



CITY COUNCIL MEETING

Draft Minutes

Tuesday, May 7, 2024
1:30 PM

LOCATION:
Council Chambers - 200 E. Santa Clara Street

MATT MAHAN, MAYOR
ROSEMARY KAMEI, VICE MAYOR, 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

- **Call to Order and Roll Call**

9:30 a.m.- Closed Session. *See Pages 11 – 12 for Closed Session Minutes.*

Present: Councilmembers: Mahan, Batra, Foley, Candelas, Ortiz, Jimenez, Cohen, Doan.

Absent Councilmembers: Davis, Torres, Kamei.

- **1:30 p.m.- Regular Session**

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

Absent Councilmembers: None

- **Pledge of Allegiance**

Mayor Mahan led the Pledge of Allegiance.

- **Invocation (District 5)**

Viet Ha Do, Executive Producer of Viet Ha Entertainment offered the invocation with a singing performance.

- **Orders of the Day**

None provided.

- **Adjournment**

Mayor Matt Mahan announced the meeting will be adjourned in memory of the incredibly dedicated and outstanding soul of Pham Phu Nam who passed away on March 20, 2024. Pham was a renowned journalist and media figure for Northern California who advocated for the voice of Vietnamese people with eloquence and humility. Pham's legacy is one that will continue to inspire, motivate, and support generations to come. Pham will be missed dearly, his words etched in our hearts and his voice echoed in our minds.

- **Closed Session Report**

None provided.

1. CEREMONIAL ITEMS

- 1.1 Councilmember Domingo Candelas, Councilmember Peter Ortiz, and Councilmember Bien Doan presented the proclamation recognizing May 4-5, 2024 as National Light the Night for Fallen Firefighters Memorial Weekend in the City of San José.
- 1.2 Councilmember Pam Foley presented the proclamation declaring May 2024 as Older Americans Month in the City of San José to raise awareness about issues affecting our aging population focusing on social and physical health and advocating for policies that support our aging populations.

2. CONSENT CALENDAR

Public Comment: None provided.

Councilmember Arjun Batra pulled item 2.14 for comment only.

Action: Upon motion by Councilmember Arjun Batra, seconded by Councilmember Omar Torres, and carried unanimously, the Consent Calendar was approved as a whole, the below actions were taken as indicated. (10-0-1; Absent: Doan)

- 2.1 **Approval of City Council Minutes.**
- 2.2 **Final Adoption of Ordinances.**
- 2.3 **Approval of Council Committee Minutes.**
- 2.4 **Mayor and Council Excused Absence Requests.**
- 2.5 **City Council Travel Reports.**
- 2.6 **Report from the Council Liaison to the Retirement Boards.**
- 2.7 **Actions Related to the AMS SJC JV Retail Concession Agreement.**

Adopt a resolution authorizing the City Manager or her designee to negotiate and execute one or more amendment(s) to the AMS SJC JV Retail Concession Agreement to:

- (a) Place the AMS SJC JV Retail Concession Agreement for concession locations that expire on June 30, 2024, on a month-to-month holdover tenancy effective July 1, 2024;
- (b) Suspend the Minimum Annual Guarantee and allow the Concessionaire to pay a percentage of gross sales (Percentage Fee) on the two retail packages consolidated under the AMS SJC JV agreement for any period between January 1, 2025 to June 30, 2026; and
- (c) Revise the Percentage Fee categories in both retail packages to one consolidated Percentage Fee for the period between January 1, 2025 to June 30, 2026.

CEQA: Not a Project, File No. PP17-005, Adjustment to Fees, Rate and Fares without changes to or expansion of services. (Airport)

Action: **Resolution No. RES2024-123** was adopted, authorizing the City Manager or her designee to negotiate and execute one or more amendment(s) to the AMS SJC JV Retail Concession Agreement. (10-0-1; Absent: Doan)

2.8 **Actions Related to Housing Grant Agreements for Fiscal Year 2023-2024.**

Adopt a resolution authorizing the Director of Housing, Acting Director of Housing, or their designee to negotiate and execute agreements and amendments for the following priorities serving individuals and families using Housing Opportunities for Persons with Acquired Immunodeficiency Syndrome funds approved in the Fiscal Year 2023-2024 Annual Action Plan for services and Measure E funds for legal services for low-income residents in Fiscal Year 2023-2024:

(a) The Health Trust in the amount of \$1,562,639 retroactively from July 1, 2023 to June 30, 2024; and

(b) Law Foundation of Silicon Valley in the amount of \$200,000 retroactively from July 1, 2023 to June 30, 2024.

CEQA: Not a Project, File No. PP17-009, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment; and 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. (Housing)

Action: **Resolution No. RES2024-124** was adopted, authorizing the Director of Housing, Acting Director of Housing, or their designee to negotiate and execute agreements and amendments. (10-0-1; Absent: Doan)

2.9 **Third Amendment to the Agreement with DST Consulting Services for Grant and Contract Management Services.**

Adopt a resolution authorizing the Director of Housing, Acting Director of Housing, or their designee to negotiate and execute an amendment to an agreement with DST Consulting Services to extend the agreement's end term from June 30, 2024, to June 30, 2025 and increase maximum total compensation by \$240,000 from \$325,000 to \$565,000.

CEQA: Not a Project, File No. PP17-009, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. (Housing)

Action: **Resolution No. RES2024-125** was adopted, authorizing the Director of Housing, Acting Director of Housing, or their designee to negotiate and execute an amendment to an agreement with DST Consulting Services. (10-0-1; Absent: Doan)

2.10 Approval of Free Use for Various Human Resources Events in the City Hall Rotunda, Wing Committee Rooms, and City Hall Plazas.

Adopt a resolution authorizing “Free Use” for up to 15 various employee or semi-public Human Resources Department events per year, including Saturdays, in the City Hall Rotunda, Wing Committee Rooms 118-120, and City Hall Plazas.

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

Action: **Resolution No. RES2024-126** was adopted, authorizing “Free Use” for up to 15 various employee or semi-public Human Resources Department events per year. (10-0-1; Absent: Doan)

2.11 Actions Related to the 8087 – TRAIL: Coyote Creek (Mabury Road to Empire Street) Project-Rebid.

(a) Approve an increase to the construction contingency from 10% to 23% for the 8087 – TRAIL: Coyote Creek (Mabury Road to Empire Street) Project-Rebid in the amount of \$1,000,000 for a total contingency of \$1,748,363.

(b) Adopt the following Appropriation Ordinance amendments in the Construction Tax and Property

Conveyance Tax Fund: City-wide Parks Purposes:

(1) Increase the TRAIL: Coyote Creek (Mabury Road to Empire Street) appropriation to the Parks, Recreation and Neighborhood Services Department by \$1,100,000; and

(2) Decrease the Ending Fund Balance by \$1,100,000.

CEQA: Addendum to the Coyote Creek Trail Master Plan Mitigated Negative Declaration (Resolution No. 75982), File No. ER20-145. Council Districts 3 and 4. (Public Works/Parks, Recreation and Neighborhood Services/City Manager)

Action: (a) An increase to the construction contingency was approved, and (b) **Ordinance No. 31075** was adopted. (10-0-1; Absent: Doan)

2.12 Report on Bids and Award of Contract for 10327 – On-Call General Engineering Construction Contract for Capital Improvement Projects.

Report on bids and award of a contract for 10327 – On-Call General Engineering Construction Contract for capital improvement projects to the lowest responsive, responsible bidder, Rodan Builders, Inc., in the amount of \$3,000,000 for a duration of three years.

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

Action: The report on bids and award was accepted. (10-0-1; Absent: Doan)

2.13 Grant Agreements and Resolutions for Consolidated Rail Infrastructure and Safety Improvements Grant Acceptance.

- (a) Accept and receive Consolidated Rail Infrastructure and Safety Improvements grant funds.
- (b) Adopt a resolution authorizing the City Manager or her designee to negotiate and execute the grant agreements with the Federal Railroad Administration for the following:
- (1) A federal contribution of 50% of the construction cost, not to exceed \$1,220,000, for the Bascom Avenue Queue Cutter Traffic Signal Project with a 50% local match; and
 - (2) A federal contribution of 75% of the project cost, not to exceed \$7,500,000, for the Monterey Road Grade Separations Project preliminary engineering and environmental with a 25% local match.
- (c) Adopt a resolution authorizing the City Manager or her designee to negotiate and execute an agreement with Santa Clara Valley Transportation Authority for the Bascom Avenue Queue Cutter Traffic Signal Project.
- CEQA: Bascom Avenue Traffic Signal: Categorically Exempt, File No. ER23-009, CEQA Guideline Section 15301(c) Existing Facilities; Grade Separations Project: Statutorily Exempt, File No. PP17-001, CEQA Guidelines Section 15262, Feasibility and Planning Studies. Council Districts 2 and 6. (Transportation)

Action: (a) Consolidated Rail Infrastructure and Safety Improvements were accepted, (b) **Resolution No. RES2024-127** was adopted, and (c) **Resolution No. RES2024-128** was adopted. (10-0-1; Absent: Doan)

2.14 Boards and Commissions Appointment.

Approve the following Boards and Commissions appointments:

- (a) Youth Commission:
- (1) District 2 Seat: Appoint Neyha Pradeepkumar for a term of June 1, 2024 to May 31, 2026.
 - (2) District 4 Seat: Appoint Genesis Arroyo for a term of June 1, 2024 to May 31, 2026.
 - (3) District 6 Seat: Appoint Amiya Bansal for a term of June 1, 2024 to May 31, 2026.
 - (4) District 8 Seat: Appoint Aldojoell Gonzalez-Muñiz for a term of June 1, 2024 to May 31, 2026.
 - (5) District 10 Seat: Appoint Nolan Mascarenhas for a term of June 1, 2024 to May 31, 2026.
 - (6) Citywide Seat: Appoint Marian Kucharewski for a term of June 1, 2024 to May 31, 2026.

CEQA: Not a Project, File No. PP17-010, City Organizational and Administrative Activities resulting in no changes to the physical environment. (City Clerk)
[Rules Committee referral 5/1/2024 - Item A.1.a]

Councilmember Arjun Batra offered welcoming words to the six new members of the Youth Commission.

Action: The Youth Commission Boards and Commissions appointments were approved. (10-0-1; Absent: Doan)

3. **STRATEGIC SUPPORT**

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

None provided.

3.2 **Labor Negotiations Update.**

None provided.

3.3 **Amendment to City Council Policy 0-12 Requests for Policy Analysis (Council Referrals).**

(a) Adopt a resolution amending Council Policy 0-12, Requests for Policy Analysis (Council Referrals).

(b) Direct the City Manager to drop select Council Referrals as listed in Attachment B to the staff memorandum.

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

Sarah Zarate, Director Administration, Policy and Intergovernmental Relations, City Manager's Office offered the presentation and responded to questions.

Neil Rufino, Assistant Director, Parks, Recreation, and Neighborhood Services, responded to questions.

Public Comment: None provided.

Action: (a) **Resolution No. RES2024-129** was adopted, amending Council Policy 0-12 and (b) directing the City Manager to drop select Council Referrals. (11-0-0)

3.4 **Independent Police Auditor Appointment and Compensation Package.**

Adopt a resolution appointing Eddie Aubrey for services as Independent Police Auditor ("IPA") for an unexpired term beginning May 6, 2024, and ending December 31, 2024, and for a subsequent four-year term commencing January 1, 2025, and ending December 31, 2028, consistent with the following terms:

(a) Salary: The starting bi-weekly salary will be \$9,157, which is equivalent to an annual amount of \$238,100, plus an additional non-pensionable amount equal to five percent (5%) of the salary for a total annual salary of approximately \$250,000.

(b) Executive Management Benefits, Unit 99 Benefits, Health Care in-lieu and Compensation: As executive management, the IPA will receive the benefits that are included in the Executive Management (Unit 99) Benefit and Compensation Plan:

<https://www.sanjoseca.gov/home/showdocument?id=21323>

(c) Vacation and Executive Leave: The IPA will accrue vacation and executive leave in accordance with Executive Management (Unit 99) accrual rates. Executive leave cannot be cashed out or carried over into the next calendar year under any circumstances. Vacation leave can continue to accrue up to twice the annual maximum.

(d) Outside Employment: The IPA will not engage in outside employment without City Council approval.

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 5/1/2024 - Item A.1.a]

Public Comment: None provided.

Action: Upon motion by Councilmember Pam Foley, seconded by Councilmember David Cohen, and carried unanimously, **Resolution No. RES2024-130** was adopted, appointing Eddie Aubrey for services as Independent Police Auditor. (11-0-0)

4. **PUBLIC SAFETY**

5. **TRANSPORTATION & AVIATION SERVICES**

5.1 **Report on Bids and Award of Contract for 10365 – 2024 Local Streets Resurfacing Southeast Project.**

(a) Report on bids and award of contract for the construction of 10365 – 2024 Local Streets Resurfacing Southeast Project, to the lowest responsive, responsible bidder, MCK Services, Inc., in the amount of \$15,865,150; and
(b) Approve a 10% contingency in the amount of \$1,586,000.
CEQA: Categorically Exempt, File No. ER23-009, CEQA Guidelines Section 15301(c), Existing Facilities. Council Districts 2, 5, 7, 8, 9, 10. (Transportation/Public Works)

Public Comment: None provided.

Action: Upon motion by Councilmember Bien Doan, seconded by Councilmember Domingo Candelas, and carried unanimously, (a) the report on bids and award of contract, and (b) a 10% contingency were approved. (11-0-0)

5.2 **Report on Bids and Award of Contract for 10364 – 2024 Local Streets Resurfacing Southwest Project.**

(a) Report on bids and award of contract for the construction of 10364 – 2024 Local Streets Resurfacing Southwest Project to the lowest responsive, responsible bidder, MCK Services, Inc., in the amount of \$14,328,500; and
(b) Approve a 10% contingency in the amount of \$1,432,000.
CEQA: Categorically Exempt, File No. ER23-009, CEQA Guidelines Section 15301(c), Existing Facilities. Council Districts 6, 9, 10. (Transportation/Public Works)

Public Comment: None provided.

Rick Scott, Assistant Director, Department of Transportation, responded to questions.

Action: Upon motion by Councilmember Pam Foley, seconded by Councilmember Dev Davis, and carried unanimously, (a) the report on bids and award of contract and (b) a 10% contingency were approved. (11-0-0)

6. ENVIRONMENTAL & UTILITY SERVICES**7. NEIGHBORHOOD SERVICES****8. COMMUNITY & ECONOMIC DEVELOPMENT****9. REDEVELOPMENT – SUCCESSOR AGENCY****10. LAND USE****10.1 Land Use on Consent Calendar - HEARD IMMEDIATELY AFTER CONSENT****(a) Nomination of Grace Baptist Church as a City Landmark.**

(1) Adopt a resolution nominating Grace Baptist Church for designation as a City Landmark.

(2) Direct the Department of Planning, Building and Code Enforcement to initiate the required process and proceedings to designate Grace Baptist Church as a City Landmark. CEQA: Exempt pursuant to CEQA Guidelines Section 15262 - Feasibility and Planning Studies and Section 15331 - Historic preservation activities that conform with the Secretary of the Interior's Standards for the Treatment of Historic Properties will not result in a physical change to the environment. Council District 3. (Planning, Building and Code Enforcement)

HEARD IMMEDIATELY AFTER CONSENT

Public Comment: Jeanne Wardrip provided public comment.

Action: Upon motion by Councilmember Sergio Jimenez, seconded by Councilmember Pam Foley, and carried unanimously, (a)(1) **Resolution No. RES2024-131** was adopted, and (a)(2) the Department of Planning, Building and Code Enforcement was directed to initiate the required process and proceedings to designate Grace Baptist Church as a City Landmark.

(10-0-1; Absent Doan)

END OF CONSENT CALENDAR**10. Land Use - Regular Agenda****• Open Forum**

None provided.

• Adjournment

The Council of the City of San José adjourned at 2:24 p.m. in memory of the incredibly dedicated and outstanding soul of Pham Phu Nam who passed away on March 20, 2024. Pham was a renowned journalist and media figure for Northern California who advocated for the voice of Vietnamese people with eloquence and humility. Pham's legacy is one that will continue to inspire, motivate, and support generations to come. Pham will be missed dearly, his words etched in our hearts and his voice echoed in our minds.

Minutes Recorded, Prepared, and Respectfully Submitted by,

DRAFT

Daniel Aguilar
Deputy City Clerk, City of San José

Approved at Council on:

Actions: 6

Attest By:

Toni Taber, CMC
City Clerk, City of San José

SAN JOSÉ CITY COUNCIL CLOSED SESSION AGENDA

May 7, 2024

Place: City Hall Conference Room W-133

Time: **9:30 a.m.**

Item(s) to be discussed:

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

1. Case Name: In re: Claim of Barajas
Name(s) of Party(ies)
Court: Worker's Compensation Appeals Court
Case No: ADJ3007994, ADJ11879846, ADJ10159210, ADJ2623634, ADJ3983023, ADJ3436101, ADJ959001, ADJ13514530, ADJ14391661, ADJ16935528

Amount of Money or Other Relief Sought: Benefits

2. Case Name: Diamond SJ Enterprise Inc. v. City of San Jose
Name(s) of Party(ies) DIAMOND SJ ENTERPRISE INC. DBA SJ LIVE, CITY OF SAN JOSE

Court: United States Court of Appeals for the Ninth Circuit

Case No: 20-15085

Amount of Money or Other Relief Sought: Damages according to proof.

B. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION:

Significant exposure to litigation pursuant to Sections 54956.9(d)(2) and (e)(1) of the Government code:

Number of matter(s) to be discussed: 1

C. CONFERENCE WITH LABOR NEGOTIATOR PURSUANT TO GOVERNMENT CODE SECTION 54957.6:

City Negotiator: Jennifer Schembri, Director of Employee Relations

Employee Organizations:

- 1. Organization or Name and Title of Unrepresented Employees:** **Association of Maintenance Supervisory Personnel (AMSP)**

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

Name of Existing Contract or MOA: City of San José - Association of Maintenance Supervisory Personnel (AMSP) Benefit & Compensation Summary

How to Obtain a copy of Existing Contract or MOA: Web: <https://www.sanjoseca.gov/your-government/departments-offices/office-of-the-city-manager/employee-relations/labor-relations-information/bargaining-units-labor-contract-info/amsp>
Telephone – Employee Relations: (408) 535-8150

- 2. Organization or Name and Title of Unrepresented Employees:** **International Association of Firefighters (IAFF), Local 230 (IAFF#230)**

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

Name of Existing Contract or MOA: Memorandum of Agreement Between City of San José and International Association of Firefighters (IAFF), Local 230

How to Obtain a copy of Existing Contract or MOA: Web: <https://www.sanjoseca.gov/your-government/departments-offices/office-of-the-city-manager/employee-relations/labor-relations-information/bargaining-units-labor-contract-info/iaff>
Telephone – Employee Relations: (408) 535-8150