

ORDINANCE NO. 28349

ANNUAL APPROPRIATION ORDINANCE OF THE CITY OF SAN JOSE FOR CITY'S FISCAL YEAR BEGINNING JULY 1, 2008 AND ENDING JUNE 30, 2009, APPROPRIATING AND AUTHORIZING THE EXPENDITURE OF MONEYS FOR THE OPERATION OF EACH OF THE OFFICES, DEPARTMENTS, AND AGENCIES OF THE CITY DURING SAID FISCAL YEAR, AND FOR VARIOUS OTHER PURPOSES AND OBJECTS FOR SAID FISCAL YEAR; AND PROVIDING FOR TRANSFERS FROM VARIOUS CITY FUNDS TO OTHER CITY FUNDS AS MAY BE NECESSARY DURING SAID FISCAL YEAR.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. "Personal Services".

As used in this Ordinance, unless otherwise specifically provided for with respect to any particular appropriation or transfer, the words "personal services" means services rendered by an officer or employee of the City whose compensation is on a bi-weekly or monthly basis. The term also makes reference to payments made by the City to the following:

- (a) Federated City Employees Retirement System, Police and Fire Department Retirement Plan, the City's PTC 457 Plan, the California Public Employees Retirement System, and Money Purchase Plans established by the City for City officers or employees.
- (b) Health and dental care providers.
- (c) Unemployment Insurance.
- (d) Life Insurance.
- (e) Employee Assistance Program.
- (f) Vehicle allowances.
- (g) Vision Care benefits.
- (h) Municipal Employees Federation for legal costs.
- (i) Professional Development Program costs.

- (j) Uniform Allowance.
- (k) Subject to the supervision and direction of the City Manager, and subject to such other restrictions or requirements as are contained in the City Charter or as are imposed by the City Council, moneys appropriated or transferred to a City department or office for "personal services" shall be deemed appropriated for and may be expended by the head of such department or office to pay salaries and wages of officers and employees of such department or office, and to the Director of Finance for deferred compensation which would have been payable to such officers and employees if not participants in a deferred compensation plan adopted by the City.

SECTION 2. "Confidential Non-Personal Expenses of Police Department".

"Confidential Non-Personal/Equipment Expenses of Police Department" means any and all expenses incurred by the Police Department (excepting expenses for "personal services") which in the opinion of the Chief of Police must be kept confidential, without revealing the names of the ultimate recipients of the moneys expended for such purposes and without revealing the specific purpose of each such expenditure, in order to facilitate crime prevention or the apprehension of criminals. Moneys appropriated or transferred to the Police Department for such purposes may be paid by the Director of Finance to the Chief of Police from time to time as requested by the Chief of Police without said Chief being required at such time to reveal to the Director of Finance the specific purposes for which the Chief will expend such moneys nor the names of the ultimate recipients, and the Chief of Police may then expend such moneys for the above mentioned purposes. However, the Chief of Police shall file with the Director of Finance, a full report showing what the Chief has done with the moneys advanced to him for said purposes, the amounts expended, the names of the recipients, the purposes for which such expenditures were made, amounts as yet unexpended and such other relevant information as the Director of Finance may require. All such reports shall be confidential and shall not be shown to any person, other than the

Director of Finance and the City Auditor, unless and except as may be otherwise authorized by Council or required by law.

SECTION 3. "Confidential Non-Personal Expenses of Fire Department".

"Confidential Non-Personal/Equipment Expenses of Fire Department" means any and all expenses incurred by the Fire Department (excepting expenses for "personal services") which, in the opinion of the Fire Chief, must be kept confidential, without revealing the names of the ultimate recipients of the moneys expended for such purposes and without revealing the specific purpose of each such expenditure, in order to facilitate arson prevention or the apprehension of arsonists. Moneys appropriated or transferred to the Fire Department for such purposes may be paid by the Director of Finance to the Fire Chief from time to time as requested by the Fire Chief without said Chief being required at such time to reveal to the Director of Finance the specific purposes for which the Chief will expend such moneys nor the names of the ultimate recipients, and the Fire Chief may then expend such moneys for the above mentioned purposes. However, the Fire Chief shall file with the Director of Finance, a full report showing what the Chief has done with the moneys advanced to the Chief for said purposes, the amounts expended, the names of the recipients, the purposes for which such expenditures were made, amounts as yet unexpended and such other relevant information as the Director of Finance may require. All such reports shall be confidential and shall not be shown to any person other than the Director of Finance and the City Auditor, unless and except as may be otherwise authorized by Council or required by law.

