



City Council Meeting Minutes

Tuesday, February 7, 2023

11:00 AM

Hybrid Meeting - Council Chambers and Virtually -

<https://sanjoseca.zoom.us/j/88957084529>

MATT MAHAN, MAYOR
ROSEMARY KAMEI, DISTRICT 1
SERGIO JIMENEZ, DISTRICT 2
OMAR TORRES, DISTRICT 3
DAVID COHEN, DISTRICT 4
PETER ORTIZ, DISTRICT 5
DEV DAVIS, DISTRICT 6
BIEN DOAN, DISTRICT 7
DOMINGO CANDELAS, DISTRICT 8
PAM FOLEY, DISTRICT 9
ARJUN BATRA, DISTRICT 10



MINUTES OF THE SAN JOSÉ CITY COUNCIL
February 7, 2023, 2022

*** COVID-19 NOTICE ***

Consistent with AB 361 and City of San Jose Resolution Nos. 80628, 80659, 80685, 80724, 80758, 80809 and RES2023-1, Councilmembers may be teleconferencing from remote locations.

• **Call to Order and Roll Call**

9:33 a.m. - Closed Session 22-1921: *See Page 9-10 for Closed Session Minutes.*

Present Councilmembers: Kamei, Torres, Cohen, Ortiz, Doan, Candelas, Foley, Batra.

Absent Councilmembers: Mahan, Jimenez, Davis.

11:00 a.m. - Regular Session

Present Councilmembers: Mahan, Kamei, Torres, Cohen, Ortiz, Davis (on Zoom), Doan, Candelas, Foley, Batra.

Absent Councilmembers: Jimenez.

• **Pledge of Allegiance**

Mayor Mahan led the Pledge of Allegiance.

• **Invocation (District 2)**

None presented.

• **Orders of the Day**

There were no changes to the Orders of the Day.

Action: Upon motion by Councilmember Pam Foley, seconded by Vice Mayor Rosemary Kamei and carried unanimously, the Orders of the Day were approved as is. (9-0-2. Absent: Jimenez, Davis.)

• **Closed Session Report**

None provided.

1. CEREMONIAL ITEMS

None provided.

2. CONSENT CALENDAR

Public Comments: Paul Soto provided public testimony regarding the item.

Action: Upon motion by Councilmember David Cohen, seconded by Councilmember Pam Foley and carried unanimously, the below listed actions were taken as indicated. (9-0-2. Absent: Jimenez, Davis.)

2.1 Approval of City Council Minutes.

None provided.

2.2 23-168 Final Adoption of Ordinances.

(a) Ordinance No. 30876 - An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Redwood Debris Box Service Trucking, Inc.
[Passed for Publication on 1/24/2023 - Item 6.3(b) (23-077)]

Action: (a) **Ordinance No. 30876** was adopted. (9-0-2. Absent: Jimenez, Davis.)

2.3 Approval of Council Committee Minutes.

None provided.

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 23-027 Extension of AB 361 Implementation to Allow Teleconferenced Public Meetings and Modified COVID Sunshine Resolution and Procedures to Continue through February 28, 2023 during the Governor's Proclaimed COVID State of Emergency.

Adopt a resolution finding the continued existence of the need to extend AB 361 implementation and amending the City's Consolidated Open Government and Ethics (Sunshine) Resolution No. 77135 to incorporate the Governor's proclaimed COVID state of emergency to allow City legislative bodies and Joint Power Authority legislative bodies for which the City serves as lead staffing agency to hold public meetings solely by teleconference or otherwise electronically pursuant to AB 361; to

(Item Continued on the Next Page)

2.7 (Cont'd.)

modify agenda noticing and document posting; and to incorporate all future Governor's Executive Orders regarding the Brown Act into the City's open government procedures, as deemed appropriate by the City Clerk and City Manager, without further Council action. CEQA: Not a Project, File No. PP17-010, City Organizational and Administrative Activities resulting in no changes to the physical environment. (City Clerk)

Action: **Resolution No. RES2023-23** was adopted. (9-0-2. Absent: Jimenez, Davis.)

