

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, AUGUST 27, 2019

The Council of the City of San José convened in Closed Session at 9:35 a.m. in the Council Chambers at City Hall.

Present: Councilmembers - Arenas, Carrasco (10:25), Davis, Diep, Jimenez, Jones, Khamis, Esparza (10:05), Peralez, Foley; Liccardo.

Absent: Councilmembers - Jimenez (Excused)

CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:30 a.m. to a Closed Session in Room W133; (A) Pursuant to Government Code, Section 54957 Conduct Public Employee Evaluation; Title: City Auditor; Name: Joe Rois; (B): To confer with Legal Counsel – Anticipated Litigation Pursuant to Government Code Section 54956.9(d)(4) and (e)(1): Matter(s) to be discussed: 1 (one); (C) to Confer with Labor Negotiator Pursuant to Government Code Section 54957.6: City Negotiator: Jennifer Schembri, Director of Employee Relations; Employee Organizations: (1) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3 (OE#3). Web: <http://www.sanjoseca.gov/?nid=186>; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 11:53 a.m.; Council reconvened to Regular Session at 1:35 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 7)

Khmer Krom Buddhist monks of the Khemara Rangsey Temple, offered a traditional blessing/chant for 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 Chappie Jones and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with item 3.5 dropped from today's Agenda. The Meeting of the City Council will return to Closed Session following today's Open Session. (11-0.)

CEREMONIAL ITEMS

- 1.1 Mayor Sam Liccardo and Councilmember Dev Davis presented a commendation for the Retired Fire Fighter Sam Seibert. (Davis)
- 1.2 Mayor Sam Liccardo and Councilmember Magdalena Carrasco presented a commendation for Maker of Tomorrow for starting a nonprofit that helps students with engineering. (Carrasco)
- 1.3 Mayor Sam Liccardo and Councilmembers Jimenez, Khamis, Arenas, Foley and Davis presented a proclamation declaring the month of August 2019 as American Muslim Appreciation and Awareness Month in the City of San José. (Jimenez)

CONSENT CALENDAR

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

2.1 19-728 Approval of City Council Minutes.

- (a) Special City Council - Joint Meeting of City and the SCVWD Minutes of December 12, 2018.
 - (b) Regular City Council Meeting Minutes of December 11, 2018.
 - (c) Regular City Council Meeting Minutes of January 15, 2019.
 - (d) Special City Council Meeting Minutes of January 16, 2019.
- CEQA: Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

Action: The City Council Minutes were approved. (11-0.)

2.2 19-725

Final Adoption of Ordinances.

(a) Ord No. 30294 - An Ordinance of the City of San José Deleting Section 21.07.080 of Chapter 21.07 of Title 21 of the San José Municipal Code Relating to Request for Reconsideration of Certification of Environmental Impact Reports.

(b) Ord No. 30295 - An Ordinance of the City of San José to Provide for a Business Tax Amnesty Program Which Forgives Taxpayers Who Pay Certain Past Due Business Taxes from Liability for Remaining Past Due Business Taxes, Interest, and Civil and Criminal Penalties.

(c) Ord No. 30296 - An Ordinance of the City of San José to Provide for a Business Improvement District Assessment Amnesty Program Which Forgives Businesses That Pay Certain Past Due Assessments from Liability for Interest and Penalties.

(d) Ord No. 30297 - An Ordinance of the City of San José Amending Sections 4.76.115 and 4.76.120 of Chapter 4.76 Of Title 4 of the San José Municipal Code to Broaden the Definitions of Small Business and Small Business Owner in Order to add Trusts to Business Tax Financial Hardship Exemptions Under Certain Circumstances.

(e) Ord No. 30304 - An Ordinance of the City of San José Amending Title 5 of the San José Municipal Code to add a New Chapter 5.10 Related to Housing Payment Equality.

Action: **Ordinance Numbers 30294, 30295, 30296, 30297 and 30304** were adopted. (11-0.)

2.3 Approval of Council Committee Minutes.

None provided.

2.4 19-723

Mayor and Council Excused Absence Requests.

(a) Request for an excused absence for Vice Mayor Chappie Jones from the Smart Cities and Service Improvements Committee on September 5, 2019 due to authorized City business: SVO Annual Study Mission.

(b) Retroactive request for an excused absence for Mayor Liccardo, from the Regular Meeting of the Rules and Open Government on August 14, 2019 due to authorized City business at the California State Senate Subcommittee on Gas, Electric, and Transportation Safety.

Action: The request for excused absences were 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 19-668 Amendment to 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.* - DEFERRED

Adopt a resolution authorizing the City Attorney to negotiate and execute a Fifth 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 \$100,000, 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 Attorney)

Deferred to 9/10/19 per the City Attorney.

2.8 19-721 Boards and Commissions Appointments.

Approve the following Boards and Commissions appointments:

(a) Parks and Recreation Commission:

(1) District 2 Seat: Appoint Andre Morrow to a term ending June 30, 2023;

(2) District 6 Seat: Appoint John Callison to a term ending June 30, 2023;

(3) District 10 Seat: Appoint Bretton Fraboni to a term ending June 30, 2023;

(b) Housing and Community Development Commission:

(1) District 2 Seat: Appoint Alex Shoor to a term ending June 30, 2023;

(2) District 6 Seat: Appoint Andrea Wheeler to a term ending June 30, 2023;

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

Action: The Boards and Commissions Appointments were accepted. (11-0.)

2.9 19-670 Biennial Peer Review of the City Auditor's Office.

Approve an Agreement with the Association of Local Government Auditors (ALGA) to perform an audit of the City Auditor's Office for Fiscal Year 2017-18 and FY 2018-19, pursuant to the peer review guidelines of ALGA, in exchange for reimbursement of expenses for the audit team and the provision of reciprocal audit services by the City Auditor's Office.

Action: The Agreement with the Association of Local Government Auditors (ALGA) was approved. (11-0.)

2.10 19-671 Designation of Voting Delegate to the General Assembly for the League of California Cities Annual Meeting.

Approve the designation of Councilmember Sergio Jimenez as the voting delegate and Councilmember Raul Peralez as the alternate voting delegate to the General Assembly at the October 18, 2019 League of California Cities Annual Meeting in Long Beach, CA.

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

Action: The designation of a voting delegate was approved. (11-0.)

2.11 19-710 Support for History San José's and African American Heritage House (In Partnership with History San José's) Grant Applications for Santa Clara County's Historic Grant Program.

Adopt a resolution to approve History San José's and African American Heritage House (in partnership with History San José's) applications to the County of Santa Clara's Historic Grant Program for restoration projects at the Zanker House and History Park.

CEQA: Categorically Exempt, File No. PP19-062, CEQA Guidelines Section 15301(a) Existing Facilities and Section 15331, Historical Resources Restoration/Rehabilitation. Council District 7. (Economic Development)

Action: **Resolution No. 79221** approving the Grant Applications for Santa Clara County's Historic Grant Program was adopted. (11-0.)

2.12 19-711 Actions Related to the Purchase Order for HealthView Preventative Medical Center, Inc. Health Screening Services.

Adopt a resolution authorizing the City Manager to:

(a) Execute a Purchase Order with HealthView Preventative Medical Center, Inc. (Newport Beach, CA) for body scan health screening services for the City of San José Police Department for an initial twelve-month period, starting on or about September 1, 2019 and ending on or about August 31, 2020, for an amount not to exceed \$120,000; and

(b) Exercise up to four one-year options to extend the term of the Purchase Order with the last option year ending on or about August 31, 2024, subject to the annual appropriation of funds.

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

Action: **Resolution No. 79222** approving the Actions Related to the Purchase Order for HealthView Preventative Medical Center, Inc. Health Screening Services was adopted. (11-0.)

2.13 19-712 Report on Request for Bids for Citywide Purchase Orders for Computer Parts, Peripherals, Audiovisual Equipment, and PC Software.

Adopt a resolution authorizing the City Manager to:

(a) Execute Citywide purchase orders with ComputerLand of Silicon Valley (San José, CA), Oready, LLC (Campbell, CA), and SHI International Corp (Somerset, NJ) for the purchase of computer parts, peripherals, audio visual equipment, and PC software for an initial one-year term beginning September 1, 2019 and ending August 31, 2020 for a combined amount not-to-exceed \$1,200,000, subject to the appropriation of funds; and

(b) Approve a contingency of \$300,000 to amend the purchase order(s) as may be required to meet unanticipated increases in City demand during the initial term, subject to the appropriation of funds; and

(c) Execute purchase orders for up to four additional one-year options to extend the term through August 31, 2024, subject to the appropriation of funds.

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

Action: **Resolution No. 79223** regarding the request for Bids for Citywide Purchase Orders was adopted. (11-0.)

2.14 19-713 Amendment to the City Pay Plan for the Mayor's Public Information Officer.

Adopt a resolution to amend the City of San José Pay Plan effective August 27, 2019, to create the Mayor's Public Information Officer classification with a salary range of \$124,500.00 - \$200,850.00 annually.

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

Action: **Resolution No. 79224** amending the City of San José Pay Plan was adopted. (11-0.)

2.15 19-714 Request for Authorization to Apply for the Senate Bill 2 Planning Grant Program.

Adopt a resolution authorizing the City Manager or designee to apply for the Senate Bill 2 Planning Grant (SB 2 Grant) administered by the California Department of Housing and Community Development (HCD) and, if awarded, authorizing the City Manager or designee to negotiate and execute grant agreements with HCD. SB2 Grant funding would be used for various planning efforts to facilitate housing production and to comply with recent changes in State law.

CEQA: Not a Project, PP17-006, Grant Application with no commitment or obligation to enter into an agreement at the time of application. (Planning, Building, and Code Enforcement)

Action: **Resolution No. 79225** Allowing Authorization to Apply for the Senate Bill 2 Planning Grant Program was adopted. (11-0.)

- 2.16 19-726 Retroactive Approval of Annual Korean American Flag Raising Sponsored by Council District 1 as a City Council Sponsored Special Event to Expend City Funds and Accept Donations of Materials and Services for the Event.**
As recommended by the Rules and Open Government Committee on August 14, 2019:
(a) Retroactively approve the Annual Korean American Flag Raising scheduled on June 17, 2019 as a City Council sponsored Special Event and approve the expenditure of funds; and
(b) Approve and accept donations from various individuals, businesses, or community groups to support the event.

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

- 2.17 19-727 Retroactive Approval of 14th Annual West Valley Senior Walk Sponsored by Council Districts 1 and 6 as a City Council Sponsored Special Event to Expend City Funds and Accept Donations of Materials and Services for the Event.**
As recommended by the Rules and Open Government Committee on August 14, 2019:
(a) Retroactively approve the 14th Annual West Valley Senior Walk scheduled on April 26, 2019 as a City Council sponsored Special Event and approve the expenditure of funds; and
(b) Approve and accept donations from various individuals, businesses, or community groups to support the event.

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

- 2.18 19-737 Retroactive Approve the Northside Night Market Sponsored by Council District 3 as a City Council Sponsored Special Event to Expend City Funds and Accept Donations of Materials and Services for the Event.**
As recommended by the Rules and Open Government Committee on August 21, 2019:
(a) Retroactively approve the Northside Night Market scheduled on August 24, 2019 as a City Council sponsored Special Event and approve the expenditure of funds; and
(b) Approve and accept donations from various individuals, businesses, or community groups to support the event.

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

- 2.19 19-738 Approval of Kids We Lose Film Screening Sponsored by Council District 3 as a City Council Sponsored Special Event to Expend City Funds and Accept Donations of Materials and Services for the Event.**
As recommended by the Rules and Open Government Committee on August 21, 2019:
(a) Approve the Kids We Lose Film Screening scheduled on September 26, 2019 as a City Council sponsored Special Event and approve the expenditure of funds; and
(b) Approve and accept donations from various individuals, businesses, or community groups to support the event.

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

2.20 19-739 Retroactive Approval of the Taylor Street Night Market Sponsored by Council District 3 as a City Council Sponsored Special Event to Expend City Funds and Accept Donations of Materials and Services for the Event.

As recommended by the Rules and Open Government Committee on August 21, 2019:

- (a) Retroactively approve the Taylor Street Night Market scheduled on July 25, 2019 as a City Council sponsored Special Event and approve the expenditure of funds; and
- (b) Approve and accept donations from various individuals, businesses, or community groups to support the event.

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

2.21 19-743 Retroactive Approval of the Guadalupe River Park Community Clean Up Sponsored by Council District 3 as a City Council Sponsored Special Event to Expend City Funds and Accept Donations of Materials and Services for the Event.

As recommended by the Rules and Open Government Committee on August 21, 2019:

- (a) Retroactively approve the Guadalupe River Park Community Clean Up scheduled on July 16, 2019 as a City Council sponsored Special Event and approve the expenditure of funds; and
- (b) Approve and accept donations from various individuals, businesses, or community groups to support the event.

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

2.22 19-744 Retroactive Approval of the Indian Independence Day Flag Raising Community Event Sponsored by Council District 8 as a City Council Sponsored Special Event to Expend City Funds and Accept Donations of Materials and Services for the Event.

As recommended by the Rules and Open Government Committee on August 21, 2019:

- (a) Retroactively approve the Indian Independence Day Flag Raising Event scheduled on August 16, 2019 as a City Council sponsored Special Event and approve the expenditure of funds; and
- (b) Approve and accept donations from various individuals, businesses, or community groups to support the event.

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

Request for Travel and Excused Absence for Vice Mayor Jones.

Authorize travel, accept travel payments to the City of San José, and designate Vice Mayor Chappie Jones, as the City representative to attend the National League of Cities “Fly-In” event in Washington, D.C. from September 17-18, 2019, and excuse from the Regular Meeting of the City Council on September 17, 2019 and the Rules Committee Meeting on September 18, 2019. Source of Funds: National League of Cities.

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

Action: Travel authorization was approved. (11-0.)

3. STRATEGIC SUPPORT

3.1 Report of the City Manager, David Sykes (Verbal Report)

None provided.

3.2 Labor Negotiations Update.

None provided.

Employee Reimbursements Audit Report.

As recommended by the Public Safety, Finance and Strategic Support Committee on June 20, 2019, accept the Employee Reimbursements Audit.

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

[Public Safety, Finance and Strategic Support Committee referral 6/20/19 - Item (d)1]

[Deferred from 8/6/19 - Item 3.3 (19-597)]

City Auditor Joe Rois provided the audit report, and Director of Finance Julia H. Cooper offered the administration’s response.

Action: Upon motion by Councilmember Johnny Khamis, seconded by Councilmember Dev Davis and carried unanimously, the Employee Reimbursements Audit Report was accepted. (11-0.)

3.4 19-724 Public Member Appointment to the Board of Administration for Federated City Employees' Retirement System.

Interview applicant(s) for appointment to the Public Member Seat; and appoint one (1) applicant to the Public Member Seat on the Board of Administration for the Federated City Employees' Retirement System through November 30, 2020.

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

Members of the Council interviewed candidate Spencer Horowitz. It was noted that Applicants John Klobe and Allan Lionel will be interviewed by the Retirement Board at a later date for one remaining position.

Action: Spencer Horowitz was appointed to the Public Member Seat on the Board of Administration for the Federated City Employees' Retirement System through November 30, 2020.

3.5 19-716 Ordinance Excluding Certain Office of Retirement Services Staff from Tier 3 Membership.

Approve an ordinance amending Chapter 3.49 of Title 3 of the Municipal Code to exclude Office of Retirement Services staff, including the Chief Executive Officer, Chief Investment Officer, and Investment Professional staff, hired after November 4, 2014 from Tier 3 membership.

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

Deferred per Orders of the Day.

3.6 19-717 Amendment to Title 14 and Title 27 of the San José Municipal Code for Public Works Municipal Code Revisions. - DEFERRED

(a) Approve an ordinance amending the San José Municipal Code as follows:

(1) Add a new Title 27, titled "Procurement and Administration of Public Works," that incorporates recent City Charter changes modernizing the construction contract procurement process, makes changes conforming the Code to current City practices, and otherwise updates, streamlines, clarifies and modernizes requirements for the procurement and administration of public works projects;

(2) Repeal Chapters 14.04, titled "Public Works," 14.06, titled "Dispute Avoidance and Dispute Resolution Policy," and 14.07, titled "Design-Build Contracts," of Title 14, all of which are replaced by the new Title 27;

(3) Repeal Chapter 14.08 of Title 14, titled "Encumbrance of Funds for Construction Contracts," which is outdated and no longer needed;

(4) Amend Sections 4.12.055, titled "Services," of Chapter 4.12 of Title 4 to reflect recent City Charter changes clarifying that maintenance services can include repairs, construction, erection, improvement or demolition incidental to such maintenance;

(Item Continued on the Next Page)

3.6 (Cont'd.)

(a) (5) Amend Chapter 4.84, entitled “Insurance Requirements for Certain Public Works Contracts and Use or Occupancy of City-Owner Real Property,” of Title 4 to eliminate outdated insurance requirements and to allow the Risk Manager to set such requirements; and

(6) Amend Section 2.04.1420 of Chapter 2.04 of Title 2, Section 4.08.030 of Chapter 4.08 of Title 4, Section 5.06.390 of Chapter 5.06 of Title 5, Section 11.08.010 of Chapter 11.08 of Title 11, Section 15.26.120 of Chapter 15.26 of Title 15, and Section 19.32.120 of Chapter 19.32 of Title 19 to change references from Chapter 14.04 to Title 27.

(b) Adopt a resolution repealing the following resolutions, all of which address policies incorporated into the new Title 27:

(1) Resolution No. 71816, which sets forth the City’s prequalification policy;

(2) Resolution No. 71319, which sets forth the City’s contingency policy; and

(3) Resolution Nos. 72943, 75230 and 73532, which address the authority of the Director of Public Works to award and execute certain public works contracts for \$1,000,000 or less and establish the contingency for such contracts.

(c) Adopt a resolution amending Council Policy No. 1-18, entitled “Operating Budget and Capital Improvement Program Policy,” to change sections 1.i and 1.j under the Capital Improvement Program portion of the Policy to refer to the appropriate new sections of Title 27.

[Deferred from 6/18/19 - Item 3.7 (19-495) and 8/13/19 - Item 3.5 (19-624)]

Deferred to 9/10/19 Per Administration

4. COMMUNITY & ECONOMIC DEVELOPMENT

5. NEIGHBORHOOD SERVICES

5.1 19-719

Update on Safe Parking Pilot Program. - DEFERRED

As recommended by the Neighborhood Service and Education Committee on June 13, 2019, accept the report on the progress and status of the safe parking pilot program for families at Seven Trees Community Center and Library.

CEQA: Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action. Council District 7. (Housing)

[Neighborhood Services and Education Committee referral 6/13/19 - Item (d)2]

[Deferred from 8/13/19 - Item 5.1 (19-528)]

Deferred to 9/10/19 per Administration

6. TRANSPORTATION & AVIATION SERVICES

7. ENVIRONMENTAL & UTILITY SERVICES

8. PUBLIC SAFETY

9. REDEVELOPMENT – SUCCESSOR AGENCY

10. LAND USE

10.1 Land Use on Consent Calendar

(a) 19-720 C19-010 - Conventional Rezoning for Real Property Located at 419 North 5th Street.

Approve an ordinance rezoning certain real property located on the west side of North 5th Street, approximately 150 feet northerly of Washington Street, from the LI Light Industrial Zoning District to the R-M Multiple Residence Zoning District on a 0.04-acre portion of a 0.22-gross acre site.

CEQA: Categorically Exempt, CEQA Guidelines Section 15331 for Historical Resource Restoration/Rehabilitation and Section 15303 for New Construction or Conversion of Small Structures. Council District 3. Planning Commission recommends approval (5-0-1, Oliverio absent). (Planning, Building and Code Enforcement)

Action: Upon motion by Vice Mayor Chappie Jones, seconded by Councilmember Pam Foley and carried unanimously, Ordinance No. 30307, approving Rezoning for Real Property Located at 419 North 5th Street, was passed for publication. (11-0.)

END OF CONSENT CALENDAR

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

FOR RECEIPT:

Tract: 10518

Location: SE Corner of Murphy Avenue and Ringwood Avenue

District: 4

Lots/Units: 1/5

Type: Condominium

Developer: HD Family LLC

- Open Forum

None provided.

- Adjournment

Mayor Sam Liccardo adjourned the meeting of the City Council at 2:48 p.m., and the Council adjourned to Closed Session.

Minutes Recorded, Prepared and Respectfully Submitted by,

draft

Toni J. Taber, CMC
City Clerk

rmk/8-6-2019 MIN