SECTION 4. "Non-Personal/Equipment".

As used in this Ordinance, unless otherwise specifically provided for with respect to any particular appropriation or transfer, the words "non-personal/equipment", where used to express the purpose for which moneys are appropriated or transferred to a commission, board, department or office, mean any and all operating expenses (other than personal

services expenses, Confidential Non-Personal/Equipment Expenses of Police Department, and Confidential Non-Personal/Equipment Expenses of Fire Department) of such commission, board, department or office, including but not limited to the following:

- (a) Costs of supplies, materials, small tools, postage, subscriptions, books and periodicals, association dues and charges, and costs of items of equipment.
- (b) Costs of public utility services.
- (c) Printing, duplicating, binding, advertising and publishing costs, expenses and charges.
- (d) Expenses incurred in travel to and from and in attending conventions, conferences and meetings; and other travel expenses incurred in conducting City business.
- (e) Payment of car allowances and rental of equipment and vehicles, tools, machines and other property.
- (f) Contractual expenses incurred for legal, engineering, medical and other professional services, for repair or maintenance of machines, tools and equipment, and for other operating purposes.
- (g) Subject to the supervision and direction of the City Manager, and subject to such other restrictions or requirements as are contained in the City Charter or as are imposed by the City Council:
 - (i) Moneys appropriated or transferred to a City department or office for non-personal/equipment shall be deemed appropriated for and may be expended by the head of such department or office for payment of non-personal/equipment of such department or office; and
 - (ii) Moneys appropriated or transferred to each of the following departments or offices, respectively, for non-personal/equipment shall be deemed appropriated for and may be expended by the head of such department or office for the non-personal/equipment of the boards and commissions

which are hereinafter specified under the designation of each such department or office:

1. Airport Department:
 - ◆ Airport Commission.
2. Office of the City Clerk:
 - ◆ City Council Salary Setting Commission.
 - ◆ Elections Commission.
3. Office of the City Manager:
 - ◆ Human Rights Commission.
 - ◆ Disability Advisory Commission.
4. Office of Economic Development:
 - ◆ Arts Commission.
 - ◆ Small Business Development Commission.
5. Human Resources Department:
 - ◆ Deferred Compensation Advisory Committee.
 - ◆ Suggestion Award Commission.
6. Housing Department:
 - ◆ Advisory Commission on Rents.
 - ◆ Community Development Block Grant Steering Committee.
 - ◆ Housing Advisory Commission.
 - ◆ Mobilehome Advisory Commission.
7. Library Department:
 - ◆ San Jose Library Commission.
8. Parks, Recreation & Neighborhood Services Department:
 - ◆ Child Care Commission.
 - ◆ Healthy Neighborhoods Venture Fund Advisory Committee.
 - ◆ Parks and Recreation Commission.
 - ◆ Senior Citizens Commission.

- ◆ .Youth Commission
- 9. Planning, Building and Code Enforcement Department:
 - ◆ Historic Landmarks Commission.
- 10. Public Works Department:
 - ◆ San Jose-District 4 Sewer Advisory Board.
- 11. Retirement Services Department:
 - ◆ Board of Administration, Federated City Employees Retirement System.
 - ◆ Board of Administration, Police and Fire Department Retirement Plan.
- 12. Transportation Department:
 - ◆ Parking Advisory Commission.
 - ◆ Traffic Appeals Commission.

Nothing contained in this section shall be deemed to authorize any above named board or commission to expend any of the above-mentioned moneys or to incur any obligation or liability for or to require the expenditure of such moneys, it being the intent of the above provisions of this section solely to authorize the above-mentioned department heads, subject to the above mentioned limitations, to expend moneys appropriated or transferred to their respective departments for non-personal/equipment expenses of the boards and commissions if and when such department heads, in their discretion, wish to do so.

Also, moneys appropriated or transferred by this Ordinance from the San Jose-Santa Clara Treatment Plant Operating Fund to the Environmental Services Department for non-personal/equipment incurred in the operation of the San Jose-Santa Clara Sewage Treatment Plant shall be deemed to be also appropriated for the non-personal/ equipment of the San Jose-Santa Clara Sewage Treatment Plant Advisory Committee;

and subject to the supervision and direction of the City Manager, and subject to such other restrictions as are set forth in the City's Charter or as may be imposed from time to time by the City Council, the City Director of Environmental Services Department is authorized to expend said moneys for said additional purposes; provided, however, that none of said moneys may be expended for travel of members of said Committee unless the City Council shall have authorized such travel.

