



## MINUTES OF THE CITY COUNCIL

**SAN JOSÉ, CALIFORNIA**

**TUESDAY, OCTOBER 17, 2017**

The Council of the City of San José convened in Regular Session at 9:00 a.m. in the Council Chambers at City Hall.

Present: Councilmembers - Arenas, Carrasco, Davis, Diep, Jimenez, Jones, Khamis, Nguyen, Peralez, Rocha; Liccardo.

Absent: Councilmembers - All Present.

### STRATEGIC SUPPORT SERVICES

#### 3.2 Accept Labor Negotiations Update.

There was no report.

### CLOSED SESSION

Upon motion unanimously adopted, Council recessed at 9:05 a.m. to a Closed Session in Room W133; (A) re: Public Employment/Public Employee Appointment Pursuant to Government Code Section 54957; Department or Agency: Office of Community Energy; Title: Director of Community Energy. (B) to confer with Legal Counsel pursuant to Government Code Section 54956.9(d)(1) with respect to existing litigation: (1) In re: Claim of Cali-Arioto, LLC et al. v. City of San José, et al.; Names Of Partie(s) Involved: Cali-Arioto, LLC, a California limited liability company and Pule Home Corporation a Michigan Corporation; City of San José, City Council of the City of San José and Does 1-50, inclusive. Court: Superior Court of California, County of San Mateo, Unlimited Jurisdiction; Case No. 17-CIV-03887; Amount of Money or Other Relief Sought: Petition for Writ of Mandate; (2) Hung Lam v. City of San José, et al.; Names Of Partie(s) Involved: Hung Lam, individually, through his next friend Kathy Lam; City of San José, a municipal corporation; Larry Esquivel, in his capacity of Chief of Police for the City of San José; Officer Dondi West, individually and in her official position; Court: United

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.

## CLOSED SESSION (Cont'd.)

States District Court, Northern District, San José Division; US Court of Appeals, Ninth Circuit, San José Division; Case No. 14-CV-00877 PSG; 16-16052; (3) City of San José v. City of Santa Clara; Names Of Partie(s) Involved: City of San José, City of Santa Clara; Court: Superior Court of California, County of San Mateo; Case No.: 16-CIV-02303; Amount of Money or Other Relief Sought: Petition for Writ of Mandate and Complaint for Declaratory Relief; (4) City of Santa Clara v. City of San José, et al.; Names Of Partie(s) Involved: City of Santa Clara, City of San José, City of San José City Council, Does I through X; Federal Realty and Investment Trust, and Does 1-20; Court: Superior Court of California, County of San Mateo; Case No.: 17-CIV-00547; Amount of Money or Other Relief Sought: Petition for Writ of Mandate and Complaint for Declaratory Relief; (5) Federated City Employees' Retirement System v. City of San José, Norberto Duenas, in his Official Capacity as the City Manager of the City of San José; Names Of Partie(s) Involved: Federated City Employees' Retirement System v. City of San José, Norberto Duenas, in his Official Capacity as the City Manager of the City of San José, and Does 1-50; Court: Superior Court of California, County of Santa Clara; Case No: 16-CV-302829; Amount of Money or Other Relief Sought: Writ of Mandate; (6) San José Retired Employees' Association, et al. v. City, et al.; Names Of Partie(s) Involved: San José Retired Employees Association, Howard E. Fleming, Donald S. Macrae, Frances J. Olson, Gary J. Richert and Rosalinda Clara, Sixth District Court of Appeal; Case No.: 1-12-CV-23360; H040979; H042074; Amount of Money or Other Relief Sought: Verified Petition for Writ of Mandate and Declaratory Relief; (7) San José Retired Employees Association, et al. v. City of San José, et al.; Names Of Partie(s) Involved: San José Retired Employees Association, Kirk Pennington, David Armstrong, Donna Jewett, Dorothy McGinley, City of San José, the Board of Administration for the Federated City Employees Retirement Plan; Court: Superior Court of California, County of Santa Clara; Case No: 1-14-CV-268085; Amount of Money or Other Relief Sought: Change to City medical plan; (C) to Confer with Real Property Designated Representatives Pursuant to Government Code Section 54956.8: Property Street Address, Parcel Number, or other Unique Reference of Property: 255 South Montgomery Street (APN 261-37-025), 8 South Montgomery Street (APN 259-38-130), 102 South Montgomery Street (APN 259-48-012), 510 West San Fernando Street (APN 259-48-011, 259-48-013), 150 South Montgomery Street (APN 259-48-059), 105 South Montgomery Street (APN 261-35-003, 261-35-006, 261-35-010), 645 Park Avenue (APN 261-35-014), 525 West Santa Clara Street/566 West Julian Street (APN 259-28-031, 259-28-041, 529-28-043, 259-28-044) West San Carlos Street (261-37-030) No Address (261-37-028); Negotiating Parties: Nanci Klein for the City of San José and Jay Bechtel for Google; 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; (2) Property Street Address, Parcel Number, or other Unique Reference of Property: 200 Edenvale Avenue, San José, California; Negotiating Parties: Nanci Klein for the City of San José and Kevin Morgan for JMA Ventures, LLC, Nik Bhakta for Chlak Mitra Group, Will Cherashore for Chelsea Hospitality Partners, Taylor Jacobs for Newcrest Image, Cole Strombom for Greenvalley, Corp., G. Bernard Rossenson, Long Beach Properties, LLC; 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; (D) to Confer with Labor Negotiator Pursuant

## CLOSED SESSION (Cont'd.)

to Government Code Section 54957.6: City Negotiator: Jennifer Schembri, Director of Employee Relations; Employee Organizations: (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and ABMEI. (2) Association of Engineers & Architects (AEA); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AEA. (3) Association of Maintenance Supervisory Personnel (AMSP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and AMSP. (4) City Association of Management Personnel Agreement (CAMP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CAMP. (5) Confidential Employees' Organization, AFSCME Local 101 (CEO); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and CEO; (6) International Association of Firefighters, Local 230 (IAFF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Association of Firefighters. (7) International Brotherhood of Electrical Workers (IBEW); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and IBEW; (8) Municipal Employees' Federation, AFSCME Local 101, AFL-CIO (MEF); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and MEF; (9) International Union of Operating Engineers, Local No. 3 (OE#3); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc.; Name of Existing Contract or MOA: Memorandum of Agreement between City of San José and International Union of Operating Engineers, Local No. 3. (10) San José Police Officers' Association (SJPOA); Nature of Negotiations: Salaries, Hours, Working Conditions, etc.; Name of Existing Wages Contract or MOA: Memorandum of Agreement between City of San José and San José Police Officers' Association. (11) Association of Legal Professionals of San José (ALP); Nature of Negotiations: Wages/Salaries, Hours, Working Conditions, etc; Web: <http://www.sanjoseca.gov/?nid=186>; Telephone for Employee Relations: 408-535-8150.

By unanimous consent, Council recessed from the Closed Session at 11:50 a.m. and reconvened to Regular Session at 1:30 p.m. in the Council Chambers.

Present: Councilmembers - Arenas, Carrasco, Davis, Diep, Jimenez, Jones, Khamis, Nguyen, Peralez, Rocha; Liccardo.

Absent: Councilmembers - All Present.

## INVOCATION

Pagayananin Likas Musika performed lively traditional music of the Philippines.

## PLEDGE OF ALLEGIANCE

Mayor Sam Liccardo led the Pledge of Allegiance.

## ORDERS OF THE DAY

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

## CEREMONIAL ITEMS

- 1.1 Presentation of a proclamation declaring the month of October 2017 as "National Arts and Humanities Month" in the City of San José.  
(Carrasco)  
**Mayor Sam Liccardo and Vice Mayor Magdalena Carrasco, presented a proclamation declaring "National Arts and Humanities Month" in the City of San José.**
- 1.2 Presentation of a commendation to Mark Purdy in honor of his dedication to the Bay Area sports community and the City of San José.  
(Mayor)  
**Mayor Sam Liccardo presented a commendation to Mark Purdy in honor of his dedication to the Bay Area sports community and the City of San José.**

## CONSENT CALENDAR

Upon motion by Councilmember Chappie Jones, seconded by Councilmember Tam Nguyen and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (10-0-1. Absent: Carrasco.)

### 2.1 Approval of City Council Minutes:

**Recommendation:** (a) Regular Minutes of May 9, 2017.  
(b) Regular Minutes of May 16, 2017.  
CEQA: Not a Project, File No. PP17-009, Staff Reports, Assessments,

Documents Filed: Regular Council Meeting Minutes, dated May 9, 2017 and May 16, 2017.

Action: The Council meeting minutes were approved. (11-0.)

## 2.2 Final Adoption of Ordinances.

ORDINANCE NO. 29997 - An ordinance of the City of San José amending Section 2.08.1070 of Chapter 2.08 of Title 2 of the San José Municipal Code to update the appointment process and composition of the interview panel for nominating retired members to the Board of Administration for the Federated City Employees' Retirement System. CEQA: Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment. (City Manager)

Documents Filed: Proof of Publication of the Title of Ordinance No. 29997 executed on October 6, 2017 by the City Clerk.

Action: Ordinance No. 29997 was adopted. (10-1. Noes: Khamis.)  
(First Reading: 9-0-3. Absent: Khamis, Diep; Liccardo.)

ORDINANCE NO. 30000 - An ordinance of the Council of the City of San José dedicating as Public Right-Of-Way an approximately 10 foot wide by 833.50 foot long piece of City-owned property along the south side of Auzerais Avenue for the purpose of constructing improvements as part of the Del Monte Park Project. CEQA: Del Monte Park - Phase II Mitigated Negative Declaration (Resolution No. 77930), File No. PP16-023. Council District 6. (Public Works/Parks, Recreation and Neighborhood Services/City Manager)

Documents Filed: Proof of Publication of the Title of Ordinance No. 30000 executed on October 6, 2017 by the City Clerk.

Action: Ordinance No. 30000 was adopted. (11-0.)

ORDINANCE NO. 30007 - An ordinance of the City of San José amending various sections of Chapter 3.36 and 3.57 of Title 3 of the San José Municipal Code, to implement the terms of the Alternative Pension Reform Settlement Framework Agreement with the San José Police Officers' Association and International Association of Fire Fighters, Local 230. CEQA: Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment. (City Manager)

Documents Filed: Proof of Publication of the Title of Ordinance No. 30007 executed on October 6, 2017 by the City Clerk.

Action: Ordinance No. 30007 was adopted. (11-0.)

## **2.2 Final Adoption of Ordinances (Cont'd.)**

ORDINANCE NO. 30010 - An ordinance of the City of San José approving a Second Amendment to Development Agreement with Jackson-Taylor Partners, LLC, relative to the development of the Japantown Corporation Yard Redevelopment Project on certain real property located at 696 North Sixth Street and authorizing the City Clerk to execute the Second Amendment to the Development Agreement and cause the same to be recorded with the Santa Clara County Recorder's Office. CEQA: Determination of Consistency with the Japantown Corporation Yard Redevelopment Project Environmental Impact Report, adopted by City Council Resolution No. 74384, and addendum thereto. (Planning, Building and Code Enforcement) DA17-001 - Council District 3

Documents Filed: Proof of Publication of the Title of Ordinance No. 30010 executed on October 6, 2017 by the City Clerk.

Action: Ordinance No. 30010 was adopted. (11-0.)

## **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**

Approve the Third Amendment to the Master Agreement for Consultant Services with Moore, Iacofano Goltsman, Inc. (MIG) to increase the total not to exceed contract amount from \$1,500,000 to \$2,350,060 to allow continued strategic planning support for various Parks, Recreation and Neighborhood Services Department Capital Improvement Projects including, but not limited to, community centers, parks, trails, and other recreational facilities. CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. (Parks, Recreation and Neighborhood Services)

## 2.7 (Cont'd.)

Documents Filed: City Council Action Request from Director of Parks, Recreation and Neighborhood Services, Angel Rios, Jr., dated October 17, 2017, recommending approval of a Third Amendment to a Master Agreement.

Action: The Third Amendment to the Master Agreement for Consultant Services with Moore, Iacofano Goltsman, Inc. (MIG) to increase the total not to exceed contract amount from \$1,500,000 to \$2,350,060 to allow continued strategic planning support for various Parks, Recreation and Neighborhood Services Department Capital Improvement Projects including, but not limited to, community centers, parks, trails, and other recreational facilities, was approved. (11-0.)

## 2.8

Adopt a resolution of intention to vacate a 25-foot light and air easement located at 5159 and 5181 Brewster Avenue and set a Public Hearing on Tuesday, November 14, 2017, at 1:30 p.m. CEQA: Exempt, File No. PP17-054 & PP17-055, CEQA Guidelines Section 15305, Minor Alterations in Land Use Limitation. Council District 9. (Public Works)

Documents Filed: Memorandum from Director of Public Works, Barry Ng, dated September 25, 2017, recommending adoption of a resolution.

Action: Resolution No. 78384, entitled: "A Resolution of the Council of the City of San José Setting a Public Hearing to Consider Whether to Vacate a 25' Setback Easement Located at 5159 & 5181 Brewster Avenue", was adopted. (11-0.)

## 2.9

Approve a Master Agreement with Woodard & Curran, Inc. for master planning consultant services for the sanitary sewer system from the date of execution to December 31, 2020, in an amount not to exceed \$2,000,000. 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)

Documents Filed: Memorandum from Director of Public Works, Barry Ng, dated September 25, 2017, recommending approval of a Master Agreement.

Action: A Master Agreement with Woodard & Curran, Inc. for master planning consultant services for the sanitary sewer system from the date of execution to December 31, 2020, in an amount not to exceed \$2,000,000, was approved. (11-0.)

## 2.10

Approve an ordinance amending Chapter 2.08 of Title 2 of the San José Municipal Code to add a new Part establishing a Clean Energy Community Advisory Commission. CEQA: Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment. (City Clerk)

**2.10 (Cont'd.)**

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated October 5, 2017, recommending approval of an ordinance.

Action: Ordinance No. 30013, entitled: “A Ordinance of the Council of the City of San José Adding Part 21 to Chapter 2.08 of Title 2 of the San José Municipal Code to Establish the Clean Energy Community Advisory Commission”, was passed for publication. (11-0.)

**2.11**

As recommended by the Rules and Open Government Committee on October 4, 2017, pursuant to the City’s streamlined bill process for responding quickly to legislative proposals, re-affirm a position of support of AB 597, so that the City’s legislative representative can continue to advocate the City’s position of support for AB 597. CEQA: Not a Project, File No. PP17-010, City Organization & Administrative Activities resulting in no change to the physical environment. (City Manager)

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated October 5, 2017, recommending reaffirmation of a position of support.

Action: As recommended by the Rules and Open Government Committee on October 4, 2017, pursuant to the City’s streamlined bill process for responding quickly to legislative proposals, re-affirm a position of support of AB 597, so that the City’s legislative representative can continue to advocate the City’s position of support for AB 597. (11-0.)

**2.12**

As recommended by the Rules and Open Government Committee on October 4, 2017:

- (a) Approve the following community events sponsored by Council District 7 as City Council sponsored Special Events to expend City funds and accept donations of materials and services for the event.
  - (1) Clean Up with Tam on Saturday, October 28, 2017 at Kennedy Elementary School;
  - (2) Alma Neighborhood Halloween Family Night on Saturday, October 28, 2017 at the Alma Youth Center;
  - (3) Varoween Haunted House on Sunday, October 29, 2017 at the Vietnamese American Community Center;
  - (4) Halloween Festival on Monday, October 30, 2017 at Tully Library;
  - (5) Santee Halloween Family Night on Tuesday, October 31, 2017 at FMCI Building;
  - (6) Trunk or Treat on Tuesday, October 31, 2017 at Seven Trees Community Center;
  - (7) Rock the Block Party on Sunday, November 5, 2017 at Vieira Park;
  - (8) District 7 Neighborhood Leaders Appreciation Reception on Thursday, November 9, 2017 at Tully Library Community Room; and

**2.12 (Cont'd.)**



- (9) Traffic Safety Townhall Meeting on Thursday, November 16, 2017 at Franklin McKinley School District;
- (b) Approve and accept donations from various individuals, businesses or community groups to support these events.

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated October 5, 2017, transmitting recommendations of the Rules and Open Government Committee.

Action: The Clean Up with Tam on Saturday, October 28, 2017, the Alma Neighborhood Halloween Family Night on Saturday, October 28, 2017, the Varoween Haunted House on Sunday, October 29, 2017, the Halloween Festival on Monday, October 30, 2017, the Santee Halloween Family Night on Tuesday, October 31, 2017, the Trunk or Treat on Tuesday, October 31, 2017 at Seven Trees Community Center, the Rock the Block Party on Sunday, November 5, 2017, the District 7 Neighborhood Leaders Appreciation Reception on Thursday, November 9, 2017, and the Traffic Safety Townhall Meeting on Thursday, November 16, 2017 as City Council Sponsored Special Events, and expenditure of funds and authorization to accept donations from various individuals, businesses or community groups to support the events, were approved. (11-0.)

**2.13**

As recommended by the Rules and Open Government Committee on October 4, 2017:

- (a) Retroactively approve the following community events sponsored by Council District 5 as City Council sponsored Special Events to expend City funds and accept donations of materials and services for the event.
  - (1) Arbuckle Public Safety Meeting held on September 27, 2017;
  - (2) Capitol Park Dumpster Day held on September 30, 2017;
  - (3) Light Up City Hall Event scheduled on October 2, 2017; and
  - (4) Mid-Autumn Moon Festival scheduled on October 6, 2017.
- (b) Approve East San José Halloween Safety Day scheduled in various areas on October 31, 2017 as a City Council sponsored Special Event and approve the expenditure of funds.
- (c) Approve and accept donations from various individuals, businesses or community groups to support these events.

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated October 5, 2017, transmitting recommendations of the Rules and Open Government Committee.

Action: The (1) Arbuckle Public Safety Meeting held on September 27, 2017; (2) Capitol Park Dumpster Day held on September 30, 2017; (3) Light Up City Hall Event scheduled on October 2, 2017; and (4) Mid-Autumn Moon Festival scheduled on October 6, 2017. And Approve East San José Halloween Safety Day scheduled in various areas on October 31, 2017 as a City Council sponsored Special Events and retroactive approval of the expenditure of funds as City Council Sponsored Special Events, and expenditure of funds and authorization to accept donations from various individuals, businesses or community groups to support the events, were retroactively approved. (11-0.)

**2.14**

As recommended by the Rules and Open Government Committee on October 11, 2017:

(a) Retroactively approve the Independence High School Beautification Day held on October 14, 2017 as a City Council sponsored Special Event and approve the expenditure of funds.

(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. (Diep)

[Rules Committee referral 10/11/17 - Item G.1.a.]

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated October 12, 2017, transmitting recommendations of the Rules and Open Government Committee.

Action: The Retroactive approval of the Independence High School Beautification Day held on October 14, 2017 as a City Council sponsored Special event, and expenditure of funds and authorization to accept donations from various individuals, businesses or community groups to support the event, was retroactively approved. (11-0.)

**2.15**

As recommended by the Rules and Open Government Committee on October 11, 2017:

(a) Retroactively approve the Silicon Valley Organization District 4 Merchant Walk held on October 4, 2017 as a City Council sponsored Special Event and approve the expenditure of funds.

(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. (Diep)

[Rules Committee referral 10/11/17 - Item G.1.b.]

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated October 12, 2017, transmitting recommendations of the Rules and Open Government Committee.

Action: The Retroactive approval of the Silicon Valley Organization District 4 Merchant Walk held on October 4, 2017, as a City Council sponsored Special event, and expenditure of funds and authorization to accept donations from various individuals, businesses or community groups to support the event, was retroactively approved. (11-0.)

**2.16**

As recommended by the Rules and Open Government Committee on October 11, 2017:

(a) Approve the POW! WOW! San José Flag Raising Ceremony scheduled on October 23, 2017 as a City Council sponsored Special Event and approve the expenditure of funds.

(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)

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated October 12, 2017, transmitting recommendations of the Rules and Open Government Committee.

## 2.16 (Cont'd.)

Action: The approval of the POW! WOW! San José Flag Raising Ceremony scheduled on October 23, 2017 as a City Council sponsored Special event, and expenditure of funds and authorization to accept donations from various individuals, businesses or community groups to support the event, was approved. (11-0.)

## 2.17

As recommended by the Rules and Open Government Committee on October 11, 2017:

(a) Approve the Informational Briefing on the City of San José My Brother's Keeper (MBK) Strategy-Education Initiative scheduled for Wednesday, November 1, 2017 as a City Council sponsored Special Event and approve the expenditure of funds.

(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)

[Rules Committee referral 10/11/17 - Item G.1.d.]

Documents Filed: Memorandum from City Clerk Toni J. Taber, CMC, dated October 12, 2017, transmitting recommendations of the Rules and Open Government Committee.

Action: The approval of the Informational Briefing on the City of San José My Brother's Keeper (MBK) Strategy-Education Initiative scheduled for Wednesday, November 1, 2017, as a City Council sponsored Special event, and expenditure of funds and authorization to accept donations from various individuals, businesses or community groups to support the event, was approved. (11-0.)

## END OF CONSENT CALENDAR

## STRATEGIC SUPPORT SERVICES

### 3.3

(a) Accept the 2016-2017 City Manager's Annual Report of the Finances of the City of San José in compliance with City Charter Section 701 (F).

(b) Adopt Appropriation Ordinance and Funding Sources Resolution amendments in various operating and capital funds to implement the 2016-2017 Annual Report recommendations, including appropriate technical adjustments, as detailed in Section IV of the Annual Report (Recommended Budget Adjustments and Clean-Up/Rebudget Actions).

(c) Approve the addition of 1.0 Planner IV, limit-dated through February 28, 2019, in the Planning, Building and Code Enforcement Department.

### 3.3 (Cont'd.)

CEQA: Not a Project, File No. PP17-004, Government Funding Mechanism of Fiscal Activity with no commitment to a specific project which may result in a potentially significant physical impact on the environment. (City Manager)

Documents Filed: Joint supplemental memorandum from Deputy City Manager/Director of Economic Development Kim Welsh and Senior Deputy City Manager/Budget Director, Jennifer A. Maguire, dated October 17, 2017, recommending amendments to the Annual Report.

Senior Deputy City Manager/Budget Director, Jennifer A. Maguire provided an overview of the annual report and responded to questions. Assistant Director of Parks, Recreation and Neighborhood Services, Matt Cano, responded to questions regarding adjustments to conveyance tax funds.

Action: Upon motion by Councilmember Donald Rocha, seconded by Vice Mayor Magdalena Carrasco and carried unanimously, Ordinance No. 30014, entitled: “A Ordinance of the Council of the City of San José Amending Ordinance No. 29962 To Appropriate Moneys in Various Funds to Implement the 2016-2017 Annual Report Recommendations and Make Appropriate Technical Adjustments; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption; and Resolution No. 78385, entitled: “A Resolution of the Council of the City of San José Resolution No. 78229, to Implement the 2016-2017 Annual Report Recommendations and Make Appropriate Technical Adjustments to Adjust Revenues in Various Operating Funds”, were adopted; The 2016-2017 City Manager’s Annual Report of the Finances of the City of San José in compliance with City Charter Section 701 (F), was accepted, and the addition of 1.0 Planner IV, limit-dated through February 28, 2019, in the Planning, Building and Code Enforcement Department was approved. (11-0.)

### 3.4

As recommended by the Rules and Open Government Committee on June 21, 2017, provide the following updates regarding the City’s Tow Services Agreement:

- (a) Update on staff’s discussion with tow contractors on how the current towing services agreement is working.
- (b) Update on the financial model of the contract and areas of concern that may be affecting the tow companies. Examples might include, but are not limited to:
  - (i) The cost of the towing, storage, and disposal of vehicles such as RVs, motorhomes, trailers, or homemade vehicles that are abandoned, inoperable, and of no value.
  - (ii) The Contract Compensation Fee contractors are required to pay the City of San José for the towing of an abandoned vehicle, regardless of the cost to dispose of the vehicle.

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

**Deferred to 10/31/17 per Administration**

### 3.5

- (a) Accept the Salary Setting Commission's report on Options for Consideration of Charter Amendment Relating to Mayor and City Council Salaries.
- (b) Discussion and direction regarding an amendment to City Charter.

Documents Filed: (1) Joint memorandum from Mayor Sam Liccardo, Vice Mayor Magdalena Carrasco, and Councilmembers Jones, Peralez and Arenas, dated October 13, 2017, providing Council Salary Setting recommendations. (2) Memorandum from Councilmember Lan Diep, dated October 16, 2017, providing recommendations. (3) Transmittal memorandum from City Clerk Toni J. Taber, CMC, dated October 5, 2017, providing the Salary Setting Commissions' recommendations. (4) Supplemental memorandum from City Clerk Toni J. Taber, CMC, dated October 4, 2017, including alternatives for the proposed charter amendment.

Public Comments: (1) Mary Blanco, representing OE3, opined that the charter should remain unchanged. (2) LaVerne Washington, AFSCME, expressed budgetary concerns.

Motion: Councilmember Raul Peralez moved approval of the Salary Setting Commissions' report, including the memorandum from Mayor Sam Liccardo, Vice Mayor Magdalena Carrasco, and Councilmembers Jones, Peralez and Arenas, dated October 13, 2017, with the inclusion that Council may make collective decision in opting to not accept the salary increases. Councilmember Chappie Jones seconded the motion.

Substitute Motion: Councilmember Lan Diep offered a substitute motion, moving approval of his memorandum dated October 16, 2017. Councilmember Johnny Khamis seconded the motion.

On a call for the question, the substitute motion failed. (4-7. Noes: Jones, Peralez, Carrasco, Nguyen, Arenas, Rocha, Liccardo.)

Action: On a call for the question, the underlying motion carried, including acceptance of the Salary Setting Commission's report and including approval of the joint memorandum from Mayor Sam Liccardo, Vice Mayor Magdalena Carrasco, Councilmembers Chappie Jones, Raul Peralez and Sylvia Arenas dated October 13, 2017, to: (1) Direct the City Attorney to draft a City Charter amendment as outlined in Alternative #2 in the City's Clerks Supplemental Memorandum, thereafter stripping the City Council of authority over its own salary; (2) Return to Council by the end of 2017 with draft ballot language for Council consideration and placement on the November 6, 2018 ballot; (3) To conserve City General Fund dollars expenditures on the ballot measure: (a) print the fewest number of pages—for example, allowing the "argument against", but not rebuttal—to reduce costs, and (b) solicit from City Manager and other City Appointees any other "clean-up" or "clarification" items requiring Charter amendment that could lawfully and properly accompany this ballot proposal in November 2018.

Additionally, Council may make collective decision in opting to not accept the salary increases.

(10-1. Noes: Diep.)

**3.6**

- (a) Approve new items for the Council Priority list.
  - (b) Rank items on Council Priority list.
- CEQA: Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City actions. (City Manager)

Documents Filed: (1) Memorandum from Councilmember Donald Rocha, dated October 12, 2017, asking that the City Manager return to Council before the end of the year for consideration of additional items. (2) Memorandum from Councilmember Raul Peralez, dated October 13, 2017, updating a previous priority setting nomination item. (3) Memorandum from Councilmember Sergio Jimenez, dated October 16, 2017, recommending a priority setting item. (4) Memorandum from Councilmember Donald Rocha, dated October 16, 2017, recommending a priority setting item. (5) Memorandum from Councilmember Sergio Jimenez, dated October 17, 2017, recommending a priority setting item. (6) Memorandum from Councilmember Raul Peralez, dated October 17, 2017, recommending a priority setting item. (7) Memorandum from City Manager Dave Sykes, dated October 6, 2017, recommending approval and ranking of new items for the Council Priority list. (8) Supplemental memorandum from Deputy City Manager Julie Edmonds-Mares, dated October 16, 2017, providing an updated Nominated Items list. (9) Supplemental memorandum from Deputy City Manager/Director of Economic Development Kim Walesh, dated October 16, 2017, indicating 'Green Lighted' items to be integrated into department workplans. (10) Letter from Sara H. Cody, MD, County of Santa Clara Public Health Department, dated October 16, 2017, offering support for tobacco control policies. (11) Pamphlet provided by Chris Lepe, TransForm, dated October 16, 2017, offering ideas for affordable, well-designed homes that can reduce traffic and climate emissions. (12) Council Priority Setting Ballots with vote designations.

Deputy City Manager Julie Edmonds-Mares provided a presentation.

Public Comments: Fifty-three (53) members of the public offered recommendations for the Council Priority list, including tobacco prevention items, affordable housing, womens' bill of rights/equal pay, urban street parking and noise pollution.

Motion: Vice Mayor Magdalena Carrasco moved to pull Item #12 from the list, since the item will be returning to Council in the near future. Councilmember Raul Peralez seconded the motion.

Councilmembers individually addressed their priorities, and extensive discussion followed.

The Mayor, Vice Mayor and Councilmembers were allowed six votes each. A ballot was distributed to each by the City Clerk. Votes were accepted and tabulated.

**3.6 (Cont'd.)**

**Items for the Priority List were accepted, and items were ranked as follows:**

North San José Policy Review	10
Commercial Impact Fee for Affordable Housing	10
Safe Parking Program	10
Private Property Graffiti Abatement Ordinance	9
Downtown Zoning Code Update (Responding to the Housing Crisis)	7
Impact Fee Deferred Payment Program for Housing (Responding to the Housing Crisis)	7
Develop Innovation Strategies to Hire Crossing Guards	4
Sanctioned Encampments	3
Anti-Displacement Preference Ordinance	2
Update Urban Design Guidelines	2
Food and Clothing Distribution at City Parks	1
Smoke-Free Housing	1

**3.7**

Adopt a resolution appointing David Sykes as City Manager, effective October 14, 2017, consistent with the terms of compensation and benefits in the memorandum. CEQA: Not a Project, File No. PP17-010, City Organizational & Administrative Activities resulting in no changes to the physical environment. (Mayor)

Documents Filed: Memorandum from Mayor Sam Liccardo, dated October 11, 2017, recommending appointment of David Sykes as City Manager.

Action: Upon motion by Councilmember Raul Peralez, seconded by Councilmember Johnny Khamis and carried unanimously, Resolution No. 78386, entitled: “A Resolution of the Council of the City of San José Appointing David Sykes as the City Manager, and Approving the Terms of Compensation and Benefits for the City Manager, Effective October 14, 2017”, was adopted. (11-0.)

## COMMUNITY & ECONOMIC DEVELOPMENT

### 4.1 Evergreen Senior Homes Initiative.

As recommended by the Rules and Open Government Committee on October 11, 2017, direct the City Manager, pursuant to the California Elections Code Section 9212, to report on any and all of the following items regarding the proposed Evergreen Senior Homes Initiative, no later than 30 days after the elections official certifies to the legislative body the sufficiency of the petition, in the event the petition is certified:

(a) Its fiscal impact.

(b) Its effect on the internal consistency of the City's General and Specific Plans, including the housing element, the consistency between planning and zoning, and the limitations on City actions under Section 65008 of the Government Code and Chapters 4.2 (commencing with Section 65913) and 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

(c) Its effect on the use of land, the impact on the availability and location of housing and the ability of the city to meet its regional housing needs.

(d) Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks and open space. The report may also discuss whether the measure would be likely to result in increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses.

(e) Its impact on the community's ability to attract and retain business and employment.

(f) Its impact on the uses of vacant parcels of land.

(g) Its impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization.

(h) Its economic impact.

(i) Its environmental impact.

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

Documents Filed: (1) Memorandum from Councilmember Donald Rocha, dated October 13, 2017, recommending that, in addition to items proposed for study by Mayor Sam Liccardo and Councilmember Sylvia Arenas, Council proceed with additional direction as outlined. (2) Memorandum from City Clerk Toni J. Taber, dated October 12, 2017, transmitting the recommendations of the Rules and Open Government Committee.

Public Comments: Jeff Schroeder spoke on vulnerable communities, and Sean Welch, San José Residents for Evergreen Senior Homes, asserted that the mayor is using public resources to campaign against this initiative, and spoke in support of the project.



#### 4.1 (Cont'd.)

Motion: Councilmember Sergio Jimenez moved Councilmember Donald Rocha's memorandum, dated October 13, 2017. Councilmember Donald Rocha seconded the motion.

Deputy City Manager/Director of Economic Development Kim Walesh responded to questions from Council regarding a possible deferral of this item.

Modified Motion: Councilmember Sergio Jimenez modified the underlying motion, recommending a two-week deferral of this item.

Deputy City Manager/Director of Economic Development Kim Walesh responded to questions regarding timing of this item and the June election and the need for a statutory analysis.

Councilmember Sylvia Arenas requested an amendment to the motion to include staff's return to Council with a statutory analysis and the Elections Code 9212 report for the Council Meeting of October 31, 2017.

Councilmember Sergio Jimenez and Councilmember Donald Rocha accepted the amendment to the motion.

Action: On a call for the question, the motion carried, with staff to return with a statutory analysis and the Elections Code 9212 report for the Council Meeting of October 31, 2017. (10-1. Noes: Jones.)

## NEIGHBORHOOD SERVICES

- 5.1
- (a) Adopt a resolution authorizing the City Manager or his designee to:
    - (1) Negotiate, enter, execute, and deliver a State of California Standard Grant Agreement (Grant Agreement) with any commitments necessary to deliver the agreed upon Grant Scope previously authorized by Council and as consistent with the proposed appropriation actions and future funding plan and all other documents required or deemed necessary or appropriate to secure the AHSC Program funds; and
    - (2) Negotiate and execute an agreement with First Communities Housing (FCH) to allocate responsibilities, liabilities and the disbursement of AHSC funds between the City and First Communities Housing.
  - (b) Accept the future spending plan, requiring future appropriation actions, and the City's intent to deliver the scope of work for City projects identified in the Grant Application and Grant Agreement.
- CEQA: Determination of Consistency to the Brandenburg Mixed Use Project/North San Pedro Housing Sites Final Program Environmental Impact Report (Resolution No. 72170) and Addenda thereto, File No. PP16-056. Council District 3. (Parks, Recreation, and Neighborhood Services/Housing)

## 5.1 (Cont'd.)

Documents Filed: Joint memorandum from Director of Parks, Recreation and Neighborhood Services, Angel Rios, Jr., and Director of Housing, Jacky Morales-Ferrand, dated September 25, 2017, recommending adoption of a resolution and acceptance of a future spending plan.

Action: Upon motion by Councilmember Raul Peralez, seconded by Councilmember Sergio Jimenez and carried unanimously, Resolution No. 78387, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to (1) Negotiate, Execute and Deliver a Grant Application with the Department of Housing and Community Development for the Affordable Housing and Sustainable Communities Program for Funding for Downtown Projects in an Amount Not to Exceed \$12,889,611.00; (2) Enter into an Agreement with First Community Housing; and (3) Accept the Future Funding Plan to the Projects Identified in the Grant”, was adopted. (11-0.)

## ENVIRONMENTAL & UTILITY SERVICES

- 7.1 Approve an Amended and Restated Master Consultant Agreement with Stantec Consulting Services Inc. (formerly MWH Americas, Inc.) for program management services for the San José - Santa Clara Regional Wastewater Facility Capital Improvement Program, increasing the not to exceed agreement amount from \$39,000,000 to a revised not to exceed agreement amount of \$78,000,000; and extending the term of the agreement from September 30, 2018 to June 30, 2023. CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. (Environmental Services)  
*Deferred from 9/26/17 to 10/17/17 Per Administration.*

Documents Filed: Memorandum from Treatment Plant Advisory Committee Chair, Sam Liccardo, dated October 5, 2017, providing recommendations from the September 14, 2017 meeting of the Treatment Plant Advisory Committee.

Action: Upon motion by Councilmember Donald Rocha, seconded by Councilmember Dev Davis and carried unanimously, the Amended and Restated Master Consultant Agreement with Stantec Consulting Services Inc. (formerly MWH Americas, Inc.) for program management services for the San José - Santa Clara Regional Wastewater Facility Capital Improvement Program, increasing the not to exceed agreement amount from \$39,000,000 to a revised not to exceed agreement amount of \$78,000,000; and extending the term of the agreement from September 30, 2018 to June 30, 2023, was approved. (11-0.)

## **PUBLIC SAFETY**

### **8.1 Firearm Safe Storage Ordinance.**

Approve an ordinance amending Chapter 10.32 of Title 10 of the San José Municipal Code to add a new Part, requiring gun owners to safely store firearms in a locked container or disabled with a trigger lock upon leaving the residence. CEQA: Not a Project, File No. PP17-009, Staff Report, Assessments, Annual reports, and Informational Memos that involve no approvals of any City action. (City Manager/City Attorney)

Documents Filed: (1) Joint memorandum from Councilmember Raul Peralez and Councilmember Chappie Jones, dated October 13, 2017, offering acceptance of staff recommendations with modifications. (2) Memorandum from Lan Diep, dated October 17, 2017, with recommendations for a draft ordinance. (3) Joint memorandum from City Attorney Richard Doyle and City Manager Dave Sykes, dated September 25, 2017, recommending adoption of an ordinance.

Assistant to the City Manager, Michelle McGurk, and Senior Deputy City Attorney, Carl Mitchell, provided a presentation.

Public Comment: Forty-two (42) members of the public provided comments, both for the need for enhanced firearm safety and for those offering criticism of the proposed ordinance. A Petition was provided by Louis and Karen Pandula representing Safe Cities Coalition with 1,130 petition signatures in support of the proposed ordinance.

Motion: Councilmember Raul Peralez moved approval of the memorandum he coauthored with Councilmember Chappie Jones, dated October 13, 2017, including an exemption should a gun be reported stolen within 24 hours for the first year. Councilmember Chappie Jones seconded the motion.

Councilmember Lan Diep moved his memorandum dated October 17, 2017. The motion died for lack of a second.

Substitute Motion: Councilmember Johnny Khamis moved approval to accept staff's recommendations, including an exemption should a gun be reported stolen within 24 hours for the first year the ordinance is in effect. Councilmember Dev Davis seconded the motion.

Police Chief Edgardo Garcia responded to questions from Council, and extensive discussion followed.

Councilmember Raul Peralez provided changes to the underlying motion, eliminating the exemption to keep firearms stored in containers with trigger lock at all times and take out language "within your immediate control".

## 8.1 (Cont'd.)

Action: On a call for the question, the superseding motion was carried, and Ordinance No. 30015, entitled: “A Ordinance of the Council of the City of San José Amending Chapter 10.32 of Title 10 of the San José Municipal Code to Add a New Part 5 to Require Safe Storage of Firearms in a Residence, as Defined”, was passed for publication, including an exemption should a gun be reported stolen within 24 hours for the first year, and with staff directed to return with a report to Council near the end of the year regarding the exemption. (6-5. Noes: Jimenez, Jones, Nguyen, Peralez, Rocha.)

## OPEN FORUM

1. Kimi Huang addressed the difficulties of property management.
2. Cheryl Lebow offered criticism of the CPI proposal before Council and support to the bridge and inclusionary housing.
3. Ken Schneebeli urged maintaining the Ratio Utility Billing System (RUBS) for tenants.
4. A constituent speaking as a private individual spoke to tenants’ rights.
5. Seigi Tadokoro offered comments on ARO’s and owners bearing the burden of cost.
6. Scott Largent spoke on the injustice of his arrest for using a megaphone without a permit.

## ADJOURNMENT

The meeting of the City Council of the City of San José was adjourned at 10:18 p.m. in memory of Yasmin Fernandez. Yasmin passed away at the young age of 36 after a heart attack while working. She was a major advocate for low-wage workers’ rights, and believed that every worker deserves to be treated with dignity. Her passionate service to her community, leadership within the labor movement, and efforts to protect working families are her legacy. Yasmin is survived by her wife, three children, granddaughter, mother, and four brothers. (Rocha)

Minutes Recorded, Prepared and Respectfully Submitted by,

## DRAFT

Toni J. Taber, CMC  
City Clerk

Rmk/10-17-17 MIN