



**MINUTES OF THE
JOINT MEETING OF THE RULES AND OPEN GOVERNMENT COMMITTEE AND
COMMITTEE OF THE WHOLE**

SAN JOSE, CALIFORNIA

WEDNESDAY, AUGUST 21, 2019

The Joint Meeting of the Rules and Open Government Committee and Committee of the Whole of the City of San José convened in Regular Session at 2:00 p.m. in Council Chambers.

PRESENT: Mayor Sam Liccardo, Chair; Vice Mayor Chappie Jones, Vice Chair; Councilmember Dev Davis; Councilmember Sylvia Arenas and Councilmember Johnny Khamis, Members.

ABSENT: All present.

STAFF: Chief Deputy City Attorney, Kevin Fisher; City Clerk Toni J. Taber; Gloria Schmanek, Office of the City Manager; Agenda Services Manager, and Deputy City Clerk, Ruth Krantz.

A. City Council (City Clerk)

1. Review August 27, 2019 Final Agenda

- a) **Add new items to Final Agenda**
- b) **Assign "Time Certain" to Agenda Items (if needed)**
- c) **Review of Notice Waiver Requests for Agenda Items or Documents (if needed)**

Action: Upon motion by Councilmember Dev Davis, seconded by Councilmember Johnny Khamis, and carried unanimously, the Committee accepted the August 27, 2019 Final Agenda, including a Sunshine Waiver for Item 2.8, Request for an Excused Absence for Mayor; Item 2.9, Request for Travel and Excused Absence for Vice Mayor Jones; and Item 3.4, Public Member Appointment to the Board of Administration for Federated City Employees' Retirement System, noting three applicants to be interviewed.

(5-0.)

2. Review September 3, 2019 Draft Agenda (City Clerk)

September 3, 2019 Meeting Cancelled.

B. Review of Upcoming Meeting Agenda(s)

None provided.

C. Legislative Update

- 1. State**
- 2. Federal**

There were none presented.

D. Meeting Schedules

None provided.

E. The Public Record

Documents Filed: Memorandum from City Clerk Toni J. Taber, dated August 21, 2019, transmitting the Public Record for the Week of August 9 – August 15, 2019.

Action: Upon motion by Councilmember Johnny Khamis, seconded by Vice Mayor Chappie Jones, and carried unanimously, the Committee noted and filed the public record.
(5-0.)

F. Boards, Commissions and Committees

- 1. Appointments**
- 2. Work Plans & Annual Reports**

There were none presented.

G. Rules Committee Reviews, Recommendations and Approvals

1. Consent Calendar

- a. Approval of the Northside Night Market Sponsored by Council District 3 as a City Council sponsored Special Event to expend City funds and accept donations of materials and services for the event. (Peralez)**

Documents Filed: Memorandum from Councilmember Raul Peralez, dated August 14, 2019, recommending approval of a City Council sponsored Special Event.

Action: Upon motion by Councilmember Johnny Khamis, seconded by Vice Mayor Chappie Jones, and carried unanimously, approval of the City Council sponsored Special Event was accepted and placed on the August 27, 2019 City Council Agenda for action.
(5-0.)

G. Rules Committee Reviews, Recommendations and Approvals

2. Consent Calendar (Cont'd.)

- b. Approval of Kids We Lose Film Screening Sponsored by Council District 3 as a City Council sponsored Special Event to expend City funds and accept donations of materials and services for the event. (Peralez)**

Documents Filed: Memorandum from Councilmember Raul Peralez, dated August 14, 2019, recommending approval of a City Council sponsored Special Event.

Action: Upon motion by Councilmember Johnny Khamis, seconded by Vice Mayor Chappie Jones, and carried unanimously, approval of the City Council sponsored Special Event was accepted and placed on the August 27, 2019 City Council Agenda for action. (5-0.)

- c. Retroactive approval of the Taylor Street Night Market Sponsored by Council District 3 as a City Council sponsored Special Event to expend City funds and accept donations of materials and services for the event. (Peralez)**

Documents Filed: Memorandum from Councilmember Raul Peralez, dated August 14, 2019, recommending approval of a City Council sponsored Special Event.

Action: Upon motion by Councilmember Johnny Khamis, seconded by Vice Mayor Chappie Jones, and carried unanimously, approval of the City Council sponsored Special Event was accepted and placed on the August 27, 2019 City Council Agenda for action. (5-0.)

- d. Retroactive approval of the Guadalupe River Park Community Clean Up Sponsored by Council District 3 as a City Council sponsored Special Event to expend City funds and accept donations of materials and services for the event. (Peralez)**

Documents Filed: Memorandum from Councilmember Raul Peralez, dated August 14, 2019, recommending approval of a City Council sponsored Special Event.

Action: Upon motion by Councilmember Johnny Khamis, seconded by Vice Mayor Chappie Jones, and carried unanimously, approval of the City Council sponsored Special Event was accepted and placed on the August 27, 2019 City Council Agenda for action. (5-0.)

- e. Retroactive approval of the Indian Independence Day Flag Raising Community Event Sponsored by Council District 8 as a City Council sponsored Special Event to expend City funds and accept donations of materials and services for the event. (Arenas)**

H. Rules Committee Reviews, Recommendations and Approvals

3. Consent Calendar (Cont'd.)

Documents Filed: Memorandum from Councilmember Sylvia Arenas, dated August 15, 2019, recommending approval of a City Council sponsored Special Event.

Action: Upon motion by Councilmember Johnny Khamis, seconded by Vice Mayor Chappie Jones, and carried unanimously, approval of the City Council sponsored Special Event was accepted and placed on the August 27, 2019 City Council Agenda for action. (5-0.)

END OF CONSENT CALENDAR

2. Hate Crime Prevention (Jimenez)

Documents Filed: (1) Memorandum from Councilmember Sergio Jimenez, dated August 15, 2019, recommending direction regarding Hate Crime Prevention. (2) Email from Serena Alvarez, dated August 21, 2019, regarding LULAC Collaboration with ADL on prevention of Bias Motivated Violence and Improved Hate Crime Reporting.

Public Comments: A member of the public addressed increased violence in downtown and the need for intervention.

Councilmember Sergio Jimenez spoke to the importance of his memorandum and urged action. Due to the late availability of an additional memorandum authored by Councilmember Sylvia Arenas, it's consideration was agreed to be included in discussion at the future meeting of the Council.

Action: Upon motion by Councilmember Dev Davis, seconded by Councilmember Sylvia Arenas and carried unanimously, the memorandum from Councilmember Sergio Jimenez, dated August 15, 2019, was accepted, directing the San José Police Department, in coordination with the City Manager's Office, to begin the following work:

a) Provide an update to the full City Council on statistics related to hate crimes in San José over the last five years and provide information on any ongoing and future efforts by the San Jose Police Department to address hate crimes.

b) Initiate conversations with the County of Santa Clara and support any efforts, including a task force, to address ongoing safety concerns and prevent acts of violence motivated by racism, white nationalism, xenophobia, and hate.

(5-0.)

3. A Harm Reduction Approach: Eliminating the "Gun Violence Subsidy". (Mayor, Jones, Peralez)

Documents Filed: Joint memorandum from Mayor Sam Liccardo, Vice Mayor Chappie Jones and Councilmember Peralez, dated August 21, 2019, recommending a "Harm Reduction Approach" in eliminating gun violence.

3. A Harm Reduction Approach: Eliminating the “Gun Violence Subsidy” (Cont’d.)

Councilmember Johnny Khamis recused himself from participating in the Council discussion and/or voting, disclosing that he has personal interest in the insurance business.

Public Comment: Thirteen members of the public offered comments, both in favor of the recommendations offered and others citing an undue burden for otherwise law-abiding citizens.

Committee discussion followed, with clarification regarding moving forward with feasibility studies provided by Chief of Staff, Office of the City Manager, Lee Wilcox.

Motion: Vice Mayor Chappie Jones moved acceptance of the memorandum from Mayor Sam Liccardo, Vice Mayor Chappie Jones and Councilmember Raul Peralez, dated August 21, 2019, with direction to move forward with “green light” and “yellow light” items. Councilmember Dev Davis seconded the motion.

Action: On a call for the question, the motion carried unanimously, with approval of the joint memorandum from Mayor Sam Liccardo, Vice Mayor Chappie Jones and Councilmember Raul Peralez, including direction to move forward with “green light” and “yellow light” items, as noted:

1. Purpose: This policy shall have three basic purposes regarding gun violence: harm reduction, alignment of risk, behavior and financial responsibility, and reduction of public burden.

2. Insurance for all gun owners

Upon complying with standard City processes for Council-requested policy proposals, evaluate and present to Council options requiring all residents of the City of San Jose-other than sworn employees of law enforcement agencies-to have insurance for their ownership or possession of a gun.

a. No Registry/ Licensing/ Data Collection: To ensure compliance with state law, such an insurance requirement must not contain any provision for a registry or licensing scheme, nor shall the City collect any data beyond that necessary to implement this policy.

b. Provision of Insurance: The insurance requirement may be provided by an existing homeowner's policy, renter's policy, or a stand-alone policy. In the instance where the gun owner's insurer does not provide appropriate coverage, or the individual cannot obtain insurance coverage, the gun owner must participate in a public pool, as described in 3., below.

Coverage: Insurance shall include coverage for accidental discharge of the gun, and for the intentional acts of third parties who steal, borrow, or otherwise acquire the gun. To comply with state law and with longstanding insurance principles designed to avoid moral hazard, the insurance shall not cover liability of the policyholder for his or her own intentional conduct.

(Item Continued on the Next Page)

3. Fee to Fund Public Pool to Address "Gun Violence Subsidy"

Where insurance is not available, or as an alternative to an insurance mandate, Staff shall consider how the City might require gun owners to pay a per-household fee to participate in a public compensation pool sufficient to eliminate the public cost of the "gun violence subsidy" to existing gun owners.

a. Gun Violence Subsidy: The "Gun Violence Subsidy" incorporates all financial burdens borne by the public for private usage and ownership of firearms that result in harm, including but not limited to:

- Emergency medical response provided by the San Jose Fire Department, and public-funded transport by AMR;
- Hospitalization and treatment provided by VMC and other public hospitals funded by MediCal, the County, or other public sources;
- Rehabilitation and physical therapy funded by public sources;
- Incident response by San Jose Police Department;
- Expenditures by state-funded Victim-Witness Assistance Center programs for funeral services, counseling, and other expenses;
- Prosecution expenses by the County District Attorney's Office; and
- Any other expenses foreseeably borne by taxpayers for gun violence.

b. Nexus Study: Staff shall engage an expert consultant to conduct a nexus study to aggregate the Gun Violence Subsidy in the City of San Jose, and assess a per-household fee on gun-owning households that would accurately relieve that aggregate burden from the public.

c. Partnership with County and State: Staff shall reach out to the County of Santa Clara, State of California, and other relevant agencies to assess (a) costs incurred by those agencies, and (b) their interest in partnering with the City to recoup those costs through fee revenue.

d. Allocation of Risk: Staff shall consider varying the fee based upon circumstances actuarially related to the risks associated with the gun's possession, e.g., to reduce or eliminate the fee where the gun owner has completed a sanctioned gun safety course within a designated period, or to increase the fee where young adults under 25 possess or have access to the gun, for example.

e. Legality: Staff shall consider how the Council can establish "by a preponderance of the evidence ... that the amount [of the fee] is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on ... the governmental activity," as required under Proposition 26.

4. Enforcement

a. Construct a set of enforcement misdemeanor sanctions analogous to those outlined in California Vehicle Code 16209, which provides fines and other penalties for the misdemeanor of operating a vehicle without insurance.

b. Enforcement would remain the responsibility of any police officer or other designated city official lawfully present to identify the presence of a firearm, whether via plain view, a consent search, and/or pursuant to a search warrant or any other lawful basis for search.

(Item Continued on the Next Page)

5. Tax

Separately, Staff shall consider for citywide polling in October a measure that would impose an additional tax on all ammunition and firearm purchases in the City. Engage with the and surrounding cities regarding implementing a uniform tax regionally, to fund gun safety classes, violence prevention programs, and additional victim assistance services for survivors of gun violence not otherwise provided through the state-funded Santa Clara County Victim Witness Assistance Center.

6. Legislative Advocacy

Identify within the existing legislative priority advocacy for a statewide insurance- and/or fee-based approach to gun violence harm reduction, and place this item on the Agenda for the Fall 2019 Legislative Priorities updates. Further urge legislation that removes potential obstacles to local solutions such as these, including barring any legal claims asserting state preemption over a locally-enacted insurance- or fee-based approach.

7. Taking Guns and Other Weapons Out of Dangerous Hands

a. Consent-to-Search Program for Juveniles

Evaluate, in partnership with the Santa Clara County District Attorney's Office, the cost and benefits of a program, similar to St. Louis', enabling parents to allow SJPD to search their homes for any weapons owned by their dependents, and to seize those weapons, in exchange for an agreement not to prosecute the dependent for unlawful possession of the firearm or weapon. ¹

b. Gun Bounty Program

Evaluate, in partnership with other relevant agencies, the cost and benefits of a program similar to that in Pittsburg, which offered cash rewards to anonymous tipsters who identified unlawful (e.g., those with prior felony convictions or domestic violence restraining orders) possessors of firearms. ²

¹ See Scott H. Decker and Richard Rosenfeld, "The St. Louis Consent-to-Search Program," National Institute of Justice Research Reports, NCJ 191332, November 2004. Such an agreement, however, should not prohibit the use of evidence of the weapon in a prosecution for an unrelated incident under California Evidence Code Section 352, nor for prosecution for the use of threat weapon in a subsequently-discovered crime.

² See Juan Pena-Acosta et al. , "Gun Bounty Program: Program Design and Evaluation for the City of Pittsburg," Heinz School, Carnegie Mellon University, May 1998.

(4-0-0-1. Abstain: Khamis.)

H. Review of additions to Council Committee Agendas/Workplans

- 1. Community and Economic Development Committee**
 - 2. Neighborhood Services and Education Committee**
 - 3. Transportation and Environment Committee**
 - 4. Public Safety, Finance and Strategic Support Committee**
 - 5. Joint Meeting of the Rules and Open Government Committee and Committee of the Whole**
 - 6. Smart Cities and Service Improvements Committee**
- None provided.

I. Open Government

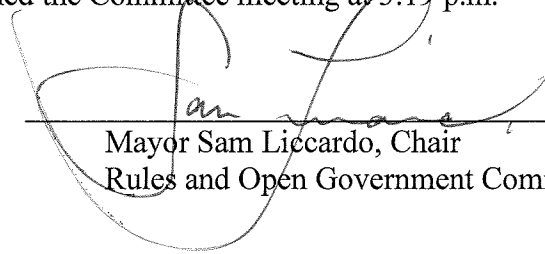
1. Appeals of Public Records Act Request – None.

J. Open Forum

Blair Beekman spoke on patience and forgiveness; he offered additional comments on the Measure T appointment process and emergency preparedness.

K. Adjournment

Mayor Sam Liccardo adjourned the Committee meeting at 3:19 p.m.



Mayor Sam Liccardo, Chair
Rules and Open Government Committee

SL/rmk:rulesmin_8-21-19