2.8 23-160

Acceptance of the Retirement Plans' Annual Comprehensive Financial Reports for Fiscal Years Ending June 30, 2022 and June 30, 2021. -

Accept the following annual reports:

(a) Police and Fire Department Retirement Plan Annual Comprehensive Financial Report for the Fiscal Years ended June 30, 2022 and June 30, 2021; and

(b) Federated City Employees' Retirement System Annual Comprehensive Financial Report for the Fiscal Years ended June 30, 2022 and June 30, 2021.

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

DEFERRED TO 2/14/2023 PER RULES AND OPEN GOVERNMENT COMMITTEE.

2.9 23-100

Approval of Lighting for American Heart Month Sponsored by Council District 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 January 11, 2023:

(a) Approve the Tower and Rotunda Lighting for American Heart Month scheduled on February 7, 2023 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.

CEQA: Not a Project, File No. PP17-011, Temporary Special Events resulting in no changes to the physical environment. (Davis)

[Rules Committee referral 1/11/2023 - Item B.6]

Action: The City Council Sponsored Special Event was approved. (9-0-2. Absent: Jimenez, Davis.)

2.10 23-202

Retroactive Approval of Tower and Rotunda Lighting for the Vietnamese Heritage and Freedom Flag Raising Tet Celebration Sponsored by Council District 5 as a City Council Sponsored Special Event to Expend City Funds and Accept Donations of Materials and Services for the Event.

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2.10 (Cont'd.)

As recommended by the Rules and Open Government Committee on February 1, 2023:

(a) Retroactively approve the Tower and Rotunda Lighting for the Vietnamese Heritage and Freedom Flag Raising Tet Celebration scheduled on January 25, 2023 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.

CEQA: Not a Project, File No. PP17-011, Temporary Special Events resulting in no changes to the physical environment. (Ortiz)

[Rules Committee referral 2/1/2023 - Item B.3]

Action: The City Council Sponsored Special Event was retroactively approved. (9-0-2. Absent: Jimenez, Davis.)

2.11 23-206

Retroactive Approval of U.S. Figure Skating Dinner Sponsored by Council District 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 February 1, 2023:

(a) Retroactively Approve the U.S. Figure Skating Dinner scheduled on January 23, 2023 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.

CEQA: Not a Project, File No. PP17-011, Temporary Special Events resulting in no changes to the physical environment. (Davis)

[Rules Committee referral 2/1/2023 - Item B.4]

Action: The City Council Sponsored Special Event was retroactively approved. (9-0-2. Absent: Jimenez, Davis.)

3. STRATEGIC SUPPORT

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

None provided.

3.2 Labor Negotiations Update.

None provided.

City Council Appointments of Standing Committees and Boards, Commissions and Committees and Assignments, and Amendment to Rules of Conduct Resolution.

- (a) Discuss, amend and/or approve the Mayor's Appointments for each of the Standing Committees, as described in Exhibit "A" of the Mayor's Memorandum.
 - (b) Except for appointments which the Mayor has sole authority to appoint pursuant to statute, organization bylaws, or other governing documents, discuss, amend and/or approve Councilmembers to each of the Boards, Commissions or Committees and assignments, as described in Exhibit "B" of the Mayor's Memorandum.
 - (c) Adopt a resolution amending the Council's Rules for the Conduct of its Meetings, Superseding Resolution No. 79870, to delete Smart Cities and Service Improvements Committee as a Standing Council Committee.
- CEQA: Not a Project, File No. PP17-010, City Organizational and Administrative Activities resulting in no changes to the physical environment. (Mayor)
[Rules Committee referral 2/1/2023 - Item A.1.a]

Clarification was requested regarding actions permitted for this item as outlined in the Agenda language. City Attorney, Nora Frimann stated that any motions taken and memoranda language considered would have to be related to Exhibit "A" or "B" as explicitly outlined in the agenda language. Following discussion of the items agendaized, she further clarified and determined that memoranda from Councilmember Ortiz (February 7, 2023) did not meet this requirement and must be heard at another time.

Motion: Councilmember Pam Foley moved Mayor Mahan's memorandum dated February 3, 2023, Councilmember Cohen's memorandum and the City Attorney's Office (CAO) memorandum dated February 2, 2023. Councilmember Arjun Batra seconded the motion.

Councilmember David Cohen stated his memo was not implicitly included in Exhibit "B" of the Mayor's memo, therefore would not meet the criteria. He requested the item be added to the February 14, 2023 City Council agenda, so additional considerations could be made and noting his memo should be removed from the motion.

Councilmember Pam Foley pulled Councilmember Cohens memo from the motion, to which the seconder agreed.

Action: On a call for the question, the amended motion was accepted and (c) **Resolution No. RES2023-22** was adopted; including the memorandum from Mayor Matt Mahan, dated February 3, 2023 recommending to: (1) Apprise the Council of the Mayor's proposed appointments for each of the standing committees, as described in Exhibit "A" of this memorandum. (2) Suggest the following Councilmembers for appointment to each of the committees and assignments that were previously listed as "Vacant" in my January 10, 2023 memo, as described in Exhibit "B" of this memorandum. (3) Add an alternate position to the San José Youth Empowerment Alliance (formerly Mayor's Gang Prevention Task Force) and appoint Vice Mayor Kamei.

Also including the memorandum from (CAO) City Attorney Nora Frimann, dated February 2, 2023 recommending to: (c) Adopt a resolution amending the Council's Rules for the Conduct of Its Meetings, Superseding Resolution No. 79870, to delete Smart Cities and Service Improvements Committee as a Standing Council Committee. (10-0-1. Absent: Jimenez.)

4. PUBLIC SAFETY SERVICES

5. TRANSPORTATION & AVIATION SERVICES

6. ENVIRONMENTAL & UTILITY SERVICES

7. NEIGHBORHOOD SERVICES

- 7.1 23-164 Lake Cunningham Shoreline and Water Quality Report.**
As recommended by the Neighborhood Services and Education Committee on December 8, 2022, accept the report on the Lake Cunningham Shoreline and Water Quality Study.
CEQA: Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action. (Parks, Recreation and Neighborhood Services/Public Works) [Neighborhood Services and Education Committee referral 12/8/2022 - Item (d)6]

DEFERRED TO 3/14/2023 PER ADMINISTRATION.

8. COMMUNITY & ECONOMIC DEVELOPMENT

- 8.1 23-165 Overruling Objections to the 2023-2024 Weed Abatement Commencement Report and Directing the Removal of Weeds or Refuse.**
Conduct a Public Hearing and adopt a resolution:
(a) Overruling any and all objections to the 2023-2024 Weed Abatement Commencement Report (Report); and
(b) Directing the Santa Clara County Consumer and Environmental Protection Agency to abate the seasonal and/or recurrent public nuisances on those properties identified in the Report pursuant to Chapter 9.12 of Title 9 of the San José Municipal Code and the Weed Abatement Agreement between the City of San José and the County of Santa Clara.
CEQA: Categorically Exempt, CEQA Guidelines Section 15301(h) Existing Facilities, File No. PP18-094. (Planning, Building and Code Enforcement)

DEFERRED TO 2/14/2023 PER RULES AND OPEN GOVERNMENT COMMITTEE.

9. REDEVELOPMENT – SUCCESSOR AGENCY

10. LAND USE

10.1 Land Use on Consent Calendar

No Land Use items on Consent Calendar.

END OF CONSENT CALENDAR

10 Land Use - Regular Agenda

• Open Forum

In Person Speakers:

1. Kay Blom spoke to multiple San José Animal Care Center issues such as: dogs not being walked, kennels not being cleaned, the firing of volunteers, the lack of transparency or communication with volunteers, and feral cat/ kitten season issues.
2. Jennifer Flick, a current San José Animal Care Center volunteer for a number of years, spoke to animal care concerns, the Center's warehouse, dogs without water, filthy kennels, a volunteer being walked off without an explanation, and the need for staff who specialize in animal behavior.
3. Ana Spar spoke to the San José Animal Care Center's lack of outreach, website links for pets not being accurate, emails regarding adoptions not being responded to, volunteers limited access and explanations, and the cat medical room being full without outreach being done.

Zoom Speakers:

1. Blair Beekman spoke to issues in Ukraine.
2. Ani Elmaoglu spoke to the number of animals at the shelter; volunteers being terminated for asking questions, dogs not being cared for correctly, the strong smell of 'poop', and animal mismanagement.
3. Louise J. spoke to shelter issues, the abandonment of animals, dead animal pickup delays, and urged council to bring back the spay and neuter services.
4. Paul Soto spoke to equity regarding the Arts Commission and Office of Cultural Affairs.

• Adjournment

The Council of the City of San José adjourned at 11:31 a.m.

Minutes Recorded, Prepared and Respectfully Submitted by,



Toni J. Taber, CMC City Clerk
yj/2-7-23/MIN

CLOSED SESSION MINUTES

SAN JOSE, CALIFORNIA

TUESDAY, FEBRUARY 7, 2023

The Council of the City of San José convened into Closed Session at 9:33 a.m.
The meeting was held in Council Chambers, Conference Room, W133.

Present: Councilmembers - Foley, Doan, Davis, Ortiz, Cohen, Torres, Jimenez, Kamei, Mahan.

Absent: Councilmembers - All Present.

Vacant: - District 8; District 10.

CLOSED SESSION ITEM(S) DISCUSSED:

A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(d)(1):

1. Case Name: In re: Claim of Jacobs
Name(s) of Partie(s)
Court: Workers Compensation Appeals Court
Case No: ADJ10055940, ADJ13437613, ADJ13547614
Amount of Money or Benefits.
Other Relief Sought:
2. Case Name: In re: Claim of Gregory
Name(s) of Partie(s)
Court: Workers Compensation Appeals Court
Case No: ADJ15292200
Amount of Money or Benefits.
Other Relief Sought:
3. Case Name: In re: Claim of Schmidt
Name(s) of Partie(s)
Court: Workers Compensation Appeals Court
Case No: ADJ12168203
Amount of Money or Benefits.
Other Relief Sought:
4. Case Name: National Association for Gun Rights, Inc; Mark Sikes and Howard Jarvis Taxpayers Assn. et al., v. City of San Jose, et al.,
Name(s) of Partie(s) NATIONAL ASSOCIATION FOR GUN RIGHTS, INC., a nonprofit corporation, and MARK SIKES, an individual, HOWARD JARVIS TAXPAYERS ASSN., a nonprofit corporation, SILICON VALLEY TAXPAYERS ASSN., a nonprofit corporation, SILICON VALLEY PUBLIC

ACCOUNTABILITY FOUNDATION, a nonprofit corporation, JIM BARRY, an individual, and GEORGE ARRINGTON, an individual, v. CITY OF SAN JOSE, a public entity, JENNIFER MAGUIRE, in her official capacity as City Manager of the City of San Jose, and the CITY OF SAN JOSE CITY COUNCIL

Court: United States District Court, Northern District of California
Case No: 5:22-cv-00501-BLF
5:22-cv-02365-BLF
Amount of Money or Injunctive Relief, Declaratory Judgment, And Nominal
Other Relief Sought: Damages

5. Case Name: Marin, Guadalupe v City of San Jose, et al.
Name(s) of Parties(s) GUADALUPE MARIN, CITY OF SAN JOSE, MATTHEW
Involved: RODRIGUEZ, TYLER MORAN, and DOES 1-25
Court: United States District Court Northern District of California
Case No.: 5:21-cv-06372-VKD
Amount of Money or Damages according to proof
Other Relief Sought: