

## MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, JANUARY 15, 2019

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

**9:38 a.m.-** Closed Session, Call to Order in Council Chambers  
**Absent Councilmembers: All Present.**  
**Councilmember Sylvia Arenas (10:55 a.m.)**

**1:30 p.m.-** Regular Session, Council Chambers, City Hall (special time)  
**Absent Councilmembers: All Present.**

### CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:40 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: two (2); (B) to Confer with Legal Counsel, Existing Litigation: Pursuant to Section 54956.9(d)(1) of the Government Code: 2017 Flood Litigation; Names Of Partie(s) Involved: Plaintiffs: Numerous; Defendants: City of San José; Santa Clara Valley Water District, County of Santa Clara, California Department of Water Resources (DWR) and Division of Safety of Dams (DSOD); Court: Superior Court of California, County of Santa Clara; Case No18CV321600, 18CV321601, 18CV321602, 18 CV321603, 18CV321604, 18CV321613, 18CV321761, 18CV322210, 18CV323345, 18CV324263, 18CV324794, 18CV325153, 18CV325282, 18CV325283, 18CV325285, 18CV325287, 18CV325289, 18CV325346; Amount of Money or Other Relief Sought: Damages according to proof; (2) City of San José and Black Alliance for Just Immigration v. Wilbur L. Ross, Jr., et al.; Names Of Partie(s) Involved: City of San José; Black Alliance for Just Immigration; Wilbur L. Ross, Jr.; U.S. Department of Commerce; Ron Jarmin, U.S. Census Bureau; Court: U.S. District Court, Northern District of California, San Francisco Division; Case No. 3:18-CV-02279-RS; Amount of Money or Other Relief Sought: Declaratory and Injunctive Relief; (

By unanimous consent, Council recessed from Closed Session at 10:53 a.m. and reconvened to Regular Session at 1:33 p.m. in the Council Chambers.

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

Absent Councilmembers: All Present.

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.

## **INVOCATION (District 8)**

Imam Tahir Anwar, Chairman of the Board of NISA, North-American Islamic Shelter for the Abused, provided the Invocation.

## **PLEDGE OF ALLEGIANCE**

Mayor Sam Liccardo led the Pledge of Allegiance.

## **ORDERS OF THE DAY**

Upon motion by Councilmember Johnny Khamis, Councilmember Sergio Jimenez, and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Item 7.1(a) to be bifurcated. (11-0.)

## **CLOSED SESSION REPORT**

None provided.

**Item 3.5 was heard out of order to approve the appointment of Councilmember Charles "Chappie" Jones as Vice Mayor, and Councilmembers Maya Esparza and Pam Foley were welcomed to the San José City Council.**

## **CEREMONIAL ITEMS**

None provided.

## **CONSENT CALENDAR**

Upon motion by Councilmember Johnny Khamis, 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 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 18-1794 **Amendment to Federal Aviation Administration for Passenger Facility Charges for the Terminal B - North Concourse Project.**

Adopt a resolution authorizing the City Manager to submit an amendment to the Federal Aviation Administration to increase the City's authority to impose and use Passenger Facility Charges for the Terminal B - North Concourse Project in the amount of \$38,696,000.

Documents Filed: City Council Action Request from Director of Aviation, John Aitken, A.A.E., dated January 15, 2019, recommending adoption of a resolution.

Action: Resolution No. 78948, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Submit an Amendment to the Federal Aviation Administration (FAA) to Increase the City's Authority to Impose and Use Passenger Facility Charges (PFCs) for the Terminal B – North Concourse Project in the Amount of \$38,696,000", was adopted. (11-0.)

### 2.8 18-1796 **Purchase Order with Duke's Root Control for Chemical Root Treatment Services.**

Adopt a resolution authorizing the City Manager to:

- (a) Execute a Purchase Order with Duke's Root Control (Syracuse, NY) for chemical root treatment services on behalf of the Department of Transportation for an initial twelve-month period, starting on or about January 16, 2019 and ending on or about January 15, 2020, for an amount not to exceed \$330,000; 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 January 16, 2024, subject to the appropriation of funds.

Documents Filed: City Council Action Request from Director of Finance Julia H. Cooper, dated January 15, 2019, recommending adoption of a resolution.

Action: Resolution No. 78949, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to 1) Execute a Purchase Order with Duke's Root Control (Syracuse, NY) for Chemical Root Treatment Services On Behalf of the Department of Transportation for an Initial Twelve-Month Period, Starting on or About January 16, 2019 and Ending on or About January 15, 2020, for an Amount not to Exceed \$330,000; and 2) Exercise Up to Four One-Year Options to Extend the Term of the Purchase Order with the Last Option Year Ending on or About January 16, 2024, Subject to the Appropriation of Funds", was adopted. (11-0.)

**2.9 18-1799 Amendment to the Agreement with Bibliotheca, LLC for Library Radio Frequency Identification System.**

Adopt a resolution authorizing the City Manager to:

- (a) Negotiate and execute the First Amendment to the Agreement for a Library Radio Frequency Identification System with Bibliotheca, LLC (Norcross, GA) to purchase additional radio frequency identification equipment and professional services to expand use at current and additional library locations and to increase the maximum compensation by \$84,875 for a total maximum contract compensation of \$3,235,878 for the initial five-year term ending on August 31, 2021; and
- (b) Increase contingency by \$300,000 for amendments and change orders for any additional unanticipated changes required during the initial five-year term, 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)

Documents Filed: Memorandum from Director of Finance Julia H. Cooper, dated January 2, 2019, recommending adoption of a resolution.

Action: Resolution No. 78950, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to 1) Negotiate and Execute a First Amendment to the Agreement for a Library Radio Frequency Identification System with Bibliotheca, LLC and to Increase the Maximum Compensation by \$84,875 for a Total Maximum Compensation Amount of \$3,235,878 for the Initial Five-Year Term Ending on August 31, 2021; and 2) Increase the Contingency by \$300,000 for Amendments and Change Orders for any Additional Unanticipated Changes Required During the Initial Five-Year Term, Subject to the Appropriation of Funds”, was adopted. (11-0.)

**2.10 18-1815 City Council Committee and Board and Commission Appointments.**

- (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.

Documents Filed: Memorandum from Mayor Sam Liccardo, dated January 10, 2019, recommending appointments for standing committees and assignments.

Councilmember Magdalena Carrasco pulled this item to indicate she would be switching commissions with Councilmember Sylvia Arenas as indicated below in “Action”.

Action: Upon motion by Councilmember Sylvia Arenas, seconded by Vice Mayor Chappie Jones and carried unanimously, the recommendations were accepted, with changes made per Councilmember Carrasco that she will be acting as liaison to the Human Services Commission, and Councilmember Sylvia Arenas will be assigned as liaison to the Youth Commission. (11-0.)

**2.11 18-1819 Retroactive Approval of the East Hills Neighborhood Association Community Gathering 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 January 9, 2019:

- (a) Retroactively approve the East Hills Neighborhood Association Community Gathering scheduled on December 15, 2018 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.

Documents Filed: Memorandum from City Clerk Toni J. Taber, dated January 15, 2019, transmitting the recommendations of the Rules and Open Government Committee.

Action: The East Hills Neighborhood Association Community Gathering as a City Council Sponsored Special Event was retroactively approved, and expenditure of funds and authorization to accept donations from various individuals, businesses or community groups to support the event, was approved. (11-0.)

**2.12 18-1820 Retroactive Approval of the Latino Leaders Convening 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 January 9, 2019:

- (a) Retroactively approve the Latino Leaders Convening scheduled on November 14, 2018 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.

Documents Filed: Memorandum from City Clerk Toni J. Taber, dated January 15, 2019, transmitting the recommendations of the Rules and Open Government Committee.

Action: The Latino Leaders Convening as a City Council Sponsored Special Event was retroactively approved, and expenditure of funds and authorization to accept donations from various individuals, businesses or community groups to support the event, was approved. (11-0.)

**2.13 18-1821 Retroactive Approval of the Winter Candyland Event 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 January 9, 2019:

- (a) Retroactively approve the Winter Candyland event scheduled on December 15, 2018 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. (Peralez)

## 2.13 (Cont'd.)

Documents Filed: Memorandum from City Clerk Toni J. Taber, dated January 15, 2019, transmitting the recommendations of the Rules and Open Government Committee.

Action: The Winter Candyland Event as a City Council Sponsored Special Event was retroactively approved, and expenditure of funds and authorization to accept donations from various individuals, businesses or community groups to support the event, was approved. (11-0.)

## 2.14 18-1822 **Retroactively Approval of Dumpster Day Sponsored by Mayor Sam Liccardo and Council District 4 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 9, 2019:

(a) Retroactively approve the Dumpster Day event scheduled on December 15, 2018 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. (Mayor Liccardo and Diep)

Documents Filed: Memorandum from City Clerk Toni J. Taber, dated January 15, 2019, transmitting the recommendations of the Rules and Open Government Committee.

Action: The Dumpster Day sponsored by Mayor Sam Liccardo and District 4 as a City Council Sponsored Special Event was retroactively approved, and expenditure of funds and authorization to accept donations from various individuals, businesses or community groups to support the event, was approved. (11-0.)

## 2.15 18-1823 **Regional Housing Needs Allocation Subregion.**

As recommended by the Rules and Open Government Committee on January 9, 2019, adopt a resolution stating the City's intent to support formation of a Housing Subregion of Santa Clara County Local and County Governments to facilitate and implement countywide housing production consistent with the Regional Housing Needs Allocation (RHNA) formula currently assigned by The Association of Bay Area Governments (ABAG).

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

Documents Filed: Memorandum from City Clerk Toni J. Taber, dated January 15, 2019, transmitting the recommendations of the Rules and Open Government Committee.

Mayor Sam Liccardo pulled this item to highlight its importance.

## 2.15 (Cont'd.)

Public Comments: Andrew Boone offered comments on the Monterey corridor subcommittee and offered support to the project.

Action: Upon motion by Councilmember Sylvia Arenas, seconded by Vice Mayor Chappie Jones and carried unanimously, Resolution No. 78951, entitled: “A Resolution of the Council of the City of San José of Intent to Support Formation of a Housing Subregion of Santa Clara County Local and County Governments to Facilitate and Implement Countywide Housing Production Consistent with Regional Housing Needs Allocation (RHNA) Formula Currently Assigned by the Association of Bay Area Governments (ABAG)”, was adopted. (11-0.)

## STRATEGIC SUPPORT

### 3.3 18-1808 Reappointment to Appeals Hearing Board

Consider reappointment of Elizabeth Chien-Hale to the Appeals Hearing Board for the remainder of her unexpired term, ending December 31, 2021, upon a finding that there was good excuse for her absences from Board meetings or upon finding that the reappointment will be in the City’s best interests.

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

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated January 10, 2019, recommending consideration of a reappointment to the Appeals Hearing Board.

Elizabeth Chien-Hale was interviewed and offered an explanation of her absences from Board meetings.

Action: Upon motion by Councilmember Raul Peralez, seconded by Councilmember Pam Foley and carried unanimously, Elizabeth Chien-Hale was appointed to the Appeals Hearing Board for the remainder of her unexpired term, ending December 31, 2021. (10-0-1. Absent: Carrasco.)

### 3.4 18-1788 Appeals Hearing Board Appointment.

- a. Interview applicant(s) for appointment to the Appeals Hearing Board;
- b. Appoint one (1) applicant to the Attorney-at-Law Seat on the Appeals Hearing Board for a term ending December 31, 2022;
- c. Appoint one (1) applicant to the Public Member Seat on the Appeals Hearing Board for a term ending December 31, 2019;
- d. Appoint one (1) applicant to the Public Member Seat on the Appeals Hearing Board for a term ending December 31, 2022;
- e. If Council did not approve Item 3.3 on today’s Council agenda, appoint one (1) applicant to the Public Member Seat on the Appeals Hearing Board for a term ending December 31, 2021; and
- f. If Rajwant Bains is appointed to a third term on the Appeals Hearing Board, make a finding that the reappointment is necessary under San José Municipal Code Section 2.08.150.F in order to maintain a

### 3.4 (Cont'd.)

functioning quorum or to retain valuable experience on the Board; and  
g. If any vacancy remains, direct the City Clerk to continue recruitment efforts and bring forward additional applicants for consideration within 90 days.

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated January 10, 2019, providing recommendations for the Appeals Hearing Board.

**City Clerk Toni J. Taber, recommended deferral of this item, as one applicant had dropped out and two others were no longer available for the interview. This item was deferred due to unavailability of applicants.**

### 3.5 18-1797 Appointment of Vice Mayor.

Approve the appointment of Councilmember Charles "Chappie" Jones as Vice Mayor.

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

*Note: heard first before Consent Items.*

Documents Filed: Memorandum from Mayor Sam Liccardo, dated January 10, 2019, recommending appointment of Councilmember Charles "Chappie" Jones as Vice Mayor.

Action: Councilmember Chappie Jones was appointed as Vice Mayor. (11-0.)

### 3.6 18-1800 Audit of Towing Services: Changes to Contract Terms and Consolidated Oversight Could Improve Operations.

Accept the Audit of Towing Services: Changes to Contract Terms and Consolidated Oversight Could Improve Operations report.

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)

Documents Filed: (1) Memorandum from Councilmember Magdalena Carrasco, dated January 11, 2019, recommending approval of the City Auditor's findings and recommendations, with additional stipulations. (2) Memorandum from Councilmember Johnny Khamis, dated January 11, 2019, recommending direction to staff. (3) Joint memorandum from Vice Mayor Chappie Jones and Councilmembers Jimenez, Peralez and Davis, dated January 11, 2019, recommending acceptance of the Audit with additional direction. (3) Audit of the City Auditor provided by City Auditor Sharon Erickson, dated December 19, 2018.

City Auditor Sharon Erickson and staff provided the Audit of Towing Services. Staff provided the administration's responses, and Director of Transportation Jim Ortbal responded to questions.

Public Comments: Offering comments, questions and complaints regarding towing services, illegally parked vehicles and service providers offering feedback on the communication with the City, were: Andres Solomonoff, Kenny Carvalho (City Towing), Ryan, Nick Alongi (Alongi Brothers) and Russell (Motor Body).

### 3.6 (Cont'd.)

Motion: Councilmember Johnny Khamis moved all memoranda from Councilmembers with direction to explore subcontracting towing services to the CHP, and explore working with special towing companies that work exclusively with oversized vehicles. Councilmember Dev Davis seconded the motion.

Vice Mayor Chappie Jones offered a friendly amendment, suggesting the delivery model sent to Council to be left to the discretion of the Transportation & Environment Committee. Councilmembers Khamis and Davis accepted the friendly amendment.

Deputy City Manager, Civic Innovation & Digital Strategy, Kip Harkness and Director of Transportation Jim Ortbal responded to questions, and Council discussion continued.

Action: On a call for the question, the motion carried unanimously, with the Audit accepted, including Councilmember Johnny Khamis' memorandum dated January 11, 2019:

Direct the City Manager to have the Department of Planning, Building & Code Enforcement:

- 1) Consider the Auditor's recommendation #14 i.e., to reduce time required to oversee contract terms, in future towing services agreements the City should charge one consolidated fee to towing contractors based on the number of towed vehicles.
- 2) Consider the Auditor's recommendation #15 i.e., for improved oversight over the towing services agreements, the administration of the contract should be consolidated in the Police Department with an evaluation of the resources needed to perform this responsibility.

**Including the memorandum from Vice Mayor Chappie Jones, and Councilmembers Jimenez, Peralez and Davis, dated January 11, 2019:**

1. Accept the Audit of Towing Services and the Administration's response.
2. Direct the City Manager to give high priority to exploring alternative service delivery models that equitably distribute the response obligations.
3. Direct the City Manager to report to the Transportation and Environment Committee and receive input on the draft service delivery model and RFP for towing services agreements.
4. Following Council subcommittee input and approval, return to Council with a draft service delivery model and RFP for approval.

**And including the memorandum from Vice Mayor Magdalena Carrasco and Councilmember Sylvia Arenas, dated January 11, 2019:**

1. Accept the City Auditor's findings and recommendations in the December 2018 audit report of towing services.
2. Request staff to determine intermediate solutions for vehicle requests that have been refused to be picked up.
3. Add stipulations to the following audit recommendations. Additions are indicated italicized and in **Bold type**.

Recommendation 1: To provide a method to address violations, the City should include in future towing services agreements:

- An escalating penalty structure of liquidated damages, suspension, and contract termination. Liquidated damages should be increased over time.
- Provisions requiring tow contractors to respond to another tow zone in case of a tow refusal or suspension (with a different timeliness standard).

### 3.6 (Cont'd.)

*Provisions allowing the City to reach out to tow companies outside of contracted companies in case of refusals by contractors in neighboring zones.*

**Recommendation 3: The City should issue a new RFP for the towing services agreements, taking into consideration the issues identified and recommendations made in this report. *If possible the City should issue the RFP much before the proposed date of July 2020 by the Administration, due to the thoroughness of the City Auditor's report and findings that should create a simpler contract and increase the pool of applicants.***

Recommendation 9: The City should modify future towing services agreements to allow towing contractors to have tow yards located outside of their assigned zones, such as anywhere within the City limits. *Allow towing contractors to store vehicles that have entered into their ownership outside of city limits.*

**Also, including direction to staff to explore subcontracting towing services to the CHP, and explore working with special towing companies that work exclusively with oversized vehicles.**

**The delivery model being sent to full Council will be left to the discretion of the Transportation & Environment Committee.**

**(11-0.)**

*Vice Mayor Magdalena Carrasco left the meeting at 2:30 p.m. and returned at 4 p.m.*

### 3.7 18-1801 **Actions Related to the Fee Schedule for City-Generated Zone Towing Services.**

Adopt a resolution setting a new fee schedule for City-Generated Zone Towing Services with rates not to exceed the allowable tow fees under the State of California Highway Patrol Tow Services Agreement for the Golden Gate Region-San José Office to take effect January 16, 2019, with the below contractors:

- (a) Matos Auto Towing & Transport
- (b) City Towing, Inc.
- (c) Century Tow
- (d) Motor Body Company, Inc.
- (e) Courtesy Tow Services, Inc.
- (f) Alongi Brothers, Inc.

CEQA: Statutorily Exempt, File No. PP17-005, CEQA Guidelines Section 15273, Rates, Tolls, Fares, and Charges, Adjustment to Fees, Rates & Fares without changes to or expansion of services. (Planning, Building and Code Enforcement)

Documents Filed: Memorandum from Rosalynn Hughey, Director, Planning, Building and Code Enforcement, dated January 2, 2019, recommending adoption of a resolution.

Division Manager, Planning Building and Code Enforcement, Rachel Roberts introduced the topic and responded to questions.

### 3.7 (Cont'd.)

Action: Upon motion by Councilmember Johnny Khamis, seconded by Councilmember Dev Davis and carried unanimously, Resolution No. 78952, entitled: “A Resolution of the Council of the City of San José Adopting a Fee Schedule for Tow Services Agreements”, was adopted. (10-0-1. Absent: Carrasco.)

## COMMUNITY & ECONOMIC DEVELOPMENT

### 4.1 18-1809 City Council Priority #27: Cannabis Manufacturing, Distribution, and Testing.

(a) Adopt a resolution approving the San José Industrial Cannabis Municipal Code Amendment Project Addendum to the Envision San José General Plan Final Environmental Impact Report (General Plan FEIR), Supplemental Program Environmental Impact Report (General Plan SEIR) for the Envision San José 2040 General Plan, and addenda thereto, all in accordance with the California Environmental Quality Act, as amended.

(b) Approve an ordinance amending Title 20 (the Zoning Ordinance) of the San José Municipal Code amending Section 20.10.040 of Chapter 20.10 and Section 20.50.100 of Chapter 20.50, Section 20.80.760 of Chapter 20.80, adding a new Part 9.76 to Chapter 20.80, and amending Sections 20.100.1530, 20.100.1535, and 20.100.1540 of Chapter 20.100 to add “Cannabis Manufacturing Business,” “Cannabis Distribution Business,” and “Cannabis Testing Business” as new restricted uses; and make other technical, non-substantive, or formatting changes to Title 20.

(c) Approve an ordinance amending Chapter 6.88 of Title 6 (Business Licenses and Regulations) of the San José Municipal Code to:

- (1) Add cannabis manufacture, distribution, and testing to the categories of regulated cannabis businesses;
- (2) Create a registration process, safety criteria, and other regulations for cannabis manufacturers, distributors, and testing labs;
- (3) Approve other changes to update the San José Municipal Code to align with new State regulations; and
- (4) Make other technical, non-substantive, or formatting changes.

(d) Direct the City Manager and City Attorney to return to the City Council before June 30, 2019 with an ordinance amending Chapter 4.66 of the San José Municipal Code to implement a revised Marijuana Business Tax rate structure to reduce the tax rate for the cultivation, manufacturing, testing, and distribution of cannabis.

CEQA: Addendum to the Envision San José 2040 General Plan EIR (Resolution No. 76041), and Supplemental Program Environmental Impact Report (Resolution No. 77617) and Addenda thereto; and File No. PP18-014. Planning Commission recommends approval (5-0-1; Vora absent).

(Planning, Building and Code Enforcement/Police/Finance)

#### 4.1 (Cont'd.)

Documents Filed: (1) Memorandum from Mayor Sam Liccardo, dated January 15 2019, accepting staff recommendations with additional recommendations from Council. (2) Joint memorandum from Councilmember Raul Peralez and Councilmember Magdalena Carrasco, dated January 11, 2019, recommending the staff recommendations with additional considerations. (3) Memorandum from Councilmember Lan Diep, dated January 14, 2019, advising recommendations. (4) Memorandum from Chief of Police Edgardo Garcia dated January 2, 2019, recommending approval of an ordinance as noted. (5) Memorandum from Director of Finance Julia H. Cooper, dated January 2 2019, recommending implementation of a revised Marijuana Business Tax rate structure. (6) Memorandum from Planning Commission Secretary, Rosalynn Hughey, dated January 2, 2019, transmitting the Planning Commission recommendations. (7) Literature provided by Fernando Alvarez, representing VaporTent Lounges, a state licensed cannabis event organizer.

Assistant to City Manager, Michele McGurk, offered a presentation, followed up by Director of Finance Julia H. Cooper and Wendy Salaci, Division of Cannabis. Staff responded to questions.

Public Comments: Fifteen (15) members of the public offered comments, recommendations, support and concerns, ranging from public safety to opportunities for growth.

Mayor Sam Liccardo and City Manager, David Sykes offered comment and direction on issues regarding the priority list.

Motion: Councilmember Pam Foley moved approval of Mayor Sam Liccardo's memorandum dated January 15 2019, which included portions of recommendations from Council memoranda, also including increasing the number of priorities sent to the priority setting session. Councilmember Johnny Khamis seconded the motion.

Assistant to City Manager, Michele McGurk, expressed that expanding the number of dispensaries would be a major project for staff to undertake at this time. She noted that staff would provide an info memo before the priority setting session.

Councilmember Sergio Jimenez offered a friendly amendment to include Item H from his memorandum and not send this item to the priority setting session. The amendment was respectfully declined.

Action: On a call for the question, the motion carried unanimously, and Resolution No. 78953, entitled: "A Resolution of the Council of the City of San José Adopting the San Jose Industrial Cannabis Municipal Code Amendment Project Addendum to the Envision San Jose 2040 General Plan Final Program Environmental Impact Report, Supplemental Environmental Impact Report and Addenda Thereto, all in Accordance with the California Environmental Quality Act, as Amended", was adopted; Ordinance No. 30209, Amending Section 20.10.040 of Chapter 20.10, Section 20.50.100 of Chapter 20.50, and Section 20.80.760 of Chapter 20.80, Adding A New Part 9.76 To Chapter 20.80, and Amending Sections 20.100.1530, 20.100.1535, and 20.100.1540 of Chapter 20.100 of Title 20 of the San Jose Municipal Code To Add Cannabis Manufacturing, Cannabis Testing, and Cannabis Distribution As Newly Enumerated Restricted Uses In Specified Industrial Zoning Districts, and Making Other Technical, Non-Substantive, or Formatting Changes"; and Ordinance No. 30210, entitled "An Ordinance of the City of San José Amending Chapter 6.88 of Title 6 of the San José Municipal Code to Add Cannabis Manufacturing, Cannabis Testing, and Cannabis Distribution to the Categories of Regulated Cannabis Businesses and Making Other Technical, Non-Substantive, or Formatting Changes", was passed for publication; including the memorandum from Mayor Liccardo, dated

#### 4.1 (Cont'd.)

January 15, 2019, to: (1) Accept recommendations 1, 2.a., 2.b., 2.e, 2.f. from Councilmembers Peralez and Carrasco (memorandum dated January 11, 2019); recommendations 2.a-c. from Councilmember Esparza (memorandum dated January 14, 2019); and recommendation 1 from Councilmember Diep (memorandum dated January 14, 2019); and (2) Refer recommendations 2.c, 2.d., 2.g., 2.h. from Councilmembers Peralez and Carrasco and recommendation 2 from Councilmember Diep to the Council Priority Setting Process.

##### **Accepting:**

Recommendations 1, 2.a., 2.b., 2.e, 2.f. from Councilmembers Peralez and Carrasco: Direct the City Manager to assess the following considerations and return to Public Safety, Finance and Strategic Support Committee for discussion and recommendations for: a. Monitoring of the retail tax rate to stay competitive and taking into consideration cannabis business growth and risk assessment, b. Allowing the current 16 cannabis businesses to open a second location, e. Changing the audit requirement from mandatory to random audits on varying years or as a punitive action, f. Impact of cannabis waste and a revise for a more stringent cannabis disposal policy;

Recommendations 2.a-c. from Councilmember Esparza: a. Evaluate the current zoning provisions of the San Jose Municipal Code that have led to the oversaturation of retail Cannabis Collectives/Businesses in Council District 7. c. Present options for the implementation of a cap on the number of retail Cannabis Collectives/Businesses in Council District 7;

Recommendation 1 from Councilmember Diep: 1. Report back to the Community and Economic Development Committee in winter 2020 on how many cannabis manufacturing, distribution, and testing business permits have been issued, any problems arising from the industry, and potential improvements to the policy recommendations made today.

##### **Referred to Priority Setting:**

recommendations 2.c, 2.d., 2.g., 2.h. from Councilmembers Peralez and Carrasco: c. Sale of individual licenses and business', d. Expanding "black out" areas in North and South San Jose for all cannabis uses, not only manufacturing, distribution and lab testing, g. Allowing of private consumption events and, h. Creating an equity applicant program as outlined by the State of California in SB 1294.

recommendation 2 from Councilmember Diep: 2. Conduct a study of how the uses on our industrial lands are changing and return to Council when appropriate with a report on the state of our industrial property market, identifying opportunities and strategies for revitalization, intensification, and creation of permanent protections of industrial lands.

**(11-0.)**

## TRANSPORTATION & AVIATION SERVICES

### 6.1 18-1803 **Actions Related to the Signatory and Non-Signatory Airline-Airport Lease and Operating Agreements with Airlines Operating at the Norman Y. Mineta San José International Airport.**

Adopt a resolution authorizing the Director of Aviation to:

(a) Negotiate and execute Signatory Airline-Airport Lease and Operating Agreements with any current or new passenger or cargo airlines at the Norman Y. Mineta San José International Airport that meet the minimum requirements to be a signatory airline, for the 10-year term of the new lease, starting on July 1, 2019, with two 5-year options to extend subject to the mutual agreement of the City and the airlines.

(b) Negotiate and execute Non-Signatory Airline-Airport Lease and Operating Agreements with any current or new passenger or cargo airlines at the Norman Y. Mineta San José International Airport that do not meet the minimum requirements to be a signatory airline or choose not to enter into a signatory lease, for the 10-year term of the new lease, starting on July 1, 2019, with two 5-year options to extend subject to the mutual agreement of the City and the airlines.

(c) Negotiate and execute agreements and amendments with airlines for leases of premises through the term of the Signatory and Non-Signatory Airline-Airport Lease and Operating Agreements that adhere to standard rates and charges for Airport premises.

CEQA: Not a Project, File No. PP17-003, Agreements and Contracts, Services that involve no physical changes to the environment. (Airport)

Documents Filed: (1) Memorandum from Mayor Sam Liccardo, dated January 15, 2019, offering support to staff recommendations with additional direction. (2) Memorandum from Director of Aviation, John Aitken, A.A.E., dated January 2, 2019, recommending adoption of a resolution.

Director of Aviation, John Aitken, A.A.E. provided key elements of the recommendation.

Action: Upon motion by Councilmember Raul Peralez, seconded by Councilmember Lan Diep, Resolution No. 78954, entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Aviation to Negotiate and Execute (A) Signatory Airline-Airport Lease and Operating Agreements with Any Current or New Passenger or Cargo Airlines at the Mineta San José International Airport; (B) Non-Signatory Airline-Airport Lease and Operating Agreements with Any Current or New Passenger or Cargo Airlines at the Airport; and (C) Agreements and Amendments With Airlines for Leases of Premises at the Airport, All Subject to Certain Conditions”, was adopted. (10-0-1. Absent: Arenas.)

**The Council adjourned for a break at 5:35 p.m. and reconvened at 6:06 p.m. with all Councilmembers present.**

## ENVIRONMENTAL & UTILITY SERVICES

### 7.1 18-1804 **Actions Related to Negotiations of Recycle Plus Residential Solid Waste Agreements.**

- (a) Accept the staff report with the term sheets from Garden City Sanitation, GreenTeam of San José, and GreenWaste Recovery for future residential solid waste services;
- (b) Direct staff to develop agreements with Garden City Sanitation, GreenTeam of San José, and GreenWaste Recovery in accordance with the term sheets and return to Council in April 2019 with Recycle Plus agreements for residential solid waste services to begin July 1, 2019 and continue through June 30, 2036;
- (c) Direct staff to end negotiations with California Waste Solutions and issue a Request for Proposals to provide Recycle Plus services for single-family recyclables collection & processing in Service Districts A & C, with the same framework as future services in Service District B, for a contract term to begin July 1, 2021 through June 30, 2036;
- (d) Direct staff to exclude Junk Pickup services from future residential solid waste services and return to Council with an approach for delivering this service in the future; and
- (e) Direct staff to continue negotiations with GreenWaste Recovery for residential street sweeping services and return to Council with a recommendation.

CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment; and File No. PP17-007, Preliminary direction to staff and eventual action requires approval from decision-making body. (Environmental Services) [Deferred from 12/4/18 Item 7.1 (18-1607); and 12/18/18 Item 7.1 (18-1706)]

*Note: Item 7.1(a) was bifurcated from 7.1(b) per Orders of the Day.*

Documents Filed: (1) Joint memorandum from Councilmember Johnny Khamis and Councilmember Sergio Jimenez, dated January 11, 2019, offering approval to the Staff Report with a modification. (2) Memorandum from Vice Mayor Chappie Jones, dated January 14, 2019, with recommended actions related to negotiations of the Agreements. (3) Memorandum from Councilmember Sylvia Arenas, dated January 11, 2019, providing recommendations. (4) Memorandum from Director, Environmental Services, Kerrie Romanow, dated November 13, 2018, regarding actions related to Negotiations of Recycle Plus Residential Solid Waste Agreements. (5) Supplemental memorandum from Director, Environmental Services, Kerrie Romanow, dated January 10, 2019, providing additional information and clarification. (6) Letter from members of the California Legislature, dated January 15, 2019, regarding California Waste Solutions. (7) Letter from the publisher of CM Magazine regarding concerns about the California Waste Solution recycle contract.

Councilmember Pam Foley recused herself from Item 7.1(a) due to a conflict of interest.

Deputy City Manager, Civic Innovation & Digital Strategy, Kip Harkness provided an introduction, and Director, Environmental Services, Kerrie Romanow; Deputy Director Valerie Osmond, and Jeff Anderson continued with the presentation.

## 7.1 (Cont'd.)

Public Comments: Fifty-one (51) members of the public, representing California Waste Solution, Working Partnerships U.S.A., Garden City Sanitation, Green Waste Recovery, and members of the public at large provided comments, complaints, and a need for an unbiased report.

Motion 7.1(a): Vice Mayor Chappie Jones moved his memorandum dated January 14, 2019. Councilmember Sylvia Arenas seconded the motion.

Councilmember Raul Peralez requested a friendly amendment regarding prevailing wage. Vice Mayor Chappie Jones offered a modified version of his amendment, which was accepted by Councilmember Raul Peralez to: request additional direction in the RFP, that the evaluation includes wages as a category in which the respondents are evaluated, and make those who use prevailing wage receive the maximum number of points for that category. The friendly amendment was accepted as modified.

7.1(a) Action: On a call for the question, the motion was accepted, including the memorandum from Vice Mayor Chappie Jones, dated January 14, 2019 to resume negotiations with California Waste Solutions (CWS) and come to an Agreement that:

1. Pay for Performance: Negotiate to reach an agreement that enables CWS to provide service to customers at a price that, may equal, but not exceed Green Team's current levels of contamination by the third year of the contract, if CWS satisfies predetermined performance targets in the contract's first two years.
  - a. Those targets-for service delivery, diversion, and customer satisfaction-shall be set to the same standard to which Green Team is held.
  - b. If, by the third year, CWS fails to meet those negotiated standards, the City Manager is directed to issue an RFP to all industry providers for service in the area.
2. Timeline: If a deal meeting these terms cannot be mutually agreed upon within 30 days, the City Manager is directed to end negotiations and issue a Request for Proposal (RFP) for service in the coverage area.
3. RFP: Should the City Manager issue an RFP, then proceed according to paragraph 2 of Councilmember Sylvia Arenas' memorandum, to:
  - a. Include in the RFP language that the labor peace and employee retention provisions of the City's Living Wage Policy will apply.
  - b. Include in RFP language that would add points based on whether proposals sustain or improve upon the current wages and benefits paid to the employee by the predecessor contractor. Points should be sufficient to support a level playing field for companies that pay living wage versus any "modified" living wage to their workers.
  - c. Release an information memo to Council regarding the details of the RFP in advance of the its release.

With additional direction, in the RFP evaluation include wages as a category in which the respondents are evaluated, and make those who use prevailing wage receive the maximum number of points for that category

**(9-1-0-1. Noes: Diep. Abstain: Foley.)**

*(Item Continued on the Next Page)*

## 7.1 (Cont'd.)

7.1(b) Action: Upon motion by Councilmember Sylvia Arenas, seconded by Councilmember Magdalena Carrasco and carried unanimously, recommendations were accepted, with staff directed to develop agreements with Garden City Sanitation, GreenTeam of San José, and GreenWaste Recovery in accordance with the term sheets and return to Council in April 2019 with Recycle Plus agreements for residential solid waste services to begin July 1, 2019 and continue through June 30, 2036. (11-0.)

## 7.2 18-1805 **Actions Related to Recycle Plus Residential Solid Waste Agreements and China's Policy On Importing Recyclable Material.**

Adopt a resolution authorizing the City Manager to waive all or a portion of the contractor disincentives for not meeting the required diversion rates for calendar year 2018 if by March 1, 2019 the City Manager determines that the Recycle Plus contractors are unable to meet their required diversion rates because of China's "National Sword" policy on the import of recyclable materials.

CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment; and File No. PP17-007, Preliminary direction to staff and eventual action requires approval from decision-making body. (Environmental Services) [Deferred from 12/4/18 Item 7.2 (18-1599); and 12/18/18 Item 7.2 (18-1707)]

Documents Filed: (1) Memorandum from Mayor Sam Liccardo, dated January 14, 2019, accepting staff's recommendations with additions. (2) Joint memorandum from Councilmember Johnny Khamis and Councilmember Sergio Jimenez, dated January 11, 2019, accepting staff's recommendations with additional direction.

Director, Environmental Services, Kerrie Romanow, offered a presentation.

Action: Upon motion by Councilmember Johnny Khamis, seconded by Councilmember Sergio Jimenez, and carried unanimously, Resolution No. 78955, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Waive All or a Portion of the Contract Disincentives for the Recycle Plus Haulers That Do Not Meet the City's Required Diversion Rates for Calendar Year 2018 if the City Manager Determines by March 1, 2019 that the Recycle Plus Haulers Cannot Meet Their Required Diversion Rates Because, Due to China's "National Sword" Policy, there were No Reasonable Alternatives for Diverting Recyclables Materials Historically Exported to China", was adopted. (11-0.)

## 7.3 18-1806 **Actions Related to Implementing Living Wage Requirements for Recycle Plus Residential Garbage and Recycling Contracts.**

(a) Accept the staff report on:

(1) The proposed methodology to implement a Modified Living Wage for Recycle Plus Customer Service Representatives, Mechanics, and Materials Recovery Facility workers; and

(2) The updated labor peace plans from Recycle Plus contractors.

(b) Direct staff to negotiate the inclusion of a Modified Living Wage requirement, as approved by Council, in future residential garbage and recycling agreements for the Recycle Plus program.

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

### 7.3 (Cont'd.)

any City action; and File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. (Environmental Services/Public Works)  
[Deferred from 12/4/18 Item 7.3 (18-1600) and 12/18/18 Item 7.3 (18-1708)]

Documents Filed: (1) Joint memorandum from Councilmember Lan Diep and Councilmember Dev Davis, dated January 11, 2019, recommending acceptance of the staff's reports with a modification. (2) Joint memorandum from Councilmember Raul Peralez and Councilmember Sergio Jimenez, dated January 11, 2019, offering support to staff recommendations. (3) Memorandum from Councilmember Magdalena Carrasco, dated January 15 2019, recommending the staff report with one addition.

Public Comments: Four members of the public offered comments and recommendations.

Motion: Councilmember Sergio Jimenez moved approval of Councilmember Magdalena Carrasco's memorandum. Councilmember Raul Peralez seconded the motion.

Councilmember Lan Diep noted that he could not accept the motion on the floor, as he felt the San José rate payers would be subsidizing other regions.

Substitute Motion: Councilmember Lan Diep moved approval of staff's recommendation, accepting only Item 1(a) from Councilmember Magdalena Carrasco's memorandum. Councilmember Dev Davis seconded the motion.

Councilmember Johnny Khamis offered support to the substitute motion.

Action: On a call for the question, the substitute motion failed. (3-8. Noes: Jones, Jimenez, Peralez, Carrasco, Esparza, Arenas, Foley; Liccardo.)

Action: On a call for the question, the motion carried, and the staff's recommendations were accepted, including Councilmember Magdalena Carrasco's memorandum dated January 15, 2019:

- a. If an existing San Jose residential or commercial recycling contractors respond to a future San Jose residential RFPs, staff should re-evaluate whether San Jose material would make up 50% or more of the material handled at their facility. If so, the Living Wage should be applied across their recycling contracts.
  - b. Accept staff recommendation to negotiate the inclusion of a Modified Living Wage requirement, as approved by Council, in future residential garbage and recycling agreements for the Recycle Plus program for any workers not covered by Prevailing Wage or Living Wage.
- (8-3. Noes: Davis, Diep, Khamis.)

## OPEN FORUM

Blair Beekman offered comments about PG&E and the need for community involvement.

Leon Dryden, spoke about an abandoned vehicle on his street and neighborhood blight. He provided detailed information on the vehicle in question.

Documents Filed: Information regarding an abandoned vehicle in D8 provided by Leon Dryden, including a CD disk, offering “examples of neighborhood values being destroyed”.

## ADJOURNMENT

The Council Meeting of the City of San José was adjourned at 10:23 p.m.

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

FOR APPROVAL:

Tract: 10465

Location: West side of Great Oaks Blvd approximately 1,000 feet northwesterly of Highway 85

District: 2

Lots/Units: 72/72

Type: SFA

Proposed Decision: Approved

Developer: Pulte Group

Minutes Recorded, Prepared and Respectfully Submitted by,

***draft***

Toni J. Taber, CMC  
City Clerk

rmk/1-15-2019 MIN