

3.7 Ratification of Proclamation of Local Emergency.

Recommendation:

Adopt a resolution ratifying the Director of Emergency Services' proclamation of the existence of a local emergency.

CEQA: Statutory Exempt, Section 15269, Emergency Projects Undertake specific actions necessary to prevent or mitigate an emergency. (City Manager)

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

**SUBJECT: RATIFICATION OF A
PROCLAMATION OF LOCAL
EMERGENCY**

FROM: Jennifer A. Maguire

DATE: February 5, 2024

REASON FOR ADDENDUM

On February 3, 2024, just before 9 p.m., the Director of Emergency Services proclaimed a Local Emergency (Attachment A) related to a National Weather Service (NWS) Flood Watch and High Wind Warning and the need to prepare for local evacuation notifications (Attachment B) commencing that evening. Pursuant to the San José Municipal Code and the California Government Code, these actions must be ratified by the City Council within seven days.

RECOMMENDATION

Adopt a resolution ratifying the Director of Emergency Services' proclamation of the existence of a local emergency.

SUMMARY AND OUTCOME

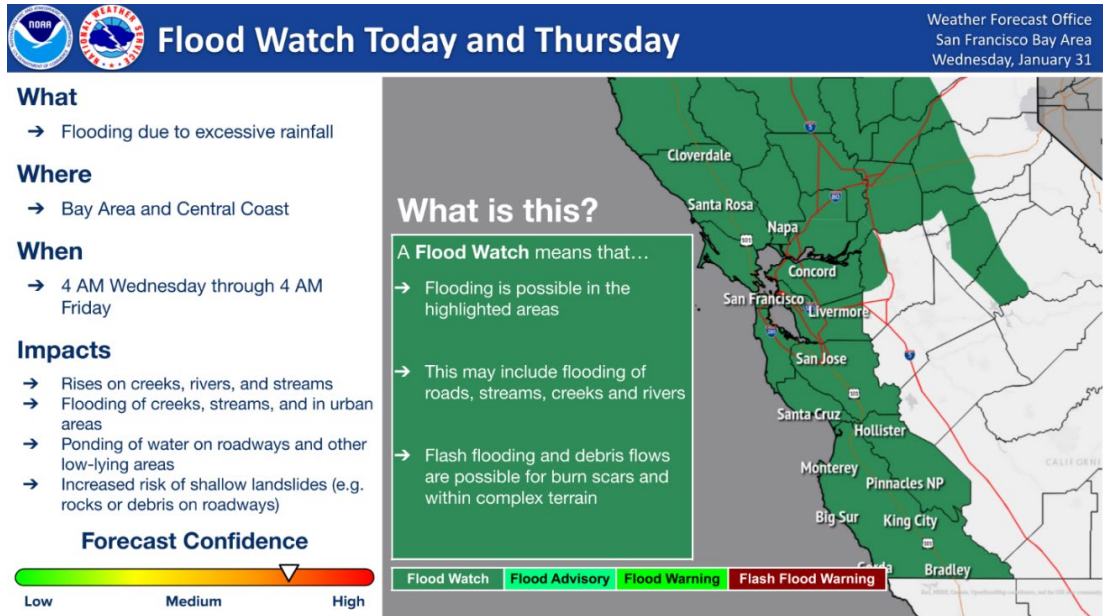
Ratification of the Director of Emergency Services' (City Manager) or designee's proclamation of a local emergency allows the City to exercise extraordinary police powers, such as evacuation; immunity for emergency actions; authorization of issuance of orders and regulations; activation of pre-established emergency provisions; and is a prerequisite for requesting state or federal assistance. Termination of the proclamation of local emergency when conditions warrant is required by law.