SECTION 5. Civil Service Commission, Planning Commission, Appeals Hearing Board.

Moneys appropriated or transferred to the Civil Service Commission, to the Planning Commission or to the Appeals Hearing Board shall be deemed appropriated for and may be expended by the Secretary of such Commission or Board to pay salaries or stipends payable to members of such Commission or Board and for payment of non-personal/equipment of such Commission or Board, and to the Director of Finance for deferred compensation which would have been payable to such members of such Commissions or Boards if not participants in a deferred compensation plan adopted by the City.

SECTION 6. Operating Expenses for City Council.

As used in this Ordinance, unless otherwise provided with respect to any specific appropriation, moneys appropriated or transferred to the City Council as "operating expenses" shall be deemed appropriated to and may be expended by:

- (a) The City Clerk to pay personal services/expenses of the City Council, including salaries payable to the Mayor and members of the City Council and employees assigned to the City Council, and to pay non-personal/equipment expenses of the City Council; and
- (b) The Director of Finance for deferred compensation which would have been payable to such officers and employees if not participants in a deferred compensation plan adopted by the City.

SECTION 7. Acquisition of Lands and Interests in Land.

- (a) As used in this Ordinance, unless otherwise provided with respect to any specific appropriation, the words "lands" or "interests in land" mean any and all real property and any and all rights, titles, or interests in real property or in the use of such property, including, but not limited to, fee simple title to real property, easements, profits, encroachment permits, licenses, air rights, rights to or orders of immediate possession and any and all other rights or interests in real property or its use.
- (b) Subject to the supervision and direction of the City Manager, and subject to such other restrictions or requirements as may be contained in the City Charter or as may be imposed by the City Council or as may be imposed by other applicable laws, moneys appropriated or transferred to a department or office for the acquisition of lands or interests in land for a stated purpose shall be deemed appropriated for and may be expended by the following persons for the following purposes:
 - (i) By the head of the department to which such moneys are appropriated or transferred, to acquire lands or interests in land for the purpose stated in the appropriation or transfer, and to pay all the following costs and expenses incurred for or in connection with such acquisition:
 1. The amount or price required to be paid or deposited for such lands or interests in land, as established by agreement or by order or judgment of court; and
 2. Cost of title surveys and reports, title insurance, stamp fees and all escrow and closing costs incurred in the acquisition of such property; and
 3. Amounts payable to appraisers and negotiators, other than City employees, for appraisal and negotiation services rendered by them for City; and

4. Amounts payable as rent or otherwise for the leasing, renting or use of land or interests in land; and
5. Amounts payable to officers and employees of the department to whom said appropriation is made, for personal services rendered by them in connection with and for the acquisition of lands or interests in land, including but not limited to compensation payable to or for them for time spent by them in (a) appraising and evaluating land or interests in land, (b) the negotiation, execution and performance of contracts for the acquisition of lands or interests in land, and (c) performing typing, stenographic and other clerical services in connection with and for the acquisition of said property. Said compensation shall be deemed to include salaries and wages paid to said officers and employees, together with a reasonable prorated overhead charge to cover City's cost of providing retirement benefits, dental benefits, health insurance and workers' compensation benefits for said officers and employees for the time expended by said officers and employees in the above mentioned work, said charge to be calculated by the Director of Finance; and
6. Amounts payable to independent contractors for preparation of EIRs for projects for which lands or interests in land are proposed to be acquired; and
7. Amounts payable for relocation expenses, including supplemental payments; and
8. An amount to cover the indirect administrative costs associated with such acquisition of lands or interests in land, at a rate calculated by the Director of Finance as part of the Indirect Cost

Application Rates calculated annually in accordance with generally accepted accounting principles.

- (c) Moneys appropriated or transferred to the City Attorney's Department for the acquisition of lands or interests in land for a stated purpose shall be deemed appropriated for and may be expended by the head of the City Attorney's Department to pay costs and expenses incurred by such department to acquire lands or interests in land for the purpose stated in the appropriation or transfer, including but not limited to the following costs and expenses:
- (i) Costs and expenses incurred in, for or in connection with eminent domain or inverse condemnation proceedings, including but not limited to court fees and costs, expert witness fees, amounts required to be deposited or paid pursuant to court orders or judgments, and amounts payable to persons other than officers and employees of said department for title reports, appraisal and evaluation services, and engineering and other professional or expert services reasonably necessary for the proper handling of said proceedings; and
 - (ii) Amounts payable to officers and employees of the City Attorney's Department for personal services rendered by them for and in connection with the acquisition of lands or interests in land, including but not limited to compensation payable to them for time spent by them in, for or in connection with (a) the drafting, execution and performance of agreements for the acquisition of lands and interests in land, (b) eminent domain or inverse condemnation proceedings, (c) preparation and drafting of other agreements and documents reasonably necessary for the acquisition of land or interests in land, and (d) other legal proceedings reasonably necessary for the acquisition of such property. Said amounts shall include amounts payable to attorneys in said department for their professional services, amounts payable to other members of said

department for typing, stenographic and other clerical services, and a reasonable prorated overhead charge covering City's cost of providing retirement benefits, dental benefits, health insurance and workers' compensation benefits for such officers and employees for the time expended by them in the above mentioned work, said charge to be calculated by the Director of Finance.

- (d) Moneys appropriated or transferred to the Public Works Department for the acquisition of lands or interests in land for a stated purpose shall be deemed appropriated for and may be expended by the head of the Public Works Department:
- (i) To pay costs and expenses incurred by such department in, for or in connection with the acquisition of lands or interests in land for the purpose stated in the appropriation or transfer, including but not limited to amounts payable to officers and employees of such department for personal services rendered by them for and in connection with the acquisition of lands or interests in land, including but not limited to compensation payable to or for them for time spent by them in the survey of land and in the preparation of descriptions of land reasonably necessary for the acquisition of lands or interests in land, together with a reasonable prorated overhead charge to cover City's cost of providing retirement benefits, health insurance, dental benefits and workers' compensation benefits for said officers and employees for time spent by them in the above mentioned work, said charge to be calculated by the Director of Finance; and
 - (ii) By the head of the Public Works Department to pay costs and expenses incurred by such departments in the preparation of EIRs for projects for which lands or interests in land are proposed to be acquired, including but not limited to amounts payable to officers and employees of said

departments for personal services rendered by them in the preparation of said EIRs, together with a reasonable prorated overhead charge to cover City's cost of providing retirement benefits, dental benefits, health insurance and workers' compensation benefits, for officers and employees for time spent by them in the above mentioned work, said charge to be calculated by the Director of Finance.

SECTION 8. Construction, Installation and/or Improvement of Various Facilities.

Unless otherwise provided with respect to any specific appropriation or transfer, moneys appropriated or transferred to a department or office for the construction, installation and/or improvement of any property, facility or other things are and shall be deemed appropriated for and, subject to the supervision and direction of the City Manager and subject to such other restrictions or requirements as may be contained in the City Charter or as may be imposed by the City Council or by other applicable laws, may be expended by the following persons for the following purposes:

- (a) By the head of the department to which such moneys are appropriated or transferred to pay amounts required to be paid by City to independent contractors and other persons (other than officers and employees of the City) for:
 - (i) The construction, installation and/or improvement of said property, facility, or thing;
 - (ii) The preparation of EIRs for proposed construction and improvement projects; and
 - (iii) For soil tests, surveys, architectural or engineering services, plans and specifications, site development services, inspection services, and any and all other services reasonably necessary for said construction, installation or improvement.
- (b) By the head of the department to which such moneys are appropriated or transferred for costs of supplies and materials reasonably necessary for said construction, installation or improvement.

- (c) By the head of the department to which such moneys are appropriated or transferred for cost of equipment which is to be affixed or attached to or to become a part of the facility, property or thing constructed, installed or improved, including window coverings, fixed carpeting and fixtures as defined in Section 660 of the Civil Code of the State of California, and also including such items as fire hydrants, fire alarm boxes, parking meters, street lights and appurtenances, traffic signals and appurtenances, but excepting items normally considered as furniture or furnishings.
- (d) By the head of the department to which such moneys are appropriated or transferred for amounts payable to officers and employees of the department or office to which such appropriation or transfer is made, and to officers and employees of other City departments, as compensation for personal services rendered by them in connection with and for such construction, installation or improvements, including but not limited to compensation payable to them for time spent by them in and for:
 - (i) Preparation of plans and specifications;
 - (ii) Inspection services;
 - (iii) Soil and other testing services;
 - (iv) Construction, installation, and improvement services,
 - (v) Other engineering services;
 - (vi) Typing, stenographic and other clerical services rendered in connection with and for said construction, installation or improvement; and
 - (vii) Preparation of EIRs.

Said compensation shall be deemed to include salaries and wages paid to said officers and employees, together with a reasonable prorated overhead charge calculated by the Director of Finance to cover City's costs of providing retirement benefits, dental benefits, health insurance and workers' compensation benefits

- for said officers and employees for the time expended by them in the above mentioned work.
- (e) By the head of the City Attorney's Department to pay amounts payable to officers and employees of said department as compensation for personal services rendered by them for and in connection with said construction, installation or improvement, including but not limited to compensation payable to them for time spent by them in, for or in connection with the drafting, execution and performance of agreements for the construction, installation or improvement of property, facilities or other things or for soil tests, plans and specifications, special studies and reports, inspection services, and other services reasonably necessary for said construction, installation, and improvements. Said amounts shall include amounts payable to attorneys in said department for professional services, amounts payable to other members of said department for typing, stenographic or other clerical services, and a reasonable prorated overhead charge covering City's cost of providing retirement benefits, dental benefits, health insurance and workers' compensation benefits for such officers and employees for the time expended by them in the above mentioned work, said charge to be calculated by the Director of Finance.
 - (f) By the head of the Public Works Department to pay costs and expenses in connection with the preparation of EIRs for proposed construction and improvement projects, including but not limited to amounts payable to officers and employees of said department for personal services, together with a reasonable prorated charge to cover City's cost of providing retirement benefits, dental benefits, health insurance and workers' compensation benefits for said officers and employees for time spent by them in the above mentioned work, said charge to be calculated by the Director of Finance.
 - (g) By the head of the department to which such moneys are appropriated or transferred for an amount to cover the indirect administrative costs associated

with but which cannot be identified as direct costs of such construction, installation or improvements at a rate calculated by the Director of Finance as part of the Indirect Cost Application Rates calculated annually in accordance with generally accepted accounting principles.

SECTION 9. Multiple Appropriations for the Same Purposes.

- (a) Whenever separate sums of money are separately appropriated by two or more appropriations or transfers for the same purpose or for the payment of the same costs and expenses, the separate appropriations or transfers shall be deemed to be cumulative; and, subject to the direction, supervision and control of the City Manager, any of, or all of, said separate sums of money may be expended for the same purpose or to pay said same costs and expenses.
- (b) Where moneys have been appropriated or transferred from any special fund or funds (including bond funds) for the acquisition of lands or interests in land or for the construction, installation and/or improvement of various facilities, and such moneys can be expended, pursuant to the provisions of this Ordinance for the payment of a reasonable prorated overhead charge to cover City's cost of providing retirement benefits, dental benefits, health insurance and workers' compensation benefits for officers and employees of the City or for indirect administrative costs as defined in this Ordinance, the expenditure for such overhead charge or administrative costs may be accomplished by temporarily using other moneys from the General Fund, if and to the extent that moneys have been appropriated or transferred from the General Fund for such purposes. Whenever moneys from the General Fund are so used, moneys appropriated or transferred from said special fund or funds shall be expended to reimburse the General Fund for the prorata share of such overhead charges and indirect administrative costs, periodically at such times as said prorata share is ascertained.

SECTION 10. Restrictions on Expenditures.

All appropriations and transfers contained in this Ordinance for the operation of the various departments, offices, boards, commissions, and other agencies of the City are made for the operation of such departments, offices, boards, commissions and agencies for and during the City's fiscal year 2008-2009 and all other appropriations and transfers contained in this Ordinance are for the purposes of objects named in the budget. No moneys appropriated by this Ordinance shall be expended for any other purpose or object unless moneys are appropriated or transferred therefore, or its expenditure for such other purposes or objects is authorized, after June 24, 2008, by amendment of this Ordinance or by other ordinances (or resolution when such is authorized by the City's Charter) adopted after June 24, 2008.

SECTION 11. The moneys appropriated from the various City funds for City's Fiscal Year 2008-2009, and the purposes for which such moneys are appropriated, are as set forth in **Exhibit "A,"** which is attached to and incorporated into this Ordinance as though fully set forth herein.

SECTION 12. This Ordinance shall become effective immediately upon adoption, pursuant to Section 605(c) of the Charter of the City of San Jose.

ADOPTED this 24th day of June, 2008, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CORTESE, LICCARDO,
NGUYEN, PYLE, WILLIAMS, REED.

NOES: OLIVERIO.

ABSENT: CONSTANT.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk