



# **City Council Meeting MINUTES (DRAFT)**

**Tuesday, September 1, 2020**

**11:00 AM**

**Held Virtually**

SAM LICCARDO, MAYOR  
CHAPPIE JONES, VICE MAYOR, DISTRICT 1  
SERGIO JIMENEZ, DISTRICT 2  
RAUL PERALEZ, DISTRICT 3  
LAN DIEP, DISTRICT 4  
MAGDALENA CARRASCO, DISTRICT 5  
DEV DAVIS, DISTRICT 6  
MAYA ESPARZA, DISTRICT 7  
SYLVIA ARENAS, DISTRICT 8  
PAM FOLEY, DISTRICT 9  
JOHNNY KHAMIS, DISTRICT 10

*Consistent with the California Governor's Executive Order No. N-29-20, Resolution No. 79450 from the City of San José and the Santa Clara County Health Officer's March 16, 2020 Shelter in Place Order, the City Council meeting was not physically open to the public. Public comments were accepted via eComment, email, by phone and webinar.*

**The meeting was teleconferenced from remote locations and interpreted into Spanish and Vietnamese.**

## **CLOSED SESSION**

**9:31 a.m. [See Page 21 for Closed Session Minutes](#)**

**The Council of the City of San José convened on Tuesday, August 11, 2020 at 1:30 p.m**

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

Absent: Councilmembers      All Present.

## **Pledge of Allegiance**

Mayor Sam Liccardo led the Pledge of Allegiance.

- Pledge of Allegiance
- Invocation (District 8)

Pastor Greg Gates, Lead Pastor at The Point Church in Evergreen led the invocation and presented a musical performance video.

- Orders of the Day

Upon motion by Councilmember Sergio Jimenez, seconded by Councilmember Pam Foley, and carried unanimously, the Orders of the Day and the Amended Agenda were approved. (11-0)

- Closed Session Report

No Report

# 1. CEREMONIALS

None Provided.

# 2. CONSENT CALENDAR

Public Comment: Blair Beekman spoke on the consent calendar.

Upon motion by Councilmember Maya Esparza, seconded by Councilmember Dev Davis 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.**

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

### **20-992 Final Adoption of Ordinances.**

**Recommendation:** (a) **Ordinance No. 30467** - An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to A-Force Roll Off, LLC.

[Passed for Publication on 8/25/2020 - Item 6.2 (b) (20-931)]

(b) **Ordinance No. 30468** - An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Mohammed Abdo DBA IDump-San José Dumpster Rentals.

[Passed for Publication on 8/25/2020 - Item 6.2 (b) (20-931)]

(c) **Ordinance No. 30469** - An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Yellowsack, Inc.

[Passed for Publication on 8/25/2020 - Item 6.2 (b) (20-931)]

Action: Ordinance Nos. 30467, 30468, and 30469 were approved. (11-0)

## **2.3 Approval of Council Committee Minutes.**

## **2.4 Mayor and Council Excused Absence Requests.**

### **20-996 Mayor and Council Excused Absence Requests.**

**Recommendation:** Request for an excused absence for Councilmember Arenas, from the Regular Meeting of Rules and Open Government Committee on August

19, 2020 due to illness  
CEQA: Not a Project, File No. PP17-010, City Organizational and Administrative Activities resulting in no changes to the physical environment. (Arenas)  
[Rules Committee referral 8/26/2020 - Item A.1.a]

Action: The Request for excused absence for Councilmember Arenas was approved. (11-0)

## **2.5 City Council Travel Reports.**

## **2.6 Report from the Council Liaison to the Retirement Boards.**

### **2.7 20-956 Affordable Housing Impact Fee Fund Annual Report for Fiscal Year 2019-2020.**

**Recommendation:** Accept the Fiscal Year 2019-2020 Annual Report prepared in accordance with the Mitigation Fee Act (Government Code section 66000 et seq.) on the status of the City's Affordable Housing Impact Fee.

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

Action: The Fiscal Year 2019-2020 Annual Report was accepted. (11-0)

### **2.8 20-957 2020 Regional Active Transportation Program Grant for Five Wounds Trail: Story Road to Julian Street. - RENUMBERED TO ITEM 7.2**

**Recommendation:** Adopt a resolution to:

- (a) Identify the City Manager or his designee as the authorized representative to submit a grant to the State of California's Transportation Commission to pursue Active Transportation Program grant funding for the subject project;
- (b) If awarded a grant through this program, authorize the City Manager to negotiate and execute a grant agreement and associated documents with the Metropolitan Transportation Commission (MTC); and
- (c) Recognize that staff will return in the future with a funding plan that is reasonably expected to be available and sufficient to complete the project via a \$33,610,683 grant subject to 80 percent reimbursement and \$423,000 for non-eligible expenses, with an obligation to fund all additional expenses which may not be fully understood at this early stage of project development.

CEQA: Not a Project, File No. PP17-006, Grant Application with no commitment or obligation to enter into an agreement at the time of application. Council Districts 3 and 7. (Parks, Recreation and Neighborhood Services)  
[RENUMBERED TO ITEM 7.2 (20-989)]

Action: See item 7.2 for action.

**2.9 20-958 Amendment to Title 27 of the San José Municipal Code to Clarify Sections Related to the Procurement of Public Works.**

**Recommendation:** Approve an ordinance amending Title 27 of the San José Municipal Code to set forth the manner in which the City will adjust for inflation the threshold amount used to define a Major Public Works Contract and clarify the review and approval process for Major Public Works solicitation documents.

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

Action: Adopted **Ordinance 30474** amending Title 27 of the San José Municipal Code. (11-0)

**2.10 20-959 Cost Sharing Agreement Between City of San José and City of Cupertino for Pavement Maintenance on Bollinger Road.**

**Recommendation:** Adopt a resolution authorizing the City Manager to execute a Cost Sharing Agreement with the City of Cupertino for pavement maintenance improvements on Bollinger Road between Miller Avenue and Lawrence Expressway as part of the 2020 Pavement Maintenance Phase 2 Project in an amount not to exceed \$707,286.

CEQA: Categorically Exempt, File No. PP18-029, CEQA Guidelines Section 15301(c), Existing Facilities. Council District 1. (Transportation)

Action: Adopted **Resolution 79702** authorizing the City Manager to execute a Cost Sharing Agreement with the City of Cupertino. (11-0)

**2.11 20-997 Boards and Commissions Appointments.**

**Recommendation:** Approve the following Boards and Commissions appointments:

(a) Youth Commission:

(1) District 8 Seat: Paula Escobar to a term ending May 31, 2022.

CEQA: Not a Project, File No. PP17-010, City Organization and Administrative Activities resulting in no changes to the physical environment. (City Clerk)  
[Rules Committee referral 8/26/2020 - Item A.1.a]

Action: Appointed Paula Escobar to the Youth Commission to a term ending May 31, 2022. (11-0)

**2.12 20-1003      Retroactive Approval of District 6 Litter Pickup 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.**

**Recommendation:** As recommended by the Rules and Open Government Committee on August 26, 2020:

(a) Retroactively approve the District 6 Litter Pickup scheduled on Saturday, August 15, 2020 as a City Council sponsored Special Event and approve the expenditure of funds.

(b) Retroactively 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 08/26/2020- Item G.1(a)]

Action: Retroactively approved the Council District 6 Litter Pickup Special Event. (11-0)

**2.13 20-1010      Approval of Breastfeeding Awareness Month 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.**

**Recommendation:** As recommended by the Rules and Open Government on August 26, 2020:

(a) Retroactively approve recognition of Breastfeeding Awareness Month in the month of August as a City Council sponsored Special Event and approve the expenditure of funds.

(b) Retroactively 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. (Arenas)  
[Rules Committee referral 08/26/2020- Item G.1(b)]

Action: Approved the Council District 8 Breastfeeding Awareness Month Event. (11-0)

**2.14 20-1017 Advance the Strategic Expansion of Water Reuse in San José.**

**Recommendation:** As recommended by the Rules and Open Government on August 26, 2020, direct the City Manager to prioritize the pursuit of expanded recycled water use with Santa Clara Valley Water District (Valley Water) to increase local, drought-resilient supply and reduce reliance on imported water. Through collaborative efforts, Valley Water and the City of San José should establish a negotiation team and negotiate to meet future water needs by developing and expanding programs and partnerships for water reuse, including both recycled water and potable reuse.

CEQA: Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment. (Jones) [Rules Committee referral 08/26/2020- Item G.2]

Action: Approved direction to the City Manager to prioritize the pursuit of expanded recycled water use with the Santa Clara Valley Water District. (11-0)

### **3. STRATEGIC SUPPORT**

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

- 20-960** (a) City Manager’s COVID 19 Update (Verbal Report)  
(b) City Manager’s Report on Other City Matters (Verbal Report)  
*Heard before Consent Calendar*

City Manager Dave Sykes recognized the Beautify SJ team and the homeless services branch of the EOC. The presentation was provided by Lee Wilcox, City Manager’s Office Chief of Staff; Jill Bourne, Library Director; Jim Ortball, Deputy City Manager; Kip Harkness, Deputy City Manager; Ragan Henninger Deputy Director, Housing Department; Sarah Zarate Assistant to the City Manager spoke on the

Public Comment: Mark, Mollie McLeod, Paul, Tim McRae, Deborah provided public comments.

Council discussion ensued and staff answered questions.

Action: No action required.

### 3.2 Labor Negotiations Update.

None Provided.

### 3.3 20-964 San José Food Distribution Update.

**Recommendation:** As recommended by the Smart Cities and Service Improvements Committee on August 6, 2020, accept the report on the update on food and necessities distribution work in support of the City’s Pandemic Response which reviews accomplishments, lessons learned, and the transition back to Santa Clara County.  
CEQA: Not a Project, File No. PP17 009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action. (City Manager)  
[Smart Cities and Service Improvements Committee referral 8/6/2020 - Item (d)2]  
[Deferred from 8/25/2020 - Item 3.3 (20-924)]  
***Heard after Item 3.1***

Deputy City Manager Angel Rios introduced the report. Additional staff and outside professionals presenting information and responding to questions were Dolan Beckel, Director of the Office of Civic Innovation and Digital Strategy; Neil Rufino, Assistant Director of the Parks, Recreation and Neighborhood Services; Second Harvest Food Bank Chief Executive Officer Leslie Bacho; Second Harvest Food Bank Vice President Tracy Weatherby; Santa Clara County Office of Education Assistant Director Shammy Karim; The Health Trust Chief Executive Officer Michele Lew; Veggielution Executive Director Cayce Hill; World Central Kitchen Executive Director Nate Mook; Sourcewise Chief Executive Officer Aneliza Del Pinal.

Public Comment: Ewell Sterner, Blair Beekman, Gisela Bushey, and Frances Wong provided public comment.

Action: No action required.

### 3.4 20-971 Coronavirus Relief Funds for Resident Assistance Efforts. - DEFERRED

**Recommendation:** Approve the Resident Assistance funding allocation plan for approximately \$2 million in Coronavirus Relief Funds.  
CEQA: Not a Project, 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. (City Manager)  
**Deferred per Administration**



### **3.5 20-961 Audit of Fire Development Services.**

**Recommendation:** Accept the report on the Fire Development Services 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)

City Auditor Joe Rois presented the report, with Fire Chief Robert Sapien providing comments. Additionally, Program Performance Auditor Stephanie Noble was available for questions.

Public Comment: Constituent with phone number ending in 5140, Roland, Blair Beekman, Jim McClure, and Mark provided comments.

Council discussion ensued.

Action: Upon motion by Councilmember Johnny Khamis and seconded by Councilmember Pam Foley the Audit of Fire Development Services was accepted. (11-0)

### **3.6 20-962 Audit of Park Maintenance.**

**Recommendation:** Accept the report on the Park Maintenance 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)

City Auditor Joe Rois presented the report and answered questions assisted by Supervising Auditor Gitanjali Mandrekar; Director of Parks, Recreation and Neighborhood Services Jon Cicirelli; Acting Deputy Director Avi Yotam; and Parks Manager Torie O'Reilly. Council

Public Comment: Cayce Hill, Robert Aguirre, and a resident with the phone number ending in 5140 provided comments.

Council discussion ensued.

Action: Upon motion by Councilmember Sylvia Arenas and seconded by Councilmember Maya Esparza to approve the memorandum by Councilmembers Arenas, Esparza and Peralez was approved and the following actions were taken: 1. Accepted the staff report and administration response. 2. Directed the administration to continue working towards identifying a dedicated funding stream to reinvest in San José Parks, including: A. Continuing widespread community engagement on the problems related to \$382 million in

deferred maintenance needs and the lack of adequate funding for desperately needed Parks Recreation & Neighborhood Services programs that support families in need. B. Work towards a 2022 ballot measure, if economic conditions have improved: strongly consider, gauge community support, and poll test a measure modeled on Oakland's successful Measure Q, which combined the need for investing in parks and recreation, community beautification, and additional funding to support community members experiencing homelessness and living in our public spaces. Additionally, evaluate and consider a measure model based on Los Angeles County's Measure A. (10-1; Noes-Khamis)

**3.7 20-965 Report on Bids and Award of Construction Contract for the 8674 - Trail: Coyote Creek (Story Road to Phelan Avenue) Project.**

**Recommendation:** Report on bids and award of construction contract for the 8674 - Trail: Coyote Creek (Story Road to Phelan Avenue) Project to the low bidder, Teichert Construction, for the base bid in the amount of \$2,089,885, and approval of a ten percent contingency in the amount of \$208,989.

CEQA: Mitigated Negative Declaration for the Coyote Creek Trail Project Story Road to Phelan Avenue, File No. PP14-051. Council District 7. (Public Works)

Matt Cano, Director of Public Works and Jon Cicirelli, Director of Parks, Recreation and Neighborhood Services presented the report and answered questions.

**Public Comment:** Blair Beekman, KB, and Robert Aguirre, and Kathryn Hedges provided comments.

Council discussion ensued.

**Action:** Upon motion by Councilmember Esparza and seconded by Councilmember Foley the report of bids was accepted and the construction contract was awarded to Teichert Construction for the base bid in the amount of \$2,089,885, and approval of a ten percent contingency in the amount of \$208,989 for the construction of 8674 - Trail: Coyote Creek (Story Road to Phelan Avenue) Project. Additionally, included in the motion was approval of the memorandum from Councilmember Esparza to 1. Direct Staff to provide ongoing quarterly updates on the Coyote Creek Trail Project to the Neighborhood Services and Education Committee. 2. Direct Staff to continue coordinating with the San Jose Police Department on the Trail Safety Plan. (11-0)

### **3.8 20-1020 Health and Equity Task Force Recommendations.**

**Recommendation:** As recommended by the Rules and Open Government on August 26, 2020, direct the City Manager for a discussion and consideration of the recommendations from the Health and Equity Task Force and for the City Manager to provide a written response to the recommendations relevant to the City.

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

[Rules Committee referral 08/26/2020- Item G.3]

Councilmember Magdalena Carrasco presented the report. Michelle Lew, the Chief Executive Officer of the Health Trust and Dolores Alvarado, Chief Executive Officer of Community Health Partnership provided comments.

**Public Comment:** Blair Beekman, Robert Aguirre, Paul Soto, and Gabriel Hernandez from Somos Mayfair, Jeffrey Buchanan, and Brenda Zendejas provided comments.

Council Discussion ensued.

**Action:** Upon motion by Councilmember Carrasco and seconded by Vice Mayor Jones, to accept the staff's report on information and feedback related to the recommendations provided for by the Health and Racial Equity Task Force. (11-0)

## **4. PUBLIC SAFETY SERVICES**

## **5. TRANSPORTATION & AVIATION SERVICES**

## **6. ENVIRONMENTAL & UTILITY SERVICES**

### **6.1 20-966 Master Agreements for Consultant Services for Microgrid and Energy Resilience Studies and Projects.**

**Recommendation:** Approve master consultant agreements with Worley Group, Inc. (DBA Advisian) and AECOM Technical Services, Inc. for microgrid and energy resilience studies and projects, from the date of execution through September 30, 2023, in a total amount not to exceed \$1,500,000 for each agreement, subject to the appropriation of funds. CEQA: Not a Project, File No. PP17-002, Consultant services for design, study, inspection, or other professional services with no commitment to future action. (Public Works/Community Energy)

There was no staff presentation.

Public Comment: Blair Beekman provided public comments.

Council discussion ensued.

Action: Upon motion by Councilmember Sergio Jimenez and seconded by Councilmember Magdalena Carrasco, the master consultant agreements with Worley Group, Inc. (DBA Advisian) and AECOM Technical Services, Inc. for microgrid and energy resilience studies and projects was approved (11-0).

## **7. NEIGHBORHOOD SERVICES**

### **7.1 20-967 Actions Related to the Future Public Park within the Japantown Square Development.**

**Recommendation:** (a) Accept one of the following recommendations regarding the future public park within the Japantown Square Development along North 6th Street:

(1) Approve the Parks and Recreation Commission recommended name of “Sakura Park”; OR

(2) Approve the staff recommendation of “Heinlenville Park”; OR

(3) Approve Item (1) or (2) and direct staff to work with the community to name an amenity within the park after the name not approved for the new park. OR

(b) Select and approve an alternative name from the list of conforming names generated through the outreach process.

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

Council District 3. (Parks, Recreation and Neighborhood Services)

Nichole Burnham, Deputy Director Capital programs, presented the report and answered questions.

Public Comment: Susan Haysae, J Chris, Craig Mizushima, Brenda Hee Wong, Jim McClure, Peter Delevett, Ryan Kawamoto, and Kathryn Hedge spoke in favor of Heinlenville Park.

Action: Upon motion by Councilmember Raul Peralez and seconded by Councilmember Pam Foley the memorandum from Mayor Liccardo and Councilmember Peralez to Support PRNS staff’s original recommendation of “Heinlenville Park” as the official name for the

future public park plaza located within the Japantown Square Development Project. (11-0)

**7.2 20-989 2020 Regional Active Transportation Program Grant for Five Wounds Trail: Story Road to Julian Street. - RENUMBERED FROM ITEM 2.8**

**Recommendation:** Adopt a resolution to:

- (a) Identify the City Manager or his designee as the authorized representative to submit a grant to the State of California’s Transportation Commission to pursue Active Transportation Program grant funding for the subject project;
- (b) If awarded a grant through this program, authorize the City Manager to negotiate and execute a grant agreement and associated documents with the Metropolitan Transportation Commission (MTC); and
- (c) Recognize that staff will return in the future with a funding plan that is reasonably expected to be available and sufficient to complete the project via a \$33,610,683 grant subject to 80 percent reimbursement and \$423,000 for non-eligible expenses, with an obligation to fund all additional expenses which may not be fully understood at this early stage of project development.

CEQA: Not a Project, File No. PP17-006, Grant Application with no commitment or obligation to enter into an agreement at the time of application. Council Districts 3 and 7. (Parks, Recreation and Neighborhood Services)

[RENUMBERED FROM ITEM 2.8 (20-957)]

Director of Parks, Recreation and Neighborhood Services Jon Cicirelli introduced the item.

Public Comment: Blair Beekman provided comments.

Action: Upon motion by Councilmember Raul Peralez and seconded by Councilmember Maya Esparza, **Resolution 79703** was adopted identifying the City Manager or his designee as the authorized representative to submit a grant to the State of California’s Transportation Commission to pursue Active Transportation Program grant funding for the subject project (b) If awarded a grant through this program, authorize the City Manager to negotiate and execute a grant agreement and associated documents with the Metropolitan Transportation Commission (MTC); and (c) Recognize that staff will return in the future with a funding plan that is reasonably expected to be available and sufficient to complete the project via a \$33,610,683 grant subject to 80 percent reimbursement and \$423,000 for non-eligible expenses, with an obligation to fund all additional expenses which may not be fully understood at this early stage of project development was adopted along with the memorandum from Mayor Liccardo and Councilmembers Peralez and Esparza to accept staff recommendations along with the following: 1. Submit the Active Transportation

Program (ATP) application and include reference to the \$4.14 million VTA Measure B funds that have been identified as available for the Five Wounds Trail project pending future application and VTA Board approval. 2. In order to minimize impacts to limited available funds that may serve other park and trail priorities in Districts 3 and 7, request that staff work with Senator Jim Beall’s office to secure additional state and regional funding to serve as match. 3. Return to Council in early 2021 to provide an update on any new sources of funding that have been identified and whether those sources would impact deadlines for negotiating and executing a grant agreement. Staff should work with the California Transportation Commission and other agencies to extend deadlines when possible, and report to Council should funding be at risk without confirmed local or external funding sources. (11-0).

## **8. COMMUNITY & ECONOMIC DEVELOPMENT**

### **8.1 20-968 Citywide Residential Anti-Displacement Strategy. - DEFERRED**

**Recommendation:** (a) Accept the staff report and approve the 10 recommendations of the Citywide Residential Anti-Displacement Strategy.  
(b) Approve workplans for the first three recommendations:  
(1) Support Equitable COVID-19 Recovery and Impact Mitigation Measures for Renters and Homeowners;  
(2) Establish a Neighborhood Tenant Preference for Affordable Housing; and  
(3) Explore a Community Opportunity to Purchase Program/Ordinance.  
(c) Direct staff to return to the City Council with an update on progress in 12 months.  
CEQA: Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action. (Housing)  
*Deferred To 9/22/2020 Per Rules And Open Government Committee*

### **8.2 20-969 Council Policy Priority # 5: Commercial Linkage Impact Fee.**

**Recommendation:** (a) Hold a public hearing regarding the establishment of a Commercial Linkage Fee on new non-residential developments to address the need for affordable housing associated with such new development;  
(b) Accept the “Commercial Linkage Fee Nexus Analysis - San José, California” dated July 2020 prepared by Keyser Marston Associates, Inc.; and  
(c) Take the following actions:  
(1) Approve an ordinance adding Chapter 5.11 to Title 5 of the San

José Municipal Code enacting a requirement that new non-residential development pay a commercial linkage fee for the provision of affordable housing.

(2) Adopt a resolution establishing the amounts of commercial linkage fees in accordance with Chapter 5.11 of Title 5 of the San José Municipal Code.

CEQA: Not a Project, File No. 17-004, Government Funding Mechanism or Fiscal Activity with no commitment to a specific project which may result in a potentially significant physical impacts on the environment. (Housing/Economic Development)  
[Deferred from 8/25/2020 - Item 3.6 (20-927)]

Kim Walesh, Deputy City Manager, Jacky Morales-Ferrand, Director of Housing, and Chris Burton, Deputy Director of Office of Economic Development presented the report. Also present for discussion and questions were Rachel VanderVeen, Deputy Director of Housing; Nanci Klein, Director of Office of Economic Development; and Vera Todorov, Senior Deputy City Attorney.

Public Comment: Providing public comment were: Eddie Truong, Scott Knies, Sandy Perry, Craig Mizushima, Mary Helen Doherty, Katheryn Hedges, Olivia Oritiz, Selma Angeles, Robert Brownstein, Jose Villarreal, Maria Teresa Barcenas, Caller ending 5140, Rolad, Tessa Woodmansee, Robert Aguirre, Kevin Ma, Gabriel Manrique, Lauren Renaud, Housing Team Sacred Heart CS, Jeffrey Buchanan, Paul Soto, Blair Beekman, Chelsea Muller, Salvador Bustamante, Vince Rocha, Brenda Zendejas, Lana, Andy Gerber, Angel Madero, Kiyomi Yamamoto (law Foundation), Mardi Gerston, Andrea, Veronica, Mary Murtaugh, matthew (Silicon Valley @ Home), Justin Lardinois, Z Zanderbergen, Rev. Ray, Vinita Goyal (Silicon Valley Community Foundation), Neil Park-McClintick (Cupertino for All), Raphael V, Edesa Bitbadal (NAIOP), Roma Dawson, April Nicholson, Deborah St. Julien, Jewell Buchanan, Workout Caller, Caller ending in 4279, Araceli V, Kristan, Monica Mallon, Jake Tonkel, and Mario B. Lopez (SV@Home), Alex Shoor, Matt Gustafson, Jenny Higgins Bradanini, and Milt Krantz.

Council Discussion ensued.

Councilmember Davis moved, and Councilmember Foley seconded the memorandum authored by Mayor Liccardo, Vice Mayor Jones, and Councilmembers Diep, Davis, and Foley amending the memo language to clarify in Option 2 that the \$5 issues at Building Shell Certificate of Occupancy, and the \$10 is payable upon COO for tenant occupancy/final building inspection, with #2 from the memorandum by Councilmember Khamis.

Council discussion continued.

A substitute motion was made by Councilmember Raul Peralez and seconded by Councilmember Maya Esparza to approve the memorandum from Councilmember Peralez to was approved to Accept staff recommendation with the following modifications:

1. Implement the following phased fee schedule:

	Downtown Office		Office Outside of Downtown	
	> 100,000 SF	< 100,000 SF	> 100,000 SF	< 100,000 SF
<b>Year 1</b>	\$10 / SF	\$3 / SF	\$5 / SF	\$3 / SF
<b>Year 2</b>	\$15 / SF	\$4.5 / SF	\$7.5 / SF	\$4.5 / SF
<b>Year 3</b>	\$20 / SF	\$6 / SF	\$10 / SF	\$6 / SF

2. Beginning in Year 3, conduct immediately another Commercial Linkage Fee (CLF) feasibility study and provide recommendations for updated fees. 3. Further clarify which Research & Development projects will be included in the same fee structure as Office classification. 4. Modify the collection of impact fees to the issuance of a project’s building permits. 5. Return annually prior to the automatic fee increase with a report on the fee program. 6. Direct staff to explore: a. Potentially allowing incentives in the form of fee reductions for i. Projects that build affordable housing in parallel with its commercial development, and, ii. Projects that implement quantifiable and comparable sustainability measures b. The creation of an additional fee structure for projects above one million square feet. Additionally, included was the memorandum from Councilmember Arenas to 1. To ensure no fee exceeds the feasible rate in their geographic zone, limit or waive any Commercial Linkage Fees that exceed the “supportable fee levels by prototype and geography based on the pro forma analysis.” 2. Direct the City Manager to include geographic regions similar to those included in the current Feasibility Analysis in the next feasibility study ad #5 from the Memorandum from Mayor Liccardo, Vice Mayor Jones, and Councilmembers Diep, Davis, and Foley for hotel projects, staff should provide Option #3 (opportunity to deliver affordable units). #6 In light of rapidly growing vacancy for all retail space, and severe loss of retail employment, set retail fees at \$0, regardless of size EXCEPT that over 100k sq ft frozen at \$5, and under 100k sf is \$0.

On the call to question, the substitute motion failed with a vote of 5-6 (Noes: Diep, Davis, Foley, Khamis, Jones, Liccardo).

Action: On the call to question, the underlying motion by Councilmember Dev Davis with a second by Councilmember Pam Foley and a vote of 7-4: Noes-Peralez, Carrasco, Esparza, Arenas) passed adopting **Ordinance 30475** adding Chapter 5.11 to Title 5 of the San José Municipal Code enacting a requirement that new non-residential development pay a commercial linkage fee for the provision of affordable housing and adopting **Resolution 79705** establishing the amounts of commercial linkage fees in accordance with Chapter 5.11



of Title 5 of the San José Municipal Code was adopted with additional direction approved from the memorandum from Mayor Liccardo, Vice Mayor Jones, and Councilmembers Diep, Davis, and Foley as amended to approve the staff recommendation with the following changes:

1. For Downtown Office Space over 100,000 square feet, offer 3 options:
  - Option 1: \$12/per square foot if paid upon Certificate of Occupancy (COO)
  - Option 2: \$15/per square foot, paid in phases: - \$5 at issuance of **Building shell** COO - \$10 payable proportionate to the percentage of rentable building space for which there is **COO for Tenant Occupancy / Final Building Inspection** ~~Tenant Improvement (TI) certification~~, so that fees are paid as leases are secured, and prior to employees filling the building.
  - Option 3: Directly build affordable units - Deliver a prescribed number of affordable units equivalent to the applicable fee, based on a formula to be devised by Housing & OED staff for inclusionary fees on residential construction. The ground-breaking of the affordable housing project must precede the issuance of a certificate of occupancy on the commercial space.
2. For all office projects less than 100,000 square feet, the fee for the first 40,000 square feet is \$0 **with direction from #2 of the memorandum from Councilmember Khamis to explore justification to adjust the square footage for the exemption to 50,000 square feet for ease of administration and to simplify calculations.**
3. For citywide office projects over 100,000 square feet, provide “Option #2 (\$2 at COO and \$3 with Tenant Improvements) as well as Option #3 (opportunity to deliver affordable units).
4. For industrial projects over 100,000 square feet, provide “Option #2 (\$1 at COO and \$2 with Tenant Improvements) as well as Option #3 (opportunity to deliver affordable units).
5. For hotel projects, staff should provide Option #3 (opportunity to deliver affordable units).
6. In light of rapidly growing vacancy for all retail space, and severe loss of retail employment, set retail fees at \$0, regardless of size.
7. All state-licensed Residential Care Facilities for the Elderly should be classified as a commercial use, regardless of what kitchen facilities the individual rooms have. The fee would be calculated on the square footage of residential rooms, instead of a per-unit IHO fee. This will ensure that amenity space will not be minimized. Staff should return to the City Council to verify the per square foot fee within 60 days. Staff should also examine how to address similar projects that solely serve disabled residents, and projects that include low-income units **with additional direction that it should not exceed the \$6 fee per the Staff’s supplemental memo.**

8. Explore credits for on-site historic preservation, or sustainability at the NetZero standard, not to exceed 20%. The credit could apply directly to this fee, or applied against the total fee calculation.
9. Conduct a new feasibility study, to be undertaken no more than two years from fee adoption. If new leasing comp's are not available, use other available data to assess commercial market dynamics such as availability rates and absorption.
10. As discussed in City Council Priority #8 (Universal Fee Framework) create a "single point of contact" within the existing Development Services staff.

Additionally, also approved were items 5 and 6 from the memorandum from Councilmember Peralez to: 5. Return annually prior to the automatic fee increase with a report on the fee program. 6. Direct staff to explore: a. Potentially allowing incentives in the form of fee reductions for i. Projects that build affordable housing in parallel with its commercial development, and, ii. Projects that implement quantifiable and comparable sustainability measures (**starting with the next cycle**) b. The creation of an additional fee structure for projects above one million square feet (**for next feasibility study**)

Additionally, also approved was item 3 from the memorandum from Councilmember Khamis to: 3. Allow developers to whose projects the new fee applies to build or buy affordable housing and deed restrict it to ensure the rents remain affordable as an alternative to fulfilling the Commercial Linkage Fee requirement, as discussed in Item 1. Option 3 in the Memorandum dated August 28, 2020 from Mayor Liccardo, et al, and in Item 6.a.i. of the Memorandum dated August 28, 2020 from Councilmember Peralez.

Additionally, also approved was the memorandum from Councilmember Arenas to direct staff to explore the following 1. To ensure no fee exceeds the feasible rate in their geographic zone, limit or waive any Commercial Linkage Fees that exceed the "supportable fee levels by prototype and geography based on the pro forma analysis". 2. Direct the City Manager to include geographic regions similar to those included in the current Feasibility Analysis in the next feasibility study.

Additional clarification was give that common areas of hotels are excluded from the square footage calculation.

### **8.3 20-998 Amendment to Declarations Suspending Enforcement of Certain Provisions in Land Use Permits and Approvals and the San Jose Municipal Code.**

**Recommendation:** Adopt a resolution amending the Declarations issued June 4, 2020 and June 26, 2020 by the Director of Emergency Services of the City of San José to expand permissible business uses within adjacent private property, public sidewalks and parklets.

CEQA: Categorically Exempt, File No. ER20-159, CEQA Guidelines Section 15304(e) Minor Alterations to Land. (City Manager)  
[Rules Committee referral 8/26/2020 - Item A.1.a]

TO BE HEARD CONCURRENTLY WITH ITEM 8.4

Items 8.3 and 8.4 were heard concurrently. There was no staff presentation. Council discussion ensued. After a Council discussion, a motion was made on all items excluding cardroom use.

Public Comment: None provided.

Action: Upon motion by Councilmember Sergio Jimenez and seconded by Councilmember Pam Foley, staff recommendation was adopted. (11-0)

**Resolution 79704** was adopted mending the Declarations issued June 4, 2020 and June 26, 2020 by the Director of Emergency Services of the City of San José to expand permissible business uses within adjacent private property, public sidewalks and parklets including cardrooms was approved (10-1; Noes-Esparza)

**8.4 20-1021 Actions Related to Amending the Declarations issued June 4, 2020 and June 26, 2020 by the Director of Emergency Services of the City of San José to Expand Permissible Business Uses within Public Sidewalks and Parklets.**

Recommendation: (a) Direct the City Manager to modify the “Resolution of the City Council amending the Declarations issued June 4, 2020 and June 26, 2020 by the Director of Emergency Services of the City of San José to expand permissible business uses within public sidewalks and parklets” in Item 8.3 above to include Permitted Cardrooms as a permissible business use; and

(b) Direct staff to work with cardroom operators to determine the parameters of the use such as tent size, generators usage and hours of operations conducive to business operations and in compliance with public health regulations.

CEQA: Categorically Exempt, File No. ER20-159, CEQA Guidelines Section 15304(e) Minor Alterations to Land. (Peralez)

[Rules Committee referral 8/26/2020 - Item A.1.a]

TO BE HEARD CONCURRENTLY WITH ITEM 8.3

Items 8.3 and 8.4 were heard concurrently. There was no staff presentation. Council discussion ensued. After a Council discussion, a motion was made on all items excluding cardroom use.

Public Comment: None provided.

Action: Action: Upon motion by Councilmember Sergio Jimenez and seconded by Councilmember Pam Foley, staff recommendation was approved. See **Resolution 79704** in item 8.3. (10-1; Noes-Esparza)

## **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-None**

- **Open Forum**

The following people provided public comment: Tessa Woodmansee spoke on the environment and food security; KB spoke on upper penitentiary creek trail and suspicious activity day and night;

- **Adjournment**

Council adjourned at 1:02 a.m. on September 2, 2020.

**CLOSED SESSION MINUTES  
TUESDAY, AUGUST 11, 2020**

The Council of the City of San José convened into Closed Session at 9:00 a.m. The Session was teleconferenced from remote locations.

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

Absent: Councilmembers Carrasco.

Items discussed:

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

1. Case Name: In re: Claim of Alvarado

Name(s) of Parties(s)

Involved:

Court: Workers Compensation Appeals Court

Case No.: ADJ8328566

ADJ11725106

Amount of Money or Benefits  
Other Relief Sought:

2. Case Name: San Jose Mercury News LLC v. City, et al.

Name(s) of Parties(s) SAN JOSE MERCURY NEWS LLC; CITY OF SAN

Involved: JOSE; SAN JOSE POLICE DEPARTMENT;  
EDGARDO GARCIA, in his capacity as Chief of  
Police; and DOES 1-20

Court: Superior Court of the State of California, County of  
Santa Clara

Case No.: 20-CV-368449

Amount of Money or Verified Petition for Writ of Mandate Pursuant to the  
Other Relief Sought: California Public Records Act and the California  
Constitution; Complaint for Declaratory and Injunctive  
Relief; Request for Attorney's Fees and Costs

**B. CONFERENCE WITH REAL PROPERTY DESIGNATED REPRESENTATIVES PURSUANT TO GOVERNMENT CODE SECTION 54956.8:**

1. Property Street Address, Parcel Number, or Other Unique Reference of Property: Pond A18  
APN: 015-32-042, 015-32-043
- Negotiating Parties: Nanci Klein for the City of San José  
and Rachelle Blank for the Santa Clara Valley Water District
- Under Negotiation: The direction will concern price and terms of payment.
- Likely Range of Value of Property: Negotiated price based on appraisal and comparable property values.

**C. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION:**

Initiation of litigation pursuant to subsection (c) of Section 54956.9 of the Government Code: Number of matter(s) to be discussed: 3

The Closed Session Meeting was Adjourned at 11:18 a.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Toni J. Taber, CMC  
City Clerk