BACKGROUND

National Weather Service Flood Watch Forecast

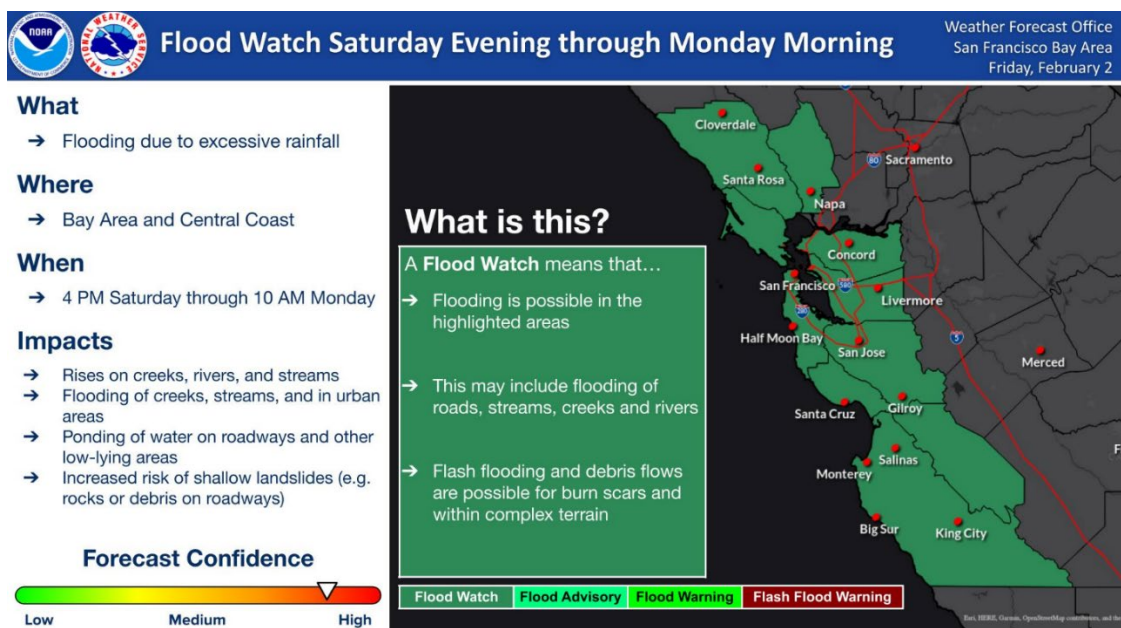
The City established an Incident Management Team on Wednesday, January 31, 2024, in anticipation of flooding from multiple significant atmospheric rivers predicted through the weekend as shown in Figure 1. The multiple storms would produce heavy rains and cause inflows into waterways throughout the City that could result in high stream flows and potential flooding affecting San José. The Incident Management Team was established in response to the NWS Flood Watch and High Wind Warning for the San Francisco Bay Area.

Figure 1: National Weather Service Flood Watch of January 31, 2024.



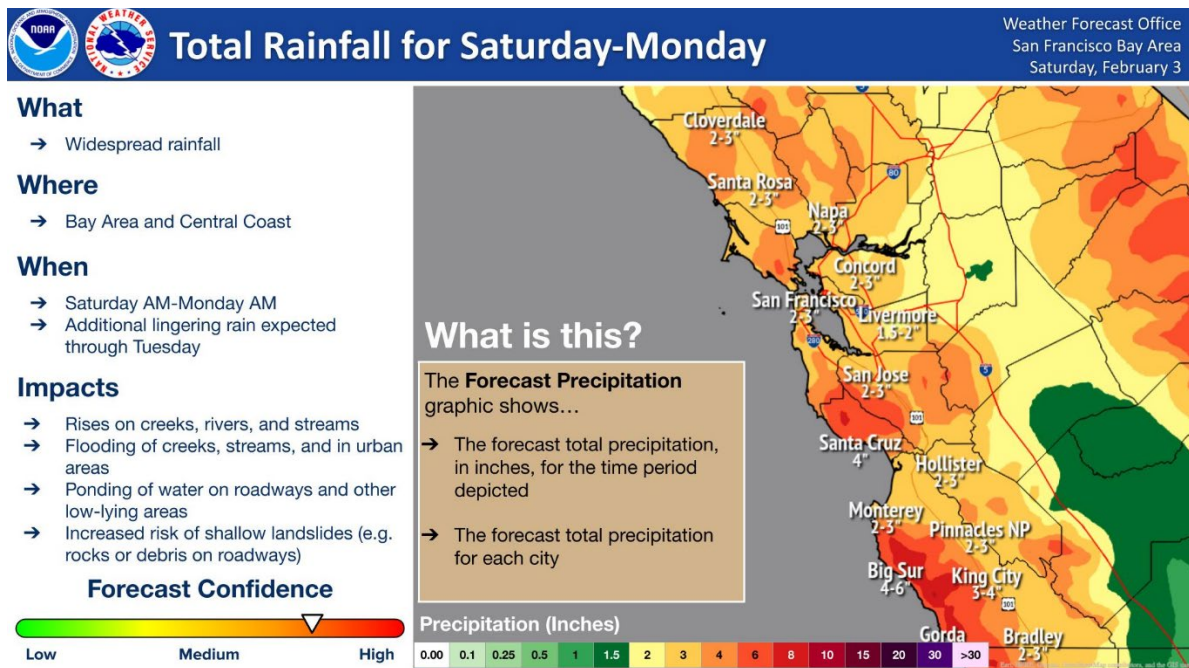
As shown in Figure 2 below, three days later, the NWS predictions grew more alarming. Meteorologists identified that the confidence in the potential and type of flooding was higher, which indicates the greater potential of flood, particularly along the Guadalupe River. Because the identified arrival of the storms was early morning (2 a.m. to 6 a.m.), actions to alert residents needed to occur on Saturday evening.

Figure 2: National Weather Service Flood Watch of February 2, 2024.



As shown in Figure 3, NWS forecasted two-three inches of rain on the valley floor in San José, from Saturday, February 3 through Monday, February 5, 2024, and more significant amounts at high elevations, which would result in run-off into the valley, exacerbating flood conditions. Combined with the information in Figure 2, the intensity of the storm required more explicit action to alert the public, ensure shelter support, and identify logistics required to support the public.

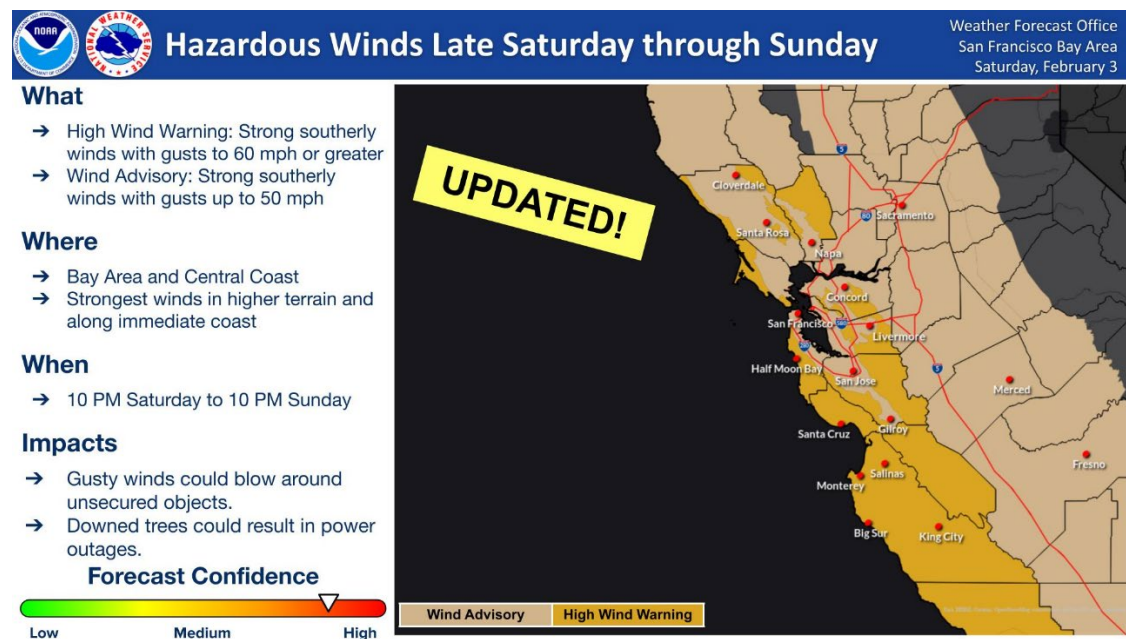
Figure 3: National Weather Service Total Rainfall, February 3, 2024



National Weather Service High Wind Forecast

NWS forecasted a high wind warning in effect throughout the county with southerly winds 35 to 40 mph with gusts up to 60 mph in valley locations in the greater Bay Area and Central Coast as shown in Figure 4. The winds would create an additional risk of falling trees which can damage homes, cause additional flooding, and pose a real threat to life. Power outages would result from the high sustained winds as well.

Figure 4: National Weather Service High Wind Warning, February 3, 2024



Incident Management Team and Emergency Operations Center

Based on worsening conditions, the City increased its response readiness on Saturday, February 3, 2024, by staffing the Emergency Operations Center at 5 p.m. to monitor the conditions and fully activate the Joint Emergency Action Plan with Santa Clara Valley Water District. Field staff deployed by the Department of Public Works and the Department of Transportation provided direct observation of the rising water levels and potential for flooding along the waterways, particularly along the Guadalupe River which was forecast to flood. In consultation with the department directors in the Emergency Operations Center and phone conferences with NWS and Santa Clara Valley Water District, and with evidence by the increasing flood threat, the Director of Emergency Services (City Manager) or designee signed a proclamation a Local Emergency just before 9 p.m. The action included an evacuation order in areas of concern along the Guadalupe River in order to protect the lives of people living or occupying those areas.

The core responsibility of the Incident Management Team is to protect lives, protect property, protect the environment, communicate as a team and with our partners, and coordinate response within the City and among our many partners while maintaining a focus as one team, acting with compassion in action, and communicating openly, honestly, and directly.

Notification of the pending emergency occurred prior to initiating the Incident Management Team. Communication to the unhoused residents was provided to the encampments along all waterways starting on Monday, January 29. The Housing Department lead the effort to provide notifications to encampments in person. Law enforcement deployed the Long-Range Acoustical Devices with digital recordings in three languages: English, Spanish, and Vietnamese. The initial contact and information encouraged the unhoused to move to higher ground and away from the

water with the incoming storms. On January 31, the Overnight Warming Location at Roosevelt Community Center was expanded to accommodate more people and Tully Library expanded its hours. Capacity was adjusted from 60 residents to 90 at Roosevelt.

As the weather conditions continued to intensify, on February 3, additional efforts to notify encampments and the housed residents near the Guadalupe River were required. In addition to the personal contact and use of the Long-Range Acoustical Devices, door-to-door delivery of the notices were initiated. The City conducted a news briefing, the first Flash Report (out of three) was initiated, and social media broadcasts occurred. Additional shelter options were created at Camden Community Center with the assistance of the American Red Cross with a capacity of up to 100 persons and 20 pets.

As decisions were made on distributing the Flood Warning and Evacuation Order, the Mayor and the City Councilmembers of the affected districts were notified.

ANALYSIS

The authority to proclaim a Local Emergency in San José is vested in the City Council, or in an emergent situation, with the Director of Emergency Services (City Manager) or designated alternate. Pursuant to Title 8, Chapter 8.08 Part 2 Section 808.210 of the San José Municipal Code and the California Government Code, Section 8680.9, the Proclamation of Local Emergency must be ratified by the City Council within seven days if proclaimed by the Director of Emergency Services or his/her designee. In addition, the City Council must terminate the Local Emergency as soon as conditions warrant.

A Proclamation of Local Emergency provides the authority to:

- Provide mutual aid consistent with the provisions of local ordinances, resolutions, emergency plans, and agreements;
- Receive mutual aid from state and other governmental agencies;
- In the absence of a State of War Emergency or State of Emergency, seek recovery of the cost of extraordinary services incurred in executing mutual aid agreements;
- Promulgate orders and regulations necessary to provide for protection of life and property; and
- Request the Governor proclaim a state of emergency when, in the opinion of the Director, the locally available resources are inadequate to cope with the emergency.

In addition to a Proclamation of Local Emergency for this event, the Director of Emergency Services also issued a mandatory evacuation along the waterways to protect the lives of people living or occupying those areas. Persons living within or otherwise located along the banks of waterways throughout the City, and more specifically on the banks of the Guadalupe River for this event, were subject to life threatening harm from sudden high stream flows that can result from the expected heavy rains. They were therefore ordered to immediately evacuate those areas and to remain out of those areas until further notice.

EVALUATION AND FOLLOW-UP

If the Proclamation of a Local Emergency is approved by the Director of the California Office of Emergency Services or concurrence is identified by the Governor in a Gubernatorial Proclamation of an Emergency, the San José Office of Emergency Management along with the Finance Department will take action to file reimbursement claims. Staff will return to the City Council to extend the proclamation as needed every 60 days, until the emergency is over, and return at such time, to terminate the emergency when conditions warrant it. The storm door is open through the month of February, beyond the Presidents Day weekend. The potential to continue the emergency proclamation and actions required to protect public safety appears imminent.

PUBLIC OUTREACH

The memorandum will be posted on the City's Council Agenda website for the February 6, 2024 City Council meeting.

COORDINATION

The report was prepared in coordination with the City Attorney's Office.

COMMISSION RECOMMENDATION

No commission recommendation or input is associated with this section.

CEQA

Statutory Exempt, Section 15269, Emergency Projects Undertake specific actions necessary to prevent or mitigate an emergency.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.



Jennifer A. Maguire
City Manager

HONORABLE MAYOR AND CITY COUNCIL

February 5, 2024

Subject: Ratification of a Proclamation of Local Emergency

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For questions, please contact Raymond Riordan, Director of the City Manager's Office of Emergency Management at (408) 794-7055.

Attachments:

- A. Proclamation of Local Emergency, issued by the Director of Emergency Services
- B. Evacuation Order, issued by the Director of Emergency Services

PROCLAMATION OF LOCAL EMERGENCY

WHEREAS, Title 8, Chapter 8.08, Part 2, Section 8.08.210 of the Municipal Code of the City of San José empowers the Director of Emergency Services to proclaim the existence or threatened existence of a local emergency when the City is affected or likely to be affected by public calamity and the City Council is not in session; and

WHEREAS, the Director of Emergency Services of the City of San José ("City") does hereby find the following conditions exist:

1. The City activated its Emergency Operations Center ("EOC") on February 3, 2024 in anticipation of potential flooding as a result of multiple significant atmospheric rivers, producing heavy rains and causing inflows into waterways throughout the City, including but not limited to Ross, Los Gatos, Fisher, Coyote, and Penitencia Creeks and the Guadalupe River, that could result in high stream flows and potential risk to public safety.
2. The current forecast is for the third atmospheric river to reach the City in the early hours of February 4, 2024. The anticipated atmospheric river is forecast by the National Weather Service to produce significant rainfall and high winds.
3. Winds are forecast to peak at 50 mph in Santa Clara County increasing the public health risk of falling trees and subsequent power outages.
4. The current conditions of saturated soils and significant run off will contribute to increased water volume and flow in the waterways throughout the City. The greatest predicted risk is along the Guadalupe River, Coyote Creek and Sunnyvale East creek.
5. Flooding is expected outside the Guadalupe River that will put residential and business structures at risk.
6. The most significant concern is for our unhoused residents who live anywhere within the banks of waterways throughout the City, including but not limited to the areas listed above. There has already been movement of some unhoused residents out of the waterway.

WHEREAS, the Director of Emergency Services finds that the heavy rains are expected to produce, cause, or threaten to cause extreme peril to the City's residents, which will necessitate continuous emergency response, including but not limited to mandatory evacuation of unhoused persons living within or otherwise located along the banks of waterways throughout the City.

WHEREAS, the efforts required to prepare for, respond to, mitigate, and recover from the accumulated January and February Storms have and will continue to impose extraordinary requirements and expenses on the City, requiring diversion of resources from day-to-day operations

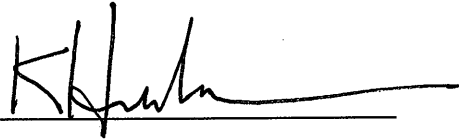
WHEREAS, the City Council of the City of San José is not in session and cannot immediately be called into session.

NOW, THEREFORE, IT IS HEREBY PROCLAIMED that

1. A local emergency now exists in and around the banks of waterways throughout the City, including but not limited to Ross, Coyote, Los Gatos, Fisher, and Penitencia Creeks and the Guadalupe River, as specified above; and
2. The current forecast calls for flooding along the Guadalupe and high flows in the Coyote Creek; and
3. During the existence of said local emergency, the powers, functions, and duties of the emergency organization of this city shall be those prescribed by state law, by ordinance, and resolutions of this City, and by the City of San José Emergency Operations Plan, as approved by the City Council on February 5, 2019; and
4. This emergency proclamation shall expire in seven (7) days after issuance, unless confirmed and ratified by the City Council of the City of San José.

THE CITY FURTHER REQUESTS that the Governor of the State of California proclaim a State of Emergency for the City of San José or the State Office of Emergency Services Director provides Concurrence with this Proclamation so the City may request reimbursement of the significant expenses incurred during response as authorized under California Government Code, Title 2, Division 1, Chapter 7.5 (California Disaster Assistance Act).

Date: February 3, 2024

By: 
Kip Harkness

Time: 20:51

Director of Emergency Services
City of San José

**DECLARATION OF THE DIRECTOR OF
EMERGENCY SERVICES OF THE CITY OF
SAN JOSE ORDERING EVACUATION OF
CERTAIN AREAS**

WHEREAS, on February 3, 2024, I proclaimed a local state of emergency within the City of San José in anticipation of potential flooding as a result of multiple significant atmospheric rivers, producing heavy rains and causing inflows into waterways throughout the City, including but not limited to Ross, Los Gatos, Fisher, Coyote, and Penitencia Creeks and the Guadalupe River, that could result in high stream flows and potential risk to public safety; and

WHEREAS, pursuant to California Government Code Section 8634 and San José Municipal Code Section 8.08.250, I am empowered upon the proclamation of a local emergency to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; and

WHEREAS, under conditions of the emergency, it is deemed necessary in the interest of public safety to order the evacuation of certain areas where high stream flows could threaten public safety; and

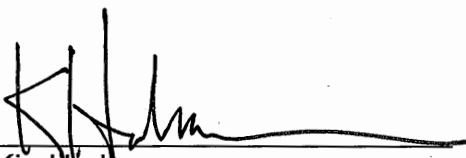
WHEREAS, life and property are deemed to be in peril and speed is of the essence;

NOW, THEREFORE, BE IT RESOLVED, I, Kip Harkness, as Director of Emergency Services, declare that commencing on February 3, 2024, a mandatory evacuation is in effect immediately and no person shall be in any area determined by emergency personnel to be unsafe or at risk of flooding, including without limitation in and along the banks of waterways throughout the City, such as Ross, Los Gatos, Fisher, Coyote, and Penitencia Creeks and the Guadalupe River.

Any violation of this Order shall be subject to enforcement and penalty as provided under San José Municipal Code Section 8.08.260.

BE IT FURTHER RESOLVED that this regulation shall remain in effect until such time as it is terminated by either the Director of Emergency Services, the City Council, or the termination of the local state of emergency resulting from the January and February 2024 storms.

February 3, 2024 2051 hrs
Date and Time


Kip Harkness
Director of Emergency Services
City of San José

RESOLUTION NO. _____

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN
JOSE RATIFYING AND CONTINUING THE
PROCLAMATION OF EXISTENCE OF A LOCAL
EMERGENCY ISSUED BY THE DIRECTOR OF
EMERGENCY SERVICES**

WHEREAS, Section 8.08.210 of Chapter 8.08 of Title 8 of the San José Municipal Code empowers the Director of Emergency Services (City Manager or Designee) to proclaim the existence or threatened existence of a local emergency if the Council of the City of San José (“City”) is not in session, and requires that the City Council shall take action to ratify the proclamation within seven (7) days thereafter, or the proclamation shall have no further force or effect; and

WHEREAS, pursuant to California Government Code Section 8680.9, a local emergency is a condition of extreme peril to persons or property proclaimed as such by the governing body of the local agency affected by a natural or manmade disaster; and

WHEREAS, the purpose of a local emergency proclamation is to provide extraordinary police powers, immunity for emergency actions, authorize issuance of orders and regulations, and activate pre-established emergency provisions; and

WHEREAS, conditions of extreme peril to the safety of persons and property have arisen within the City, based on the following:

1. The City established an Incident Management Team on January 31, 2024 in response to the National Weather Service (“NWS”) Flood Watch and High Wind Watch for the San Francisco Bay Area, in anticipation of flooding from multiple significant atmospheric river storms through the weekend predicted to produce

heavy rains and inflow into waterways throughout the City that could result in high stream flows and potential flooding.

2. The NWS forecasted two to three inches of rain on the valley floor in San José from Saturday through Monday, and more significant amounts at high elevations, which would result in run-off into the valley, exacerbating flood conditions.
3. The NWS also forecasted a high wind watch in effect throughout the county, with southerly winds 35 to 40 miles per hour and gusts up to 60 miles per hour in valley locations in the greater Bay Area and Central Coast, creating an additional risk of power outages and falling trees which can damage homes, cause additional flooding, and pose a real threat to life.
4. Based on worsening conditions, direct observation of rising water levels and potential for flooding along the waterways, the Director of Emergency Services signed a proclamation of a Local Emergency on February 3, 2024, including an evacuation order in areas of concern along the City's waterways, in particular the banks of the Guadalupe River, in order to protect the lives of people living or occupying those areas who were subject to life-threatening harm from sudden high stream flows that can result from the expected heavy rains.

WHEREAS, the City Council does hereby find that the above-described conditions of extreme peril did warrant and necessitate the proclamation of the existence of a local emergency in the City; and

WHEREAS, on February 3, 2024, the Director of Emergency Services issued a proclamation declaring the existence of a local emergency within the City; and

WHEREAS, the associated emergency conditions are on-going and the emergency should not be terminated at this time;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

1. The Proclamation of Existence of a Local Emergency, as issued by the Director of Emergency Services on February 3, 2024, is hereby ratified and confirmed.
2. The City Council has reviewed the need for continuing the declaration of local emergency and finds based on substantial evidence that the public interest and necessity require the continuance of the proclamation of local emergency related to significant rainfall resulting from the atmospheric rivers and potential storms throughout the month of February.
3. Said local emergency shall be deemed to continue to exist until terminated by the City Council of the City of San José.
4. The Director of Emergency Services is hereby directed to report to the City Council within sixty (60) days on the need for further continuing the local emergency.

ADOPTED this _____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk