridgett LLP for Legal Services Related to Preservation of Benefit Plan Retirees Association, et al. v. City of San José, et al, Increasing the Compensation to an Amount Not to Exceed \$700,000 and Extending the Term Through June 30, 2020”, was adopted. (11-0.)

**2.8 19-020 Grant Application for County of Santa Clara’s Historical Grant Program for Chiechi House Restoration Project Located at History Park.**

Adopt a resolution approving History San José’s application (in partnership with La Raza Historical Society of Santa Clara Valley) to the County of Santa Clara’s Historical Grant Program for a restoration project at the Chiechi House in History Park.

CEQA: Categorically Exempt, File No. PP18-097, CEQA Guidelines Section 15301 (a) Existing Facilities and Section 15331, Historical Resource Restoration/Rehabilitation. Council District 7. (Economic Development)

Documents Filed: City Council Action Request from Deputy City Manager/Director of Economic Development Kim Walesh dated February 21, 2019, recommending adoption of a resolution.

Public Comments: Fernando Zazueta, representing the La Raza Historical Society, offered support to the restoration project and appreciation.

Action: Resolution No. 78998, entitled: “A Resolution of the Council of the City of San José Approving an Application to the County of Santa Clara’s Historical Heritage Grant Program by History San Jose in Partnership with La Raza Historical Society of Santa Clara Valley for the Repairs and Restoration of the Chiechi House in History Park, to Accept the Grant if Awarded, and to Authorize the City Manager to Execute All Related Documents”, was adopted. (11-0.)

**2.9 19-021 Grant Application for County of Santa Clara's Historical Grant Program for Peralta Adobe Restoration Project.**

Adopt a resolution approving History San José's application to the County of Santa Clara's Historical Grant Program for the restoration of the Peralta Adobe.

CEQA: Categorically Exempt, File No. PP19-017, CEQA Guidelines Section 15301(a) Existing Facilities and Section 15331, Historical Resources Restoration/Rehabilitation. (Economic Development)

Documents Filed: City Council Action Request from Deputy City Manager/Director of Economic Development Kim Walesh dated February 21, 2019, recommending adoption of a resolution.

Action: Resolution No. 78999, entitled: "A Resolution of the Council of the City of San José

**2.10 19-032 Amendment to the Agreement with Fairbank, Maslin, Maullin, Metz & Associates, Inc. for Consultant Services.**

Adopt a resolution authorizing the City Manager to execute the Continuation and First Amendment to the Agreement for Consultant Services between the City of San José and Fairbank, Maslin, Maullin, Metz & Associates, Inc. (FM3) through December 31, 2020 and an increase in compensation of up to \$381,500 for a total amount not to exceed \$1,000,000.

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

[Deferred from 2/26/19 - Item 2.11 (18-1932)]

Documents Filed: Memorandum from Chief of Staff, Office of the City Manager, Lee Wilcox, dated February 20, 2019, recommending adoption of a resolution.

Action: Resolution No. 79000, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute the Continuation and First Amendment to the Agreement for Consultant Services Between the City of San José and Fairbank, Maslin, Maullin, Metz & Associates, Inc. (FM3) Through December 31, 2010, Increasing Maximum Compensation from \$618,500 to \$1,000,000, Subject to the Appropriation of Funds", was adopted. (11-0.)

**2.11 19-057 Request for Travel for Mayor and Council.**

(a) Authorize travel, accept travel payments to the City of San José, and designate mayor Sam Liccardo as the City representative to speak at the SXSW (South by Southwest) Conference in Austin, TX from March 8-10, 2019.

(b) Approve travel for Vice Mayor Chappie Jones to Washington, D.C. from March 9, 2019 to March 11, 2019, designate him as the City's representative at the National League of Cities Congressional City Conference, and approve use of the Mayor/Council Travel Budget.

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

## 2.11 (Cont'd.)

Documents Filed: (1) Memorandum from Mayor Sam Liccardo, dated February 20, 2019, requesting authorization to travel on official City business. (2) Memorandum from Vice Mayor Chappie Jones, dated February 25, 2019, requesting authorization to travel on official City business.

Action: The travel requests were approved. (11-0.)

## STRATEGIC SUPPORT

### 3.3 19-022 Council Priority Setting.

- (a) Approve the following elements of the priority-setting session:
    - (1) Remove the following priorities from the priority list as complete:
      - (a) Priority #1, Update the City's Rental Rights and Referrals Program
      - (b) Priority #4, Housing Rehabilitation Program
      - (c) Priority #10, Personal Care Business Compliance Initiative
      - (d) Priority #25, Downtown Active Storefronts Initiative
      - (e) Priority #27, Medical Marijuana.
    - (2) Remove the following priorities from the priority list and add them to the nominations list:
      - (a) Priority #23, Spurring High Density Development Along Transit Corridors
      - (b) Priority #24, Riparian Corridors and Bird Safe Design
      - (c) Priority #26, San José is Open for Business/Legal Non-Conforming Uses.
    - (3) Approve staff's proposed priority setting nomination list.
  - (b) Approve new items for the Council Priority List.
  - (c) Rank items on the Council Priority list.
- 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: (1) Memorandum from Vice Mayor Chappie Jones, dated March 4, 2019, providing public safety priority requests. (2) Memorandum from Councilmember Raul Peralez, dated March 4, 2019, regarding Council Priority Setting. (3) Memorandum from Vice Mayor Magdalena Carrasco, dated March 4, 2019, regarding Council Priority Setting. (4) Memorandum from Councilmember Sylvia Arenas, dated March 5, 2019, regarding Council Priority Setting. (5) Memorandum from Councilmember Dev Davis, dated March 5, 2019, regarding Council Priority Setting. (6) Memorandum from Chief of Staff, Office of the City Manager, Lee Wilcox, dated February 25, 2019, regarding the 2019 City Council Priority Setting Session. (7) Supplemental memorandum from Chief of Staff, Office of the City Manager, Lee Wilcox, dated February 28, 2019, updating the nomination list. (8) Joint supplemental memorandum from Chief of Police Edgardo Garcia and Rosalynn Hughey, Director, Planning, Building and Code Enforcement, dated March 4, 2019, regarding grouping like items in cannabis referrals for consideration. (9) "Round 1 Council Priority Setting Ballots" and "Round 2 Council Priority Setting Ballots".

### **3.3 (Cont'd.) Council Priority Setting.**

Motion: Councilmember Pam Foley moved a five-minute time limit for each Councilmember to state their reasoning per item. Councilmember Dev Davis seconded the motion.

Action: On a call for the question, the motion carried to limit each Councilmember to five minutes to promote their priority item. (9-2. Noes: Diep, Peralez.)

Motion: Councilmember Raul Peralez moved approval to move Suicide Prevention off the Priority list and give it an automatic 'green light'.

Action: On a call for the question, the motion carried unanimously, and Suicide Prevention was removed from the Priority list and given an automatic 'green light'. (11-0.)

Public Comments: Fifty-eight members of the public spoke on issues they feel should be prioritized.

Chief of Staff, Office of the City Manager, Lee Wilcox, provided an introduction, and Gloria Schmanek and Peter Hamilton of the City Manager's Office, explained the prioritization process for voting and the contents of the priority list. Assistant to the City Manager, Sarah Zarate discussed policy nominations.

Council discussion ensued.

Motion: Councilmember Magdalena Carrasco moved the inclusion of the exploration of a Private Percent for Art Ordinance, per the memorandum she submitted on March 4, 2019. Councilmember Sylvia Arenas seconded the motion.

Action: On a call for the question, the inclusion of priority setting item to direct the City Manager's Office to explore a Private Percent for Art Ordinance, per Vice Mayor Magdalena Carrasco's memorandum of March 4, 2019. (10-0-1. Absent: Peralez.)

Action: Upon motion by Councilmember Dev Davis, seconded by Councilmember Johnny Khamis and carried unanimously, the removal of noted items from the Priority List, additions to the nomination list and approval of staff's proposed priority setting nominations list, was approved, as indicated in the following Council Policy Prioritization Process "Round 2" Results. (11-0.)

**Open Form was heard while votes were being tabulated.**

**Council recessed at 5:30 p.m. while votes were being tabulated. Council session resumed at 5:58 p.m. with all Councilmembers present.**

**Staff continued with additional information regarding the prioritization list.**

**Council again recessed at 6:15 p.m., resuming to open session at 6:38 p.m. with all Councilmembers present. Council Policy Prioritization Process – Round 2 Voting was Presented as noted on page 8.**

Council Policy Prioritization Process - Round 2 Voting March 5, 2019

	ITEM Name	Mayor	D1	D2	D3	D4	D5	D6	D7	D8	D9	D10	Total
1	Family Friendly City- Paid Family Leave			1				1	1	1	1	1	6
2	Childcare & Early Education	1	1			1	1	1	1				6
3	Universal Development Fee	1	1			1		1		1	1	1	7
4	Review of Cannabis Land Use and Regulatory Provisions (Combined)			1	1	1	1	1	1		1	1	8
5	Cannabis: Equity Applicant Program		1	1	1		1			1	1		6
6	Update the Council's Wage Theft Prevention Policy			1	1		1		1	1			5
7	Private Property Graffiti Abatement Ordinance												0
8	Downtown Zoning Code Update	1										1	2
9	Impact Fee Deferred Payment Program for Housing	1										1	2
10	Develop Innovative Strategies to Hire Crossing Guards		1										1
11	Sanctioned Encampments		1			1					1		3
12	Anti-Displacement Preference Ordinance			1	1		1		1	1			5
13	Update Urban Design Guidelines	1			1	1							3
14	Food and Clothing Distribution at City Parks												0
15	Smoke-Free Housing							1					1
Total Elected Votes		5	5	5	5	5	5	5	5	5	5	5	55



**3.4 18-1928 Ordinance Modifying the Deadlines for Calculating and Approving the Cost of Living Adjustment to the Campaign Contribution Limit to Accommodate the March 3, 2020 Statewide Primary Election.**

Approve an ordinance amending San José Municipal Code Section 12.06.210 of Chapter 12.06 of Title 12 to make technical changes to the deadlines for calculating and approving a cost of living adjustment to the City's campaign contribution limit in response to California moving its statewide primary election to March of even-numbered years.  
CEQA: Not a Project, File No. PP17-010, City Organization & Administrative Activities resulting in no change to the physical environment. (City Clerk)

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated February 22, 2019, recommending approval of an ordinance.

Action: Upon motion by Councilmember Sergio Jimenez, seconded by Councilmember Pam Foley and carried unanimously, Ordinance No. 30231, entitled "An Ordinance of the City of San José Amending Section 12.06.210 of Chapter 12.06 of Title 12 of the San José Municipal Code to Update the Process and Method for Calculating and Approving a Cost of Living Adjustment for the Campaign Contribution Limit Commencing with the March 3, 2020 Primary Election", was passed for publication. (11-0.)

## **TRANSPORTATION & AVIATION SERVICES**

**6.1 19-023 Actions Related to Award of Construction Contract for 2019 Major Streets Concrete and ADA Ramps Project #2.**

(a) Approve award of a construction contract for the 2019 Major Streets Concrete & ADA Ramps Project #2, to the low bidder, Spenco Construction, Inc. in the amount of \$1,869,250.  
(b) Approve a ten percent contingency in the amount of \$186,925.  
CEQA: Categorically Exempt, File No. PP18-029, CEQA Guidelines Section 15301(c), Existing Facilities. Council Districts 2, 7, 8, 9, & 10.  
(Transportation)

Documents Filed: Memorandum from John Ristow, Acting Director of Department of Transportation, dated February 11, 2019, recommending award of a construction contract.

Action: Upon motion by Councilmember Sylvia Arenas, seconded by Councilmember Pam Foley and carried unanimously, actions related to the award of a construction contract for 2019 Major Streets Concrete and ADA Ramps Project #2 were approved. (11-0.)

## **OPEN FORUM**

1. Ray Perez spoke to San José's transit shortcomings and the need for safety.
2. Andrew Boone addressed the urgent need for reduction of greenhouse gas emissions.
3. Shani Kleinhaus urged evaluation of environmental effects of the proposed light tower at the Arena Green.
4. Dashiell Leeds expressed his concerns regarding artificial lighting and the need to consider its effects in future downtown designs.

## ADJOURNMENT

The Council Meeting of the City of San José was adjourned at 6:40 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

***draft***

Toni J. Taber, CMC  
City Clerk

rmk/3-5-2019 MIN