



City Council Meeting SYNOPSIS

Tuesday, September 28, 2021

1:30 PM

**Hybrid Meeting - Council Chambers and Virtually -
<https://sanjoseca.zoom.us/j/93052835954>**

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



- **Call to Order and Roll Call**

9:30 a.m. - Closed Session – Absent: All Present.

1:30 p.m. Present: Councilmembers -Carrasco, Arenas, Davis, Mahan, Jimenez, Jones, Cohen, Esparza, Peralez, Foley; Liccardo.

Absent: Councilmembers - All Present.

21-2093 Closed Session Agenda

6:00 p.m. - Evening Session – Cancelled

*The previously scheduled Evening Session has been cancelled.

- **Pledge of Allegiance**

Mayor Sam Liccardo led the Pledge of Allegiance.

- **Invocation (District 8)**

Pastor Theodoris Young, Light of the World Church provided the Invocation.

- **Orders of the Day**

The Orders of the Day and the Amended Agenda were approved, with Item 2.17, "Request for Travel for Mayor Liccardo" Added Under Orders of the Day. *Requiring a Determination by a Two-Thirds (2/3) Vote of the Members of the Council Present at the Meeting, or, if Less than Two-Thirds (2/3) of the Members of the Council are Present, a Unanimous Vote of those Members Present that there is a Need to take Immediate Action. Consolidated Open Government and Ethics Resolution No. 77135, Section 2.3.2.1.E.3; Council's Rules of Conduct, Resolution No. 79367, Rule 3(d); Council Agenda Items' Placement After Rules During Social Distancing Period Resolution No. 79485.*

Additionally, Item 2.9 "Conditional Summary Vacation, Declaration of Surplus, and Sale of a Portion of North Almaden Boulevard" and Item 7.2 "Amendment to Chapter 9.44, Regulation of Smoking, of Title 9, Health and Safety, of the San José Municipal Code" were deferred.

(11-0.)

- **Closed Session Report**

None provided.

1. CEREMONIAL ITEMS

- 1.1 Presentation of a Commendation to Vince Sunzeri for over a decade of service on the Police and Fire Retirement Board. (Mayor)**
Deferred.
- 1.2 Presentation of a Proclamation for National Preparedness Month. (Carrasco)**
Vice Mayor Magdalena Carrasco presented a Proclamation for National Preparedness Month encouraging community awareness of the importance of being prepared in case of a disaster.
- 1.3 Presentation of a Commendation to the Health Trust.**
Councilmember Dev Davis presented a Commendation to the Health Trust for their efforts to increase health services to our most vulnerable communities during the pandemic, and for the past 25 years.
- 1.4 Presentation of a Commendation to the Project Hope Youth Ambassadors. (Jimenez)**
Councilmember Sergio Jimenez presented a Commendation to the Project Hope Youth Ambassadors for successful completion of the ambassador program and their contributions to the Roundtable neighborhood.

2. CONSENT CALENDAR

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 21-2116 Final Adoption of Ordinances.**
(a) Ordinance No. 30663 - An Ordinance of the City of San José Rezoning Certain Real Property of Approximately 0.78 Gross Acres Situated on the East Side of Seaboard Avenue, Approximately 200 Feet Southeast of West Trimble Road (2586 Seaboard Avenue; APN: 101-01-010) from the Li Light Industrial Zoning District to the CIC Combined Industrial/Commercial Zoning District.
[Passed for Publication on 9/14//2021 - Item 10.1(a) (21-1987)]
- Action: **Ordinance No. 30663** was adopted. (11-0.)
- 2.3 21-2118 Approval of Council Committee Minutes.**
(a) Regular Community and Economic Development Committee Meeting Minutes of June 28, 2021.
(b) Regular Community and Economic Development Committee Meeting Minutes of August 23, 2021.
(c) Regular Smart Cities and Service Improvements Committee Meeting Minutes of August 5, 2021.
(d) Regular Smart Cities and Service Improvements Committee Meeting Minutes of September 2, 2021.

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2.3 (Cont'd.)

- (e) Regular Joint Meeting for the Rules and Open Government Committee and Committee of the Whole Meeting Minutes of August 11, 2021.
- (f) Regular Joint Meeting for the Rules and Open Government Committee and Committee of the Whole Meeting Minutes of August 18, 2021.
- (g) Regular Joint Meeting for the Rules and Open Government Committee and Committee of the Whole Meeting Minutes of August 25, 2021.
- (h) Regular Joint Meeting for the Rules and Open Government Committee and Committee of the Whole Meeting Minutes of September 1, 2021.
- (i) Regular Neighborhood Services and Education Committee Meeting Minutes of August 12, 2021.
- (j) Regular Public Safety, Finance and Strategic Support Committee Meeting Minutes of August 19, 2021.
- (k) Special Transportation and Environment Committee Meeting Minutes of August 30, 2021.

Action: Item 2.3(e) was pulled by Councilmember Dev Davis for a separate vote regarding an Oppose position on California Senate Bills 9 and 10: Preserving Local Control, with a motion for staff to bring back a presentation/evaluation to Council. Councilmember Sylvia Arenas provided a substitute motion, with a second by Councilmember Maya Esparza, which was accepted to bring forth analysis on these bills for a study session *and* to not explore a ballot measure prematurely. (7-4. Noes: Davis, Foley, Mahan, Liccardo.)

The balance of item 2.3 and remainder of the ROGC Minutes for August 11, 2021 were accepted. (11-0.)

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.

Councilmember Dev Davis offered an overview of discussion held last week at the Federated Pension Board regarding pension obligation bonds.

2.7 21-2095 Settlement of Faz v. City of San José.

Approve a settlement in the case of Faz v. City of San José in the amount of \$400,000, and authorize the City Attorney to execute a Settlement Agreement.

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

Action: The Settlement of Faz v. City of San José was approved. (11-0.)

Adoption of an Ordinance Ratifying Final Expenditures in Various Appropriations for 2020-2021 and Adoption of the Associated Appropriation Ordinance and Funding Sources Resolution Amendments in 2020-2021.

(a) Adopt an ordinance ratifying final 2020-2021 expenditures in various appropriations as detailed in the report to Council.

(b) Adopt the following 2020-2021 Appropriation Ordinance and Funding Sources Resolution amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Central Fund:

- (1) Increase the Construction and Conveyance Tax estimate by \$8,402,134;
- (2) Increase the Needs-Based Allocation Transfer to District 1 by \$697,964;
- (3) Increase the Needs-Based Allocation Transfer to District 2 by \$317,548;
- (4) Increase the Needs-Based Allocation Transfer to District 3 by \$288,942;
- (5) Increase the Needs-Based Allocation Transfer to District 4 by \$236,387;
- (6) Increase the Needs-Based Allocation Transfer to District 5 by \$731,115;
- (7) Increase the Needs-Based Allocation Transfer to District 6 by \$657,715;
- (8) Increase the Needs-Based Allocation Transfer to District 7 by \$649,290;
- (9) Increase the Needs-Based Allocation Transfer to District 8 by \$463,018;
- (10) Increase the Needs-Based Allocation Transfer to District 9 by \$505,483;
- (11) Increase the Needs-Based Allocation Transfer to District 10 by \$212,549;
- (12) Increase the Transfer to the Parks City-Wide Construction and Conveyance Tax Fund appropriation by \$2,381,503; and
- (13) Increase the Transfer to the General Fund - Parks Eligible Maintenance Costs appropriation by \$1,260,620.

(c) Adopt the following 2020-2021 Appropriation Ordinance *and Funding Sources Resolution amendments* in the Water Utility Fund:

- (1) Increase the Non-Personal/Equipment appropriation to the Environmental Services Department by \$942,422;
- (2) Increase the Fees, Rates, and Charges estimate by \$549,628; and
- (3) Decrease the Unrestricted Ending Fund Balance by \$392,794.

(d) Adopt the following 2020-2021 Appropriation Ordinance *and Funding Sources Resolution amendments* in the General Fund:

- (1) Increase the Personal Services appropriation to the Fire Department by \$648,168;
- (2) Decrease the Personal Services appropriation to the Information Technology Department by \$648,168;
- (3) Increase the Workers' Compensation Claims - Fire appropriation by \$99,093;
- (4) Decrease the Workers' Compensation Claims - Police appropriation by \$99,093;
- (5) Increase the Personal Services appropriation to the Independent Police Auditor by \$41,498;
- (6) Decrease the Personal Services appropriation to the Transportation Department by \$41,498;
- (7) Increase the Workers' Compensation Claims - PRNS appropriation by \$17,924;
- (8) Decrease the Workers' Compensation Claims - Other Departments appropriation by \$17,924;
- (9) Increase the PEG - CreaTV appropriation by \$5,771; and

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2.8 (Cont'd.)

(10) Decrease the City Dues/Memberships appropriation by \$5,771.

(e) Adopt the following 2020-2021 Appropriation Ordinance and Funding Sources Resolution amendments in the 1943 Gas Tax Maintenance and Construction Fund:

(1) Increase the Gas Tax estimate by \$752,178; and

(2) Increase the Transfer to the General Fund for Street Maintenance by \$752,178.

(f) Adopt the following 2020-2021 Appropriation Ordinance and Funding Sources Resolution amendments in the 1990 Gas Tax Maintenance and Construction Fund:

(1) Increase the Gas Tax estimate by \$218,068; and

(2) Increase the Transfer to the General Fund for Street Maintenance by \$218,068.

(g) Adopt the following 2020-2021 Appropriation Ordinance *and Funding Sources Resolution* amendments in the South Bay Water Recycling Operating Fund:

(1) Increase the SCVWD - Advanced Water Treatment appropriation by \$196,433;

(2) Increase the Fees, Rates, and Charges estimate by \$162,433 and

(3) Decrease the Non-Personal/Equipment appropriation to the Environmental Services Department by \$34,000.

(h) Adopt the following 2020-2021 Appropriation Ordinance and Funding Sources Resolution amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Maintenance Yards Purposes:

(1) Increase the Construction and Conveyance Tax estimate by \$23,637; and

(2) Increase the Transfer to the General Fund - Park Yards Operating and Maintenance Expenses appropriation by \$23,637.

(i) Adopt the following 2020-2021 Appropriation Ordinance amendments in the Housing Trust Fund:

(1) Increase the Overhead appropriation by \$1,554; and

(2) Decrease the Unrestricted Ending Fund Balance by \$1,554.

(j) Adopt the following 2020-2021 Appropriation Ordinance amendments in the Sewer Service and Use Charge Fund:

(1) Increase the Workers' Compensation Claims appropriation to the Human Resources Department by \$558; and

(2) Decrease the Unrestricted Ending Fund Balance by \$558.

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)

Action: (a) **Ordinance No. 30662** ratifying final 2020-2021 expenditures; (b) Appropriation **Ordinance No. 30664** and Funding Sources **Resolution No. 80230**; (c) Appropriation **Ordinance No. 30665** and Funding Sources **Resolution No. 80241**; (d) Appropriation **Ordinance No. 30666** and Funding Sources **Resolution No. 80242**; (e) Appropriation **Ordinance No. 30667** and Funding Sources **Resolution No. 80231**; (f) Appropriation **Ordinance No. 30668** and Funding Sources **Resolution No. 80232**; (g) Appropriation **Ordinance No. 30669** and Funding Sources **Resolution No. 80243**; (h) Appropriation **Ordinance No. 30670** and Funding Sources **Resolution No. 80233**; (i) Appropriation **Ordinance No. 30671**; (j) Appropriation **Ordinance No. 30672** were adopted. (11-0.)

2.9 21-2096

Conditional Summary Vacation, Declaration of Surplus, and Sale of a Portion of North Almaden Boulevard.

(a) Adopt a resolution:

(1) Approving the report of the Director of Public Works setting forth the facts justifying the conditional summary vacation of an approximately 1,381 square foot portion of North Almaden Boulevard located northeast of the North Almaden Boulevard and East Santa Clara Street intersection (“Subject Property”);

(2) Conditionally vacating the Subject Property, which after the satisfaction of the condition, will be superseded by relocation;

(3) After satisfaction of the condition, directing the City Clerk to record a certified copy of the resolution of vacation with the Office of the Recorder, County of Santa Clara; and

(4) Declaring the Subject Property “exempt surplus land” to the needs of the City.

(b) Adopt a resolution authorizing the City Manager, or their designee, to negotiate and execute:

(1) Purchase and Sale Agreement with the adjacent property owners Kenneth S. Tersini and the Kenneth S. Tersini Living Trust for the sale of approximately 674 square feet of conditionally vacated City-owned “exempt surplus property” on a portion of Almaden Boulevard, between N. Almaden Boulevard and W. Santa Clara Street, in accordance with Cal Gov. §54221(f)(1)(B) and San José Municipal Code §4.20.070(A), in exchange for the conditionally vacated 674 square feet and Assessor’s Parcel Number 259-35-055 being voluntarily annexed to the Convention Center Facilities District;

(2) Purchase and Sale Agreement with adjacent property owner Bit Holdings Sixty-Eight, Inc. for the sale of approximately 707 square feet of conditionally vacated City-owned “exempt surplus property” on a portion of Almaden Boulevard, between N. Almaden Boulevard and W. Santa Clara Street, in accordance with to Cal Gov. §54221(f)(1)(B) and San José Municipal Code §4.20.070 in the amount of \$1; and

(3) All other documents necessary to complete the transactions.

CEQA: Supplemental Environmental Impact Report for the Almaden Corner Hotel Project, H18-038. Council District 3. (Economic Development and Cultural Affairs/Public Works)

[Deferred from 8/31/2021 - Item 2.8 (21-1886); 9/14/2021 - Item 2.10 (21-1978) and 9/21/2021 - Item 2.12 (21-2045)]

Action: Deferred per Orders of the Day.

2.10 21-2098 Amendment to the Agreement for Legal Services Between the City of San José and Matteoni, O’Laughlin and Hechtman, APC.

Adopt a resolution authorizing the City Attorney to negotiate and execute a First Amendment to the Agreement for Legal Services between the City of San José and Matteoni, O’Laughlin & Hechtman, APC to increase the maximum compensation by \$75,000 for a total contract amount not to exceed \$395,000, and extend the term of the agreement through December 31, 2022.

CEQA: Environmental Impact Report for CityView Plaza Project, File No. H19-016. Council District 3. (City Attorney)

Action: **Resolution No. 80234** amending an Agreement for Legal Services was adopted. (11-0.)

2.11 21-2099 Permanent Trail Easement Agreement Between the City of San José and Brookdale Living Communities of California, LLC.

Adopt a resolution authorizing the City Manager, or her designee, to execute an Easement Agreement with Brookdale Living Communities of California, LLC, and all documents necessary to acquire a 412 square foot trail easement, and a 1,248 square foot temporary construction easement to support construction of the Guadalupe River Trail, for a price of \$0.

CEQA: Mitigated Negative Declaration for the Guadalupe River Trail Project and addenda thereto, File Nos. PP03-092 and PP05-172. Council District 9. (Economic Development and Cultural Affairs)

Action: **Resolution No. 80235** regarding execution of an Easement Agreement was adopted. (11-0.)

2.12 21-2100 Permanent Sidewalk Easement Between the City of San José and Center for Training and Careers, Inc.

Adopt a resolution authorizing the City Manager, or her designee, to execute an Easement Agreement with Center for Training & Careers, Inc, and all documents necessary to acquire a permanent sidewalk easement for modification and maintenance of an existing traffic signal and pedestrian access ramp, for a price of \$0.

CEQA: Categorically Exempt, File No. PP18-029, CEQA Guidelines Section 15301, Existing Facilities. Council District 7. (Economic Development and Cultural Affairs)

Action: **Resolution No. 80236** regarding execution of an Easement Agreement was adopted. (11-0.)

2.13 21-2149

Hewlett Packard Ground Lease Termination. - DEFERRAL

(a) Adopt a resolution authorizing the City Manager or designee to negotiate and execute a Third Amendment to the Ground Lease of Parcel W-9 Agreement with Hewlett Packard Enterprise Company to terminate the agreement early, effective upon execution by the City with a payment to Hewlett Packard Enterprise Company of \$1,500,000.

(b) Adopt the following 2021-2022 Appropriation Ordinance Amendments in the Airport Renewal and Replacement Fund:

(1) Establish the Hewlett Packard Enterprise Lease Buyout appropriation to the Airport Department in the amount of \$1,500,000; and

(2) Decrease the Ending Fund Balance in the amount of \$1,500,000. CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. (Airport/City Manager)

[Deferred from 9/21/2021 - Item 2.10 (21-2043)]

Deferred to 10/5/2021 per Administration.

2.14 21-2156

Implementation of AB 361 to Allow Teleconferenced Public Meetings to Continue Beyond September 30, 2021.

Adopt a resolution of the Council of the City of San José amending the City's Consolidated Open Government and Ethics Resolution No. 77135 to incorporate the Governor's proclaimed COVID state of emergency to allow City legislative bodies to hold public meetings solely by teleconference or otherwise electronically pursuant to AB 361; to modify agenda noticing and document posting; and to incorporate all future Governor's Executive Orders regarding the Brown Act into the City's open government procedures, as deemed appropriate by the City Clerk and City Manager, without further Council action.

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

[Rules Committee referral 9/22/2021 - Item A.1.a]

Action: **Resolution No. 80237** regarding Implementation of AB 361 to Allow Teleconferenced Public Meetings to Continue Beyond September 30, 2021 was adopted. (11-0.)

2.15 21-2163 Approval of Two Neighborhood Day Events Sponsored by Council District 10 as City Council Sponsored Special Events to Expend City Funds and Accept Donations of Materials and Services for the Events.

As recommended by the Rules and Open Government Committee on September 22, 2021:

- (a) Retroactive approval of the Orchard Creek Neighbor Day held on September 18, 2021 as a City Council sponsored Special Event and approve the expenditure of funds;
- (b) Approval of the Peppertree Neighbor Day scheduled on Saturday, October 2, 2021 as a City Council sponsored Special Event and approve the expenditure of funds; and
- (c) 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. (Mahan)
[Rules Committee referral 9/22/2021 - Item G.1.a]

Action: City Sponsored Special Events were approved. (11-0.)

2.16 21-2170 Retroactive Approval of Laneview Dumpster Day Sponsored by 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 September 22, 2021:

- (a) Retroactively approve the Laneview Dumpster Day scheduled on September 25, 2021 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. (Cohen)
[Rules Committee referral 9/22/2021 - Item G.1.b]

Action: City Sponsored Special Events were retroactively approved. (11-0.)

2.17 21-2171 Request for Travel for Mayor Liccardo.

Authorize travel for Mayor Liccardo to Dayton, Ohio from September 30 – October 2, 2021 to attend the United States Conference of Mayors (USCM) Leadership Meeting. Source of Funds: Mayor/Council Travel Budget.

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

Action: Travel authorization for Mayor Sam Liccardo was approved. (11-0.)

3. STRATEGIC SUPPORT

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

- 21-2178** (a) City Manager’s COVID-19 Update (Verbal Report).
(b) City Manager’s Report on Other City Matters (Verbal Report).

Staff provided the COVID-19 Update.

3.2 Labor Negotiations Update.

None provided.

3.3 21-2104 Code Enforcement Management Controls Audit Report. - Deferred

As recommended by the Neighborhood Services and Education Committee on September 9, 2021, accept a report on the Code Enforcement Management Controls 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)

[Neighborhood Services and Education Committee referral 9/9/2021 - Item (d)1]

Deferred to 10/5/2021 per Administration

3.4 21-2105 Status of Open Audit Recommendations as of June 30, 2021.

Accept the Status of Open Audit recommendations as of June 30, 2021.

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

Action: The Status of Open Audit recommendations was accepted. (10-0-1. Absent: Davis.)

3.5 21-2106 Adoption of Resolution Apologizing to Chinese Immigrants and their Descendants.

Adopt a resolution apologizing to Chinese immigrants and their descendants for the role of the City of San José in systematic and institutional racism, acknowledging acts of fundamental injustice, recognizing the contributions and resilience of the Chinese community and resolving to rectify the lingering consequences of past discriminatory policies.

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

Action: **Resolution No. 80238** regarding apologizing to Chinese Immigrants and their Descendants was adopted. (11-0.)

3.6 21-2107 Actions Related to the 9821 - SJC Guadalupe Gardens Fencing Project and Temporary Closure of Spring Street and Asbury Streets.

(a) Adopt a resolution delegating authority to the Director of Public Works to award the construction contract for the 9821 - SJC Guadalupe Gardens Fencing Project, pursuant to City Charter Section 1217(h), in an amount not greater than \$1,500,000.

(b) Conduct a public hearing on the proposed temporary closure of Spring Street between Hedding Street and Asbury Street, and Asbury Street between Walnut Street and Irene Street, and Irene Street between Taylor Street and Asbury Street.

(c) Adopt a resolution to temporarily close Spring Street between Hedding Street and Asbury Street, and Asbury Street between Walnut Street and Irene Street, and Irene Street between Taylor Street and Asbury Street.

(d) Adopt the following 2021-2022 Appropriation Ordinance Amendments in the Airport Renewal and Replacement Fund:

(1) Decrease the Ending Fund Balance in the amount of \$700,000; and

(2) Increase the Guadalupe Gardens Fencing appropriation in the amount of \$700,000.

CEQA: Categorical Exemption, CEQA guidelines Section 15303(e) New Construction or Conversion of Small Structures, File No. ER21-005.

(Airport/Parks, Recreation and Neighborhood Services/Public Works/Transportation/City Manager)

Action: A public hearing was held, with this item deferred to the October 19 Council Meeting to allow adequate time to explore options, for outreach to the FAA, with the City Manager's Office to return with a supplemental memorandum, and with consideration of installing temporary K-rail boundaries. (11-0.)

3.7 21-2108 Temporary Expansion of Business Tax Financial Hardship Exemptions.

Approve an ordinance amending Chapter 4.76 of Title 4 of the San José Municipal Code to amend Section 4.76.345.6 to temporarily expand and extend, from October 1, 2021 through June 30, 2022, eligibility for the existing financial hardship exemptions for low-revenue generating small businesses and small business owners with limited household incomes to include all persons engaged in business in the City who satisfy certain financial hardship requirements.

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. (Finance)

Action: **Ordinance No. 30673** regarding Temporary Expansion of Business Tax Financial Hardship Exemptions was passed for publication, with staff directed to return to PSFSS with updates. (11-0.)

5. TRANSPORTATION & AVIATION SERVICES

5.1 21-2109 Construction Crane Fee Program Study Findings and Recommendation.

(a) Approve an ordinance requiring developers whose means or methods of construction exceed the City's Downtown Building Height Limits to indemnify the City for all costs or losses arising out of developers construction means or methods, to make a deposit of estimated costs or losses prior to the City issuing a building permit, and to reconcile a percentage of costs associated with actual Air Carrier denied passenger boardings, prior to the City issuing a temporary or permanent certificate of occupancy.

(b) Adopt a resolution to implement a Landing Fee Reduction Program for air carriers that incur passenger weight impacts caused by a developer's construction means and methods in the "Construction Crane Guidance Area" and to grant the Director of Aviation authority to waive landing fees up to 75% of the total Air Carrier denied boarding costs due to construction cranes and to set the estimated crane fee deposit percentage up to 50% and fee cap on an annual basis.

CEQA: Not a Project, PP17-008, General Procedure and Policy Making resulting in no physical changes to the environment. Council Districts 3 and 6. (Airport)

Action: (a) **Ordinance No. 30674** regarding the Construction Crane Fee Program Study was passed for publication; and (b) **Resolution No. 80239** regarding implementation of a Landing Fee Reduction Program for air carriers was adopted, approving the airport staff's recommendation including exempting pipeline projects that have already applied for building permits and begin construction within 12 months of today or within 6 months of permit issuance. (11-0.)

7. NEIGHBORHOOD SERVICES

7.1 21-2110 Amendment to Chapter 6.87, Tobacco Retail License of Title 6, Business Licenses and Regulations, of the San José Municipal Code in Alignment with City Council Policy Priority #12: Flavored Tobacco and E-Cigarettes/Protecting Our Youth from the E-Cigarette Epidemic.

Approve an ordinance amending Chapter 6.87, Tobacco Retail License, of Title 6, Business Licenses and Regulations, of the San José Municipal Code to prohibit the sale of flavored tobacco and e-cigarettes (or other flavored tobacco products), prevent further overconcentration of tobacco retail businesses, and reduce youth access to tobacco products, and implement City Council Policy Priority #12: Flavored Tobacco and E-Cigarettes, Items 1, 2, and 3 / Protecting our Youth from the E-Cigarette Epidemic.

CEQA: Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Information Memos that involve no approvals of any City action. (Planning, Building and Code Enforcement)
[Deferred from 6/15/2021 Item 7.1 (21-1402)]

7.1 (Cont'd.)

Action: **Ordinance No. 30675** amending Chapter 6.87, Tobacco Retail License, of Title 6, Business Licenses and Regulations, of the San José Municipal Code was passed for publication, including the Joint memorandum from Mayor Sam Liccardo, Vice Mayor Chappie Jones and Councilmembers Foley, Carrasco and Cohen dated September 24, 2021, to:

Approve staff's recommendation with the following amendments:

1. Include language in the ordinance clarifying enforcement will be aimed at tobacco retailers.
 2. Direct Code Enforcement to continue to perform a minimum of one annual compliance check per year.
 3. Direct the Administration to search and apply for grants at the Federal, State, or County levels of government and any private or philanthropic organizations that might allow for a more robust enforcement program, including funding for decoy enforcement programs.
 4. Direct staff to return to the Neighborhood Services and Education Committee within 12 months after full implementation analyzing the ordinance's effects on tobacco retail licenses throughout San José with a special focus on tobacco retail licenses that are within 1,000 feet of a youth-sensitive receptor.
 5. Direct staff to propose amendments to the fine schedule to increase the penalty for violations of this ordinance.
 6. Direct staff to report back to Council through an information memorandum or informal presentation regarding efforts to cross-train inspectors to enable a single inspector to provide multiple inspections (e.g., alcohol, tobacco, and code) for a single business, and thereby improve efficiency of code operations. Fees should be accordingly adjusted to reflect partial cost recovery proportionate to the cost of inspection of each subject.
- (11-0.)

7.2 21-2111 **Amendment to Chapter 9.44, Regulation of Smoking, of Title 9, Health and Safety, of the San José Municipal Code in Alignment with City Council Policy Priority #18: Smoke-Free Housing.**

Approve an ordinance amending Chapter 9.44, Regulation of Smoking, of Title 9, Health and Safety, of the San José Municipal Code to prohibit smoking inside multifamily housing units, reduce the exposure to secondhand smoke in alignment with and completion of City Council Policy Priority #18: Smoke Free Housing.

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

Deferred per Orders of the Day.

8. COMMUNITY & ECONOMIC DEVELOPMENT

8.1 21-2112 Appropriation of Year One Award for the Permanent Local Housing Allocation Program Funding from the California Department of Housing and Community Development.

(a) Approve an ordinance amending Chapter 4.80 of Title 4 of the San José Municipal Code to add a new part to establish the Building Homes and Jobs Act Fund, with an effective date of July 1, 2021.

(b) Adopt the following Appropriation Ordinance and Funding Sources Resolution Amendments in the Building Homes and Jobs Act Fund:

(1) Establish an estimate for Revenue from State of California in the amount of \$4,348,646;

(2) Establish a Housing Shelter appropriation to the Housing Department in the amount of \$4,248,646; and

(3) Establish a Personal Services appropriation to the Housing Department in the amount of \$100,000.

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. (Housing/City Manager)

Action: (a) **Ordinance No. 30676** amending Chapter 4.80 of Title 4 of the San José Municipal Code to add a new part to establish the Building Homes and Jobs Act Fund was passed for publication; and (b) Appropriation **Ordinance No. 30677** and Funding Sources **Resolution No. 80240** were adopted. (11-0.)

8.2 21-2117 Eviction Moratorium.

Accept the staff report on the status of the State's Eviction Moratorium under Assembly Bill 832 and the Housing Department's efforts to provide education and support to at-risk communities in the city of San José.

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

Action: The Eviction Moratorium staff report was accepted, including:

Councilmember Maya Esparza's memorandum dated September 27, 2021, to:

1. Direct Staff to explore opening a third permanent Rental Assistance/Eviction Help Center office on the East Side, including partnering with the East Side Union High School District, Alum Rock Union School District, and other school districts serving the ZIP Codes and communities that have been hardest hit by both the public health and economic effects of the pandemic, such as 95122, 95127, 95116, and 95111.
2. Direct staff to coordinate with Councilmembers on outreach and planning for Rental Assistance/Eviction Help Center pop-ups throughout our City in communities of high need.

(Item Continued on the Next Page)

8.2 (Cont'd.)

Including Councilmember David Cohen's memorandum dated September 28, 2021, with the following additional recommendations:

1. Direct staff to report back to Council monthly through information memorandum on its progress in bringing targeted rental assistance to residents who are most at risk of being evicted or displaced after the expiration of the eviction moratorium.
2. Direct staff to develop a workplan establishing a Tenant Right to Legal Counsel program for low-income residents facing eviction, as proposed in my FY2021-22 Budget Document #14 and return to the Neighborhood Services and Education Committee with recommendations for consideration, including options for ongoing state and federal funding sources for the program.

Also including Councilmember Sylvia Arenas' memorandum dated September 28, 2021:

- 1) Direct the City Manager to develop a "No Wrong Door" referral system for the City's referrals for, but not limited to, the City's Eviction Help Center, recreational programming and scholarships, and digital literacy services to support children and families.
- 2) Direct City Manager to use the City's Eviction Help Center as a means to pre-qualify households for scholarship eligibility for PRNS recreational programming including, but not limited to, the ROCK program, Recreational Preschool, and San Jose Clean Energy discount programs.
- 3) Direct City Manager to work with California Emerging Technologies Fund (CETF) to align grantees' efforts with office hours at the Eviction Help center to offer technical assistance, program referrals, and resources.

Additionally, including 1(a) from Councilmembers Peralez and Arenas' memorandum dated September 24, 2021, to:

1. Direct staff to develop a workplan establishing a Tenant Right to Counsel program for all low-income residents and residents experiencing financial hardships facing eviction due to, but not limited to, failure to pay rent because of COVID-19, and return to Council with recommendations for consideration.
 - a. Provide targeted culturally and linguistically competent outreach and counsel (or interpretation services) for the Tenant Right to Counsel program, including but not limited to Spanish and Vietnamese, to communities disproportionately impacted by COVID-19.
(10-0-1. Absent: Carrasco.)

9. REDEVELOPMENT – SUCCESSOR AGENCY

10. LAND USE

10.1 Land Use on Consent Calendar

No Land Use items on Consent Calendar.

10 Land Use - Regular Agenda

None provided.

OPEN FORUM

- Caller '5140' expressed dissatisfaction with the Council's performance and its decision on the flavored tobacco ban.
- Paul Soto spoke to injustice and 'brainwashing'.
- Blair Beekman urged community safety and health and good luck with the eviction moratorium and housing work plans.
- Caller '6910' brought attention to displacement of seniors and the disabled and asked 'where are our leaders?'
- Kathryn Hedges and Jeff Zell noted that Item 7.2 Regulation of Smoking: Smoke Free Housing to prohibit smoking inside multifamily housing units had been deferred and the need to address the dangers of exposure to secondhand smoke.
- Alma Goldchain urged housing the homeless in livable conditions.
- Addressing the 'powder keg' danger and environmental impacts, dumping and toxic chemical pollutants at 71 Vista Montaña, complaining that the City is unresponsive and ignoring complaints and citing a grossly mismanaged situation, were Krishna Panikkasseril, Speaker '5458', Thomas Doherty, Ofelia Hernandez and Sheena.

ADJOURNMENT

The Council of the City of San José was adjourned at 11:29 a.m.