



City Council Meeting

Draft Minutes/Synopsis

Tuesday, August 18, 2020

11:00 AM

Virtual Meeting <https://sanjoseca.zoom.us/j/91325378626>

Regular Meeting

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



MINUTES OF THE CITY COUNCIL MEETING**SAN JOSÉ, CALIFORNIA****TUESDAY, AUGUST 18, 2020**

Consistent with the California Governor's Executive Order No. N-29-20, Resolution No. 79450 from the City of San José and the Santa Clara County Health Officer's March 16, 2020 Shelter in Place Order, the City Council Meeting was not physically open to the public; it was teleconferenced from remote locations. Public comments were accepted via eComment, email, by phone and webinar.

The Council meeting was teleconferenced from remote locations. The Council of the City of San José convened in a Regular Session at 11:03 AM on Tuesday, August 18, 2020. (See Page 26 for Closed Session Minutes.)

Present: Councilmembers - Liccardo, Jones, Jimenez, Peralez, Diep, Carrasco, Davis, Esparza, Arenas, Foley, Khamis.

Absent: Councilmembers - All Present.

• CALL TO ORDER AND ROLL CALL: 11:03 AM.**INVOCATION**

(District 7: Monica Arellano Muwekma Ohlone Tribe.)

PLEDGE OF ALLEGIANCE

Mayor Liccardo led the Pledge of Allegiance.

COMMENDATION

Mayor Liccardo and City Council honored Carl Guardino, who recently stepped down as President and CEO of the Silicon Valley Leadership Group, after 24-years of leadership and service to our community. Among other accomplishments, he led four separate Measures for Bath Transit, during which he provided millions of dollars for the critical infrastructure needs, Bay Area-wide. He was a champion of Affordable Housing, and founded the Housing Trust of Santa Clara County, which was a critical force in raising \$300M in private contribution for Affordable Homes, Housing to assist the Homeless as well as First Time Home Buyers.

ORDERS OF THE DAY

Upon motion by Vice Mayor Chappie Jones, to move approval, seconded by Councilmember Sylvia Arenas, and carried unanimously, the Orders of the Day and the Amended Agenda were accepted, with Item 8.1 to be heard before Items 4.1 to 4.4, which are to be heard jointly.

(11-0)

• CLOSED SESSION REPORT

No Report.

1. CEREMONIAL ITEMS

None presented.

2. CONSENT CALENDAR

Upon motion by Vice Mayor Chappie Jones, seconded by Councilmember Sylvia Arenas, and carried unanimously, the Consent Calendar was approved, with items 2.10 and 2.13 pulled, and the below listed actions taken as indicated.

(11-0)

2.1 Approval of City Council Minutes.

2.2 Final Adoption of Ordinances.

20-900 Final Adoption of Ordinances.

Recommendation: (a) Ord No. 30453 - An Ordinance of the Council of the City of San José Dedicating as Public Right-Of-Way Approximately 21,799 Square Feet of City-Owned Property North of Story Road as Knox Avenue to Align with Existing Public Improvements.
[Passed for Publication on 8/4/2020 - Item 2.8 (20-824)]

Action: **Ordinance No. 30453** was adopted.

2.3 Approval of Council Committee Minutes.

2.4 Mayor and Council Excused Absence Requests.

2.5 City Council Travel Reports.

2.6 Report from the Council Liaison to the Retirement Boards.

2.7 20-866 2020 League of California Cities Annual Meeting Voting Delegate and Alternate.

Recommendation: Approve the designation of Councilmember Sergio Jimenez as the voting delegate to the General Assembly at the October 9, 2020 League of California Cities Annual Meeting. CEQA: Not a Project, File No. PP17-010, City Organizational and Administrative Activities resulting in no changes to the physical environment. (City Manager)

Action: The 2020 League of California Cities Annual Meeting Voting Delegate and Alternate, was approved.

2.8 20-867 Adoption of Appropriation Ordinance and Funding Sources Resolution Amendments in Various Funds to Rebudget Funds to 2020-2021 for Completion of Projects.

Recommendation: (a) Adopt the following 2020-2021 Appropriation Ordinance and Funding Sources Resolution amendments in the Convention Center Facility District Capital Fund:
(1) Increase the Beginning Fund Balance by \$96,000; and
(2) Establish the Public Art appropriation to the Office of Economic Development by \$96,000.

Action: **Ordinance 30462** was adopted, and **Resolution 79682** was adopted.

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2.8 20-867**Adoption of Appropriation Ordinance and Funding Sources Resolution (Cont'd)**

(b) Adopt the following 2020-2021 Appropriation Ordinance and Funding Sources Resolution amendments in the Sewer Service and Use Charge Capital Improvement Fund:

(1) Increase the Beginning Fund Balance by \$691,000; and

(2) Increase the Public Art appropriation to the Office of Economic Development by \$691,000.

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

Action: **Ordinance No. 30463** was adopted, and **Resolution No. 79683** was adopted.

2.9 20-873**Amendment to the Agreement with HR&A Advisors, Inc. for Development Agreement Services with Google.****Recommendation:**

Approve the Second Amendment to an Agreement with HR&A Advisors, Inc., increasing the amount of compensation by \$270,000 for a total amount of compensation not to exceed \$695,000, to continue assistance with negotiating a Development Agreement with Google.

CEQA: Not a Project, File No. PP17-001 Feasibility, and Planning Studies with no commitment to future actions and File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. (Economic Development)

Action: Amendment to the Agreement with HR&A Advisors, Inc. for Development Agreement Services with Google, was approved.

2.10 20-874**Application for CARES Act Grant from Federal Economic Development Administration.****Recommendation:**

Adopt a resolution:

(a) Ratifying the application by the City Manager to apply for a CARES Act grant from the federal Economic Development Administration in partnership with SFMade, Inc. and the San José Downtown Association for small business recovery and support related to the COVID-19 pandemic;

(b) Ratifying the Agreement with SFMade, Inc. and the San José Downtown Association dated July 24, 2020 to implement the proposed grant program if approved by the Economic Development Administration; and

(c) Authorizing the City Manager to negotiate pre-award terms and, if awarded, negotiate and execute a grant agreement with the Economic Development Administration.

CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. Council Districts 3, 4, 5, 7 and 8. (Economic Development)

(Item Continued on the Next Page)

2.10 20-874 Application for CARES Act Grant from Federal Economic Development (Cont'd)

Councilmember Maya Esparza spoke to benefits for all industrial zones and business outreach in relation to the Monterey Business Corridor, and to ensure businesses continue to get support.

Office of Economic Development Deputy Director Chris Burton responded to questions.

Action: Upon motion by Vice Mayor Chappie Jones to move approval, seconded by Councilmember Sylvia Arenas, and carried unanimously, **Resolution No. 79684** was adopted, and staff report, approved.

2.11 20-942 Agreement with San José Water Company for Water Facility Services for the Fire Station No. 37 Project.

Recommendation: Approve an agreement with the San José Water Company for installation of water facilities to serve the new Fire Station No. 37 project, in the amount of \$192,501. CEQA: Categorically Exempt, File No. PP09-150, CEQA Guidelines Section 15303, New Construction or Conversion of Small Structures. Council District 6. (Public Works)
[Deferred from 8/11/2020 - Item 2.11 (20-848)]

Action: Agreement with San José Water Company for Water Facility Services for the Fire Station No. 37 Project, was approved.

2.12 20-901 Retroactive Approval of City Hall Lighting Display Sponsored By Council District 1 as a City Council Sponsored Special Event to Expend City Funds and Accept Donations of Materials and Services for The Event.

Recommendation: Retroactively approve the City Hall Lighting Display Event for Eddie Gale, scheduled for August 15, 2020 as a City Council sponsored Special Event and approve the expenditure of funds. CEQA: Not a Project, File No. PP17-011, Temporary Special Events resulting in no changes to the physical environment. (Jones)
[Rules Committee referral 8/12/2020 - Item A.1.a]

Action: The City Hall Lighting Display Special Event was approved, expenditure of funds, and acceptance of donations for the event were retroactively approved. (11-0.)

2.13 20-939 Approval of Assyrian Memorial Month Sponsored by Council District 10 as a City Council Sponsored Special Event to Expend City Funds and Accept Donations of Materials and Services for the Event.

Recommendation: (a) Approve Assyrian Memorial Month to be recognized by the City Council on Tuesday, August 18, 2020, 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.

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2.13 20-939**Approval of Assyrian Memorial Month Sponsored by Council District 10 (Cont'd)**

CEQA: Not a Project, File No. PP17-011, Temporary Special Events resulting in no changes to the physical environment. (Khamis)

[Rules Committee referral 8/12/2020 - Item A.1.a]

Councilmember Johnny Khamis introduced the Assyrian Memorial Month in remembrance of the persecution and atrocities the Assyrian global community has faced. They gave their lives in the pursuit of freedom and justice. Nearly four hundred thousand Assyrians live in the U.S, with over ten thousand in the San Jose Region.

Public Comments: Last four digits of phone # ending in: 5140 commented that the Assyrian Community was a blueprint for the Nazi Holocaust; their ordeal needs to be a lot more recognized.

Action: Upon motion by Councilmember Johnny Khamis to move approval, seconded by Councilmember Pam Foley, and carried unanimously, the Assyrian Memorial Month Special Event was approved, expenditure of funds, and acceptance of donations from various individuals, businesses, or community groups to support the event were approved.

(11-0)

3. STRATEGIC SUPPORT**3.1 20-868****Report of the City Manager, David Sykes.****Recommendation:**

(a) City Manager's COVID-19 Update (Verbal Report).

(b) City Manager's Report on Other City Matters (Verbal Report)

Heard before Consent

City Manager David Sykes provided updates regarding the City's response to COVID-19. He recognized some of the City's unsung heroes, including the Information Technology and Cyber Security Team, which acted fast to enable large portions of the City's workforce to work remotely, while protecting our cybersecurity. The team has been working diligently over the past few years for long hours. The team adapted to new set of challenges in terms of response to the crisis brought on by the pandemic. The City Manager recognized the following team members: John Rocha, Ed Walker, Eugene Park, Brian Vu, Constantine Camus, and Michel Pareido, the City's Chief Information Security Officer, and thanked the entire team for all the work it has done to keep the City safe during this COVID-19.

Deputy City Manager Kip Harkness and the leadership team from the City's Emergency Operations Center provided updates, including a focus on Severe Heat and Rolling Power Outage due to the unpredictable weather fluctuations, the County's Enforcement Ordinance, Robust communications around compliance, Census Education and Outreach, Domestic Violence, and Child Care and School Day Supervision. They noted the pop-up testing program operated by Santa Clara Valley Medical Center continues to provide free diagnostic COVID-19 testing around the County.

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3.1 20-868 Report of the City Manager, David Sykes. (Cont'd)

They noted there is a likelihood of rolling blackout in San Jose Wednesday, August 18, 2020. The City will continue to share additional information updates as, and when available from PG&E.

- **Council recessed for lunch at 12:14PM**
- **Council reconvened at 1:31PM**

Public Comments: Offering comments on the Report of the City Manager, were: Scott Largent, Jeremy Taylor, Robert Aguirre, Last four digits of phone #: 5140, Blair Beekman, Melisa Brooks, (representing SJFJC); Unnamed speaker, Unnamed speaker, (from D6); Lucia Garcia, Moline McCloud, Unnamed speaker, Paul Soto, Unnamed speaker, Elisa, Kathryn Hedges and Brenda Ganas.

Action: No motion was required. Council accepted the verbal report.

3.2 Labor Negotiations Update.**3.2 Labor Negotiations Update.**

Accept Labor Negotiations Update.
Heard at 9:30 A.M.

3.3 20-869 Audit of Fleet Maintenance.**Recommendation:**

Accept the report on the Fleet Maintenance Audit.

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

City Auditor Joe Rois gave a presentation. Public Works Director Matt Cano and Assistant Director Walter Lin responded to questions.

Public Comments: Blair Beekman commented that alternative fuels must be available to Low Income Communities. East Bay Communities are working towards renewable energy for the future.

Action: Upon motion by Councilmember Johnny Khamis to move approval, seconded by Councilmember Pam Foley, and carried unanimously, the Audit of Fleet Maintenance report was approved.

(11-0)

3.4 20-870 Extension of Proclamation of Local Emergency Related to COVID-19.

Recommendation:

Adopt a resolution finding the continued existence of a local emergency and extending the March 6, 2020 Director of Emergency Services’ proclamation of a local emergency resulting from community spread of the coronavirus, also known as COVID-19 in the City of San José.

CEQA: Statutorily Exempt, CEQA Guidelines Section 15269, Emergency Projects Undertaken for Specific Actions Necessary to Prevent or Mitigate an Emergency. (City Manager)

There was no staff presentation for this item. Emergency Operations Center Director Ray Riordan responded to questions.

Public Comments: Offering comments were: Blair Beekman, and Robert Aguirre.

Action: Upon motion by Councilmember Pam Foley to move approval, seconded by Vice Mayor Chappie Jones, and carried unanimously, **Resolution No. 79685** was adopted. (11-0.)

3.5 20-871 Community and Economic Recovery and Coronavirus Relief Funds for Local Assistance Efforts.

Recommendation:

(a) Accept the verbal staff report on the Emergency Operations Center Community and Economic Recovery efforts.

(b)

(1) Approve allocating \$2,479,500 of the Coronavirus Relief Funds for Resident Assistance to fund a job training and subsidized employment program through work2future, including wrap-around services such as childcare for individuals who have experienced job loss or other impacts related to COVID-19, and

(2) Direct the City Manager to conduct additional community outreach regarding the expenditure of the remaining Resident Assistance funding.

(c) Adopt a resolution authorizing the City Manager to negotiate and execute the following grant agreements, including any amendments and revisions to said agreements and any necessary documents to effectuate the grant, to use Coronavirus Relief Funds to provide assistance to San José residents, small businesses, and nonprofits that have been negatively impacted by the COVID-19 pandemic:

(1) With Sacred Heart Community Services in an amount not to exceed \$7.5 million to provide rental relief and other eligible financial assistance to San José residents, as well as to fund outreach efforts to connect San José residents with rental relief, job training, and other assistance;

(2) With the Enterprise Foundation, through its Small Business Development Center program, in an amount not to exceed \$3.8 million to provide rental relief and other eligible financial assistance to low-income and moderate-income San José small business owners;

(3) With the Center for Cultural Innovation in an amount not to exceed \$208,000 to provide financial assistance for creative entrepreneurs and artists;

(Item Continued on the Next Page)

3.5 20-871**Community and Economic Recovery and Coronavirus Relief Funds for (Cont'd)**

(4) With First 5 Santa Clara County in an amount not to exceed \$2.5 million to provide financial assistance to Family Childcare Homes that have been impacted by the COVID-19 pandemic; and

(5) With Silicon Valley Community Foundation in an amount not to exceed \$8 million to administer grants to cross-sector nonprofit organizations, inclusive of the arts and other social sectors; to fund technical assistance for nonprofits and small businesses to the extent feasible; to fund the procurement of personal protective equipment by nonprofit programs for their staff and the community; to fund community outreach efforts related to the COVID-19 pandemic; and to provide contract administration for the District 4 Economic Assistance Program. Should any single category not require all of the funds originally allocated, the City Manager is authorized to shift funding into another of these grantmaking categories.

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

Office of Economic Development Director Kim Walesh and PRNS Acting Deputy Director Andrea Shelton-Flores, Assistant to the City Manager Michelle McGurk gave a presentation and responded to questions.

Public Comments: Offering comments were: Paul Soto, Robert Aguirre, Blair Beekman, Amy Flores, (Superintendent of Schools for the Evergreen School District); Magaly Fernandez, and Patricia Mendoza.

Councilmember Sylvia Arenas spoke to the needs of constituents living in crowded conditions and sought clarification on how to facilitate support for those folks.

PRNS Acting Deputy Director Andrea Shelton-Flores, and Assistant to the City Manager Michelle McGurk addressed the question. Housing Director Jacky Morales-Ferrand clarified that tenants cannot be evicted right now because of the ongoing pandemic.

- **Council recessed pending PG&E power outage at 6:02 PM**
- **Council reconvened at 7:01PM**

Councilmember Esparza urged the Federal Government to step up to address community needs and sought clarification on how to combine City funds designated for rental assistance with other efforts to get funds out to residents because they have nothing amid the pandemic.

Destination: Home Chief Executive Officer Jennifer Loving responded to questions and referenced Sacred Heart's assessment criteria in determining the needs of each family in the community. Hundreds of families get help, many more, don't.

Mayor Liccardo acknowledged consensus and observed that there's a primary direction for child care.

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3.5 20-871

Community and Economic Recovery and Coronavirus Relief Funds for (Cont'd)

Action: Upon motion by Councilmember Sylvia Arenas to move approval of her memo, seconded by Councilmember Dev Davis, and carried unanimously, **Resolution No. 79686** was adopted, including approval of Memorandum from Councilmember Sylvia Arenas to:

1. Accept staff report and supplemental, with the following:
2. Direct the City Manager to include in their negotiations with First 5 efforts to ensure that families will receive subsidized childcare directly. Staff should include in their discussions:
 - a. Asking for consideration of ways to utilize the funding to create additional subsidized childcare slots at providers
 - b. Efforts to effectively allocate existing state sponsored subsidized care slots into communities most effected by the current crisis
 - c. Ways to ensure that providers receiving city funds are serving families in need
3. Direct the City Manager to return to Council on August 25th with an updated plan that incorporates community focus group feedback by allocating funding to direct support to families needing subsidized childcare. Include in this plan:
 - a. Updates on ways that the First 5 contract can be improved to better support families in need
 - b. A spending plan that allocates the remaining \$2 million in Local Assistance CRF funds to support free childcare for families in crisis. This should include:
 - i. Providing sufficient funding to make the PRNS/Library/school partnered school-aged childcare fall strategy free for referred students.
 - ii. Funding to restart PRNS's license-exempt recreation preschool, and to make it free for families referred by appropriate social service agencies.
 - iii. Funding to support subsidized slots in other appropriate license exempt programs identified by the administration, and/or other fiscally efficient strategies to maximize this investment in childcare.

Also approved was \$2M specifically for child care in relation to Items: 3 a, b, c, d and e per staff memo dated August 11, 2020, and approval allocating \$2.4M for work force training and development program outlined in staff supplemental memo, dated August 14, 2020.

This was addended with a friendly modification to the motion to request an updated plan within Councilmember Arenas' memo to return to Council on September 1, 2020 with recommendations, instead of August 25, 2020. Additional clarification was given to explore prioritization of who gets child care slots first, sexual assault, and incidents of intimate sexual violence.

(11-0.)

3.6 20-872 Proposition 16 on the November 3, 2020 California General Election Ballot. - DEFERRED

Recommendation: Receive analysis and adopt a support position for Proposition 16 on the November 3, 2020 California General Election ballot.
 CEQA: Not a Project, File No. PP17-010, City Organizational and Administrative Activities resulting in no changes to the physical environment. (City Manager)
Deferred to 8/25/2020 Per Rules and Open Government Committee.

3.7 20-881 Actions Related to Police Reform, Reimagining Police, and Strengthening the Investigative Authority of the Office of the Independent Police Auditor. Renumbered to Item 4.3

3.8 20-883 Report on Police Misconduct Complaints Received During Period of Civil Unrest. - Renumbered to Item 4.1

4. PUBLIC SAFETY SERVICES

4.1 20-943 Report on Police Misconduct Complaints Received During Period of Civil Unrest. - Renumbered from Item 3.8

Recommendation: Accept the report on the police misconduct complaints received by the Office of the Independent Police Auditor and the Internal Affairs Unit during the period of civil unrest
 CEQA: Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.
 (Independent Police Auditor)
 [Deferred from 8/11/2020 - Item 3.3 (20-850)]
[Renumbered from Item 3.8 (20-883)]
Not heard before 2:00 PM

Independent Police Auditor Shivaun Nurre gave a presentation and responded to questions. She noted her office has received many complaints, but due to duplicate complaints, about 20 of those are being investigated. She noted they received complaints about officers, as well as about policies and procedures or the lack thereof.

Police Chief Edgardo Garcia stated that Police Departments needs to examine how to improve using local and national examples.

Mayor Liccardo acknowledged the enormity of public engagement on this issue and emphasized the importance for policymakers to recognize the inherent complexity of the issues confronting the City, and noted SJPd is one of only two hundred departments, in the entire country that has any kind of independent review over internal affairs investigations in the form of an IPA.

(Item Continued on the Next Page)

4.1 20-943

Report on Police Misconduct Complaints Received During Period of Civil (Cont'd)

Public Comments: Offering comments on the Report on Police Misconduct Complaints Received During Period of Civil Unrest were: V. Christie, Scott Largent, Robert Aguirre, Nicole Boaz, (representing SURJ), Paul Soto, Carina Griswold, Lauren Renaud, (D6), Carlie Pietsch, (representing SURJ and Sacred Heart), Molly McCloud, Jen Myhre (representing Sacred Heart), Unnamed speaker, Jeremy Taylor, Lori, Rev. Nancy Palmer-Jones, Kim Guptill, (representing SURJ), Vita Brezner, (representing SURJ and Sacred Heart), Anna Zelger, Blair Beekman, Leslie Zeiger, (representing SURJ and Sacred Heart), Last digits of phone #: 7912, Michelle C., (D6, representing SURJ and Sacred Heart), Mishi, Lori Katcher, (D6), Christine Siegel, (D6), Victor, Last digits of phone #: 4379, Kathryn Hedges, Sheila Dawkins, Moto G., and Dana Bainbridge.

Councilmember Esparza sought clarifications on when to expect to receive the IPA Annual Report and a confirmation of when it will come to Council.

Independent Police Auditor Shivaun Nurre cited delays caused by COVID-19 and lack of staff and confirmed that the 2019 Annual Report should be coming to Council soon. She noted complaints received in 2020 will be included in the 2020 Annual Report which goes to Council in May 2021.

Councilmember Arenas noted the Council must address police reforms. She proposed that the City can start the conversations in the community engagement process by incorporating viewpoints by community members expressed during public comment session. She sought clarifications if the IPA considers a compilation of community complaints voiced during public comment as valid feedback from residents.

Independent Police Auditor Shivaun Nurre confirmed her intent to follow up on this proposition with the City Clerk Toni Taber to explore all plausible processes, confer with the City Manager Office, and come back to Council with recommendations.

The IPA stated that in the interim, residents can make a complaint either by phone by calling 408-794-6226, by email to ipa@sanjoseca.gov, or via the online form at: <https://www.sanjoseca.gov/your-government/appointees/independent-police-auditor/complaint-form>.

Action: Upon motion by Vice Mayor Chappie Jones to move approval of staff report, seconded by Councilmember Pam Foley, and carried unanimously, the Report on Police Misconduct Complaints Received During Period of Civil Unrest, was approved.
(11-0)

4.2 20-945

Release of Police Department Video Clips Related to Recent Protests.**Recommendation:**

Accept a report detailing the public release of video clips from the recent protests that are in the possession of or readily available to the Police Department.

CEQA: Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action. (Police)
[Deferred from 8/5/2020 - Item 4.1 (20-832)]

Not heard before 2:00 P.M.

Councilmember Raul Peralez addressed timing concerns regarding body camera and the helicopter footage of Police Department videos.

Mayor Liccardo observed that iPhones capture images from all angles nowadays and asked how it could be harmful to the City to release video of incidents involving protests where videos filmed by the public are already available on social media, noting that the online clips omit context and relevant information that could lead to understanding of why an officer may have used force and whether it was proper, lawful, or excessive.

Police Chief Garcia committed to working on a candid process that improves the PD's transparency, while guaranteeing consistency across the board to address a perception that is slanted by a very narrow view of whatever happened.

Action: Upon motion by Councilmember Raul Peralez to move approval, seconded by Councilmember Sylvia Arenas, and carried unanimously, Release of Police Department Video Clips Related to Recent Protests, was approved. Staff is directed to return to Council, (and option to come to the Rules Committee if staff needs time to discuss their work plan and workload), with a proposal for what the concept of immediately releasing body worn camera video footage of incidents of great public concern policy outside of our current practices might look like.

This was modified with Councilmember Peralez' recommendation of a parallel approach, involving the integration of the reimagining policing in general with the flexibility to accommodate some discrete items on the work plan, including the Rules of Professional Conduct for Officers and the adopted preliminary changes per community concerns, pending consultations, revisions, and feedback on reimagining policing reforms, moving forward.

(11-0.)

4.3 20-946

Actions Related to Police Reform, Reimagining Police, and Strengthening the Investigative Authority of the Office of the Independent Police Auditor. Renumbered from Item 3.7

Recommendation:

(a) Direct the Independent Police Auditor (IPA) and City Manager to return to Council by September 25, either through a report to Council or information memo, with a timeline and update on the release of a request for proposal (RFP) to select a consultant to conduct a use of force review and recommendations on additional amendments to the SJPD Duty Manual or other protocols that further align San Jose with 21st Century Policing best practices.

(b) Direct the City Manager to return to Council by September 25, either through a report to Council or information memo, with an outreach plan for community engagement specific to reimagining policing. This should include, but not be limited to:

(1) Create a timeline and sequence for outreach that includes a process and a clear strategy for including neighborhoods that have historically endured high rates of crime and poverty.

(2) Incorporate the selection of a new Chief of Police into the timeline to ensure that the new Chief will be engaged directly in that community dialogue. COUNCIL AGENDA: AUGUST 18, 2020 ITEM: 4.3

(3) Explore partnerships with San Jose State University and recommendation-neutral community-based institutions that have familiarity with SJPD and the San Jose community, as an additional “high touch” strategy to reach out to communities that may not be heard through digital platforms currently used.

(c) Direct the City Manager and Independent Police Auditor to confer on sequencing of the use of force review, reimagining public safety, and selection of a new Chief of Police to determine the best possible timeline and potential to involve the same consultant(s) for community engagement aspects of all of these portions of the workplan.

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

(Mayor, Jones, Diep, Peralez and Carrasco)

[Rules Committee referral 8/5/2020 - Item G.5]

[Renumbered from Item 3.7 (20-881)]

Not heard before 2:00 PM

Mayor Liccardo introduced the item and noted the incoming new Police Chief should be a part of the public process.

Councilmember Raul Peralez noted his initial intent is to reimagine policing and invited the community to participate.

Deputy City Manager Angel Rios underlined the importance of racial equity and the diversity of voices. He noted reimagining policing involves various Stakeholders including the police, public health providers, faith providers, the community, and others.

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4.3 20-946

Actions Related to Police Reform, Reimagining Police, and Strengthening (Cont'd)

Councilmember Maya Esparza highlighted advocacy in reimagining the police force and emphasized the importance of collaboration with key County partners that will inspire buy in, and to create lasting impact, noting it is critical that the County has a seat or more in the process, especially as the City explores deploying mental and behavioral health professionals, and social workers which the County controls.

Councilmember Esparza sought clarifications on how the City hopes to engage the community from neighborhoods in high crime areas, as many crime victims are people of color.

City Manager Dave Sykes stated that neighborhood level engagement will be a critical piece of the discussion process from start to finish, and this will be part of the commitment brought to Council on the 25th.

Councilmember Johnny Khamis expressed concern about the dangers and pitfalls of defunding and changing policing altogether, and the need to not lose sight of the concerns that officers have in policing.

Action: Upon motion by Councilmember Raul Peralez to move approval, incorporate both memoranda and accept the staff report, seconded by Vice Mayor Chappie Jones, and carried unanimously, Actions Related to Police Reform, Reimagining Police, and Strengthening the Investigative Authority of the Office of the Independent Police Auditor was accepted, including approval of Memorandum from Mayor Liccardo, Vice-Mayor Jones Councilmember Diep, Councilmember Peralez, and Councilmember Carrasco, dated August 14, 2020, to:

- 1) Direct the Independent Police Auditor (IPA) and City Manager to return to Council by September 25, either through a report to Council or information memo, with a timeline and update on the release of a request for proposal (RFP) to select a consultant to conduct a use of force review and recommendations on additional amendments to the SJPD Duty Manual or other protocols that further align San Jose with 21st Century Policing best practices.
- 2) Direct the City Manager to return to Council by September 25, either through a report to Council or information memo, with an outreach plan for community engagement specific to reimagining policing. This should include, but not be limited to:
 - a. Create a timeline and sequence for outreach that includes a process and a clear strategy for including neighborhoods that have historically endured high rates of crime and poverty.
 - b. Incorporate the selection of a new Chief of Police into the timeline to ensure that the new Chief will be engaged directly in that community dialogue.
 - c. Explore partnerships with San Jose State University and recommendation-neutral community-based institutions that have familiarity with SJPD and the San Jose community, as an additional “high touch” strategy to reach out to communities that may not be heard through digital platforms currently used.

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4.3 20-946

Actions Related to Police Reform, Reimagining Police, and Strengthening (Cont'd)

3) Direct the City Manager and Independent Police Auditor to confer on sequencing of the use of force review, reimagining public safety, and selection of a new Chief of Police to determine the best possible timeline and potential to involve the same consultant(s) for community engagement aspects of all of these portions of the workplan.

Also approved was Memorandum from Mayor Sam Liccardo, Vice-Mayor Jones, Councilmember Lan Diep, and Councilmember Carrasco, dated July 30, 2020 to:

1. Direct the Independent Police Auditor (IPA) and City Manager to provide Council with specific recommendations for how the IPA would take over investigations of police misconduct from SJPD's internal affairs that would incorporate the following elements:
 - 1) Reallocating resources to introduce investigatory capacity within the IPA by the conclusion of negotiations;
 - 2) Enabling the IPA to make factual findings based on its investigations of misconduct allegations; and
 - 3) Enabling the IPA to continue to report concerns between her factual findings and the Department's disciplinary decisions to the Council and public.
2. Direct the City Attorney, IPA, and City Manager to provide Council with specific recommendations to reform the officer disciplinary appeal process—particularly after a termination decision—to either:
 - 1) Identify and implement an alternative to binding arbitration for disciplinary appeals, and/or
 - 2) Reform the arbitration process to enable greater accountability and transparency, in:
 - a. Arbitrator selection;
 - b. Limitation of the arbitrator's scope of review, such as by requiring deference to the factual findings of the IPA;
 - c. Public disclosure of arbitration decisions;
 - d. Appeal of arbitration decisions to a court of competent jurisdiction; and/or
 - e. Other worthwhile reforms made apparent through discussions with the community and in negotiation with the POA;
3. Direct the IPA to evaluate and provide recommendations for expansion of the duties and responsibilities of the current IPA advisory committee, to include review of some of the IPA work, providing additional insight to the Office of the Independent Police Auditor and allowing for greater transparency. Explore models such as the City of Anaheim Police Review Board, City of Davis' Police Accountability Commission, and others.
4. Return to Council in Closed Session to direct City negotiators to commence labor negotiations, to the extent required by the Meyers-Milias Brown Act and related provisions of state law, with the POA and any other relevant bargaining units.

(Item Continued on the Next Page)

4.3 20-946**Actions Related to Police Reform, Reimagining Police, and Strengthening (Cont'd)**

5. Return to Council to discuss how to commence community processes—informed by experts, consultants, and research—to:
- a. publicly review use of force policy in the Duty Manual, and explore potential reforms, and
 - b. reimagine public safety response, such as by supplanting SJPd response to many non-criminal matters with civilian response.
6. Return to the Rules Committee to add to the City Auditor's workplan an audit of San Jose Police Department expenditures and workload, expanding the scope of the existing staffing audit to incorporate an analysis of the 1.2 million calls for police service, police budgetary allocations, and progress toward civilianization.
7. To enable Council to evaluate how and whether to mandate expedited public disclosure of body-worn camera footage of incidents of substantial public concern, such as major protests or controversial uses of force:
- a. Return to Council in closed session to receive assessment from the City Attorney of the requirements of POBAR and other state legal restrictions on release of evidence, and of any legal risks to the City and City taxpayers;
 - b. Return to Council in open session to discuss resources required to rapidly reproduce video that complies with legal requirements, i.e., privacy mandates to obscure faces and identities of people other than the police officers involved in the incident.

Identify any obstacles created by state law that inhibit our ability to implement straightforward changes to enable greater accountability, and return to Council to determine where the City should take a clear position for legislative advocacy.
(10-0-1. Absent: Arenas)

4.4 20-884**Police Department Duty Manual Amendments. - Renumbered from Item 4.1****Recommendation:**

- (a) Approve amendments to the Police Department Duty Manual referenced as one through five in the July 27, 2020 Memo that follow the direction provided by the City Council as part of the police reforms work plan.
- (b) Direct the City Manager to:
- (1) Strengthen amendment six, to ban the use of rubber bullets in any crowded setting.
 - (2) Ban the use of the Carotid Restraint for any purpose other than self-defense of the officer or defense of another person, and only where the officer or other person's life is under imminent and serious threat of death--commensurate with the necessary predicate for the use of a firearm.
- CEQA: Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment.
(Police)
[Deferred from 8/11/2020 - Item 4.1 (20-851)]
[Renumbered from Item 4.1 (20-884)]
Not heard before 2:00 P.M.

(Item Continued on the Next Page)

4.4 20-884

Police Department Duty Manual Amendments. - Renumbered from 4.1 (Cont'd)

There was no staff presentation for this item.

Councilmember Maya Esparza expressed concern about banning rubber bullets and sought clarification concerning the tools the PD has left at its disposal that is less deadly or less lethal.

Police Chief Edgardo Garcia outlined scenarios in which the PD may or may not use rubber bullets on individuals that are committing violence either against officers or folks in the crowd. Removal of these tool will lessen are efficiency in stopping threat of assault on an officer or someone else in a crowd. The PD is not supportive of this because it limits their ability to use less lethal means to stop violence.

Action: Upon motion by Councilmember Maya Esparza to move approval, seconded by second of Vice Mayor Chappie Jones, and carried unanimously, Police Department Duty Manual Amendments was accepted, including approval of Memorandum from Councilmember Sylvia Arenas, dated August 17, 2020, to:

1. Direct the City Manager to review and recommend to the Public Safety, Finance, & Strategic Support (PSFSS) Committee additional duty manual changes to improve the Police Department's interactions with survivors of domestic violence, child abuse, sexual assault, human trafficking, and other vulnerable populations including:
 - a. Align measurable outcomes across law enforcement agencies and community service providers.
 - b. Review all reports of domestic violence, child abuse, sexual assault, and human trafficking for potential high lethality and require officers to provide a police report upon request.
 - c. Ensure a trauma-informed approach to Police Department response by providing survivors with a connection to a community advocate in-person, by phone, or pamphlet before the officer leaves the scene regardless if the survivor asks for referral services.
2. Add this work to the PSFSS Committee Workplan, as well as the City Manager's Sexual Assault Response and Strategy Workplan.
3. Cross list this item to Council for final approval of potential duty manual changes not limited to Section 4312 Sexual Assault Cases and Section 4313 Domestic Violence.

Also approved was Memorandum from Mayor Liccardo, Vice-Mayor Jones, Councilmember Diep, and Councilmember Carrasco, dated: August 14, 2020, to:

1. Approve amendments to the Police Department Duty Manual referenced as one through five in the July 27, 2020 Memo that follow the direction provided by the City Council as part of the police reforms work plan.

(Item Continued on the Next Page)

4.4 20-884

Police Department Duty Manual Amendments. - Renumbered from ... (Cont'd)

2. Direct the City Manager to:

- a. Strengthen amendment six, to ban the use of rubber bullets in any crowded setting.
- b. Ban the use of the Carotid Restraint for any purpose other than self-defense of the officer or defense of another person, and only where the officer or other person's life is under imminent and serious threat of death--commensurate with the necessary predicate for the use of a firearm.

Staff was directed to explore coordination on item (2)(a) of the August 14, 2020 memo with the SJPDP:

(2)(a) Strengthen amendment six, to ban the use of rubber bullets in any crowded setting

It was further agreed, (per Assistant Police Chief Dave Knopf's clarification of the specific duty manual language), that that item 2b from the Mayor's memo had already been changed and incorporated or stated in the duty manual as follows, as of June 9, 2020.

(2)(b): Ban the use of the Carotid Restraint for any purpose other than self-defense of the officer or defense of another person, and only where the officer or other person's life is under imminent and serious threat of death--commensurate with the necessary predicate for the use of a firearm. Additional clarification was given that a little bit more study will be required to ensure that the duty manual doesn't require use of more lethal force in certain situations.

It was discussed, (per Mayor Liccardo's recommendation) that Council should continue the conversation for one or two weeks to the August 25, 2020 or the September 1, 2020 Agenda, (whichever works for Chief Garcia and everyone else), as part of the hearings.

Upon unanimous consent, it was finally agreed to come back next week after taking it to the Rules Committee to afford the chance to better review the schedule.
(10-0-1. Absent: Arenas)

5. TRANSPORTATION & AVIATION SERVICES**6. ENVIRONMENTAL & UTILITY SERVICES****7. NEIGHBORHOOD SERVICES**

8. COMMUNITY & ECONOMIC DEVELOPMENT

8.1 20-875 Downtown Residential High-Rise Inclusionary Housing Ordinance In Lieu Fee Reduction.

Recommendation:

(a) Adopt a resolution authorizing a reduction in the in-lieu fee for Downtown High-Rise (Rental and For-Sale) projects in the Downtown Core (as described in Resolution Number 73587 adopted January 9, 2007) that are ten (10) or more floors or stories in height not including any nonresidential uses where the highest occupied floor has a floor level elevation that is at least 150 feet above street level under the Inclusionary Housing Ordinance to the amount of:

(1) \$0 for projects obtaining building permits by June 30, 2023, with annual increases to the in lieu fee, for projects obtaining building permits after that date (not to exceed \$13/SF by June 30, 2024 and then \$23/SF by June 30,2025) and returning the Downtown High-Rise in lieu fee to the full amount for project that receive building permits after June 30, 2025; and

(2) The projects would need to obtain Certificates of Occupancy for 80% of dwelling units on or prior to June 30, 2025.

Housing Director Jacky Morales-Ferrand reminded Council that the Housing Department, in partnership with the Office of Economic Development and the Catalyst Team were merely bringing forward the policy decisions Council directed staff to implement back in November 2019. Unfortunately, staff has been unable to make these changes until now due to COVID-19.

Economic Development Assistant Director Nanci Klein noted that a feasibility study looks at cost including land costs, project costs, soft costs compared to what projected revenues could be obtained and analysis of the likely returns, including the costs of money so as to determine if a high-rise project can be built. She responded to questions.

Public Comments: Offering comments were: Freddie Mann, Blair Beekman, Paul Soto, Todd Williams and Kathryn Hedges.

Action: Upon motion by Councilmember Johnny Khamis to move approval, seconded by Mayor Sam Liccardo, and carried unanimously, **Resolution No. 79687** was adopted, including approval of staff recommendation to:

(a) Adopt a resolution authorizing a reduction in the in lieu fee for Downtown High-Rise (Rental and For-Sale) projects in the Downtown Core (as described in Resolution Number 73587 adopted January 9, 2007) that are ten (10) or more floors or stories in height not including any nonresidential uses where the highest occupied floor has a floor level elevation that is at least 150 feet above street level under the Inclusionary Housing Ordinance to the amount of:

(i) \$0 for projects obtaining building permits by June 30, 2023, with annual increases to the in lieu fee, for projects obtaining building permits after that date (not to exceed \$13/SF by June 30, 2024 and then \$23/SF by June 30,2025) and returning the Downtown High-Rise in lieu fee to the full amount for project that receive building permits after June 30, 2025; and

8.1 20-875

Downtown Residential High-Rise Inclusionary Housing Ordinance In... (Cont'd)

(ii) The projects would need to obtain Certificates of Occupancy for 80% of dwelling units on or prior to June 30, 2025.

(b) Adopt a resolution amending the 2020-2021 Schedule of Fees and Charges (Resolution No. 72737, as amended) to reduce the Inclusionary In Lieu Fee under San José Municipal Code Chapter 5.08 to reflect the schedule in the resolution above for qualifying Downtown High-Rise Residential Developments receiving Certificates of Occupancy for 80% of dwelling units by June 30, 2025.

Further clarification was given to study projects outside of the downtown area, such as the Public Transportation Corridors including the Rail System, and to explore the feasibility of decreasing fees on those, determined through study by a qualified consultant within the two-year timeline.

It was also agreed in principle that the projects that are on queue can potentially move forward.

Additional direction was given to ensure the OED coordinates and collaborates with other departmental staff and come back to Council on timeline and for feedback, as well as and how it's work interconnects with ongoing work at the Housing Department, City Attorney's Office, and PBCE.

Emphasis was added by Council that approval of the feasibility study is not to be limited to downtown but should be City wide and at Council-approved costs.

A friendly amendment request from Councilmember Peralez to the motion was accepted to instead direct staff to come back to Council before December 31, 2020, with report on what the budget implications would be, rather than direction to go forth and embark on feasibility studies, with notation that staff should updates the Council on initial responses in terms of both timing and costs. When Council knows how much this will ultimately cost, it can decide at that point to go forward.

(7-0-4. Noes: Jimenez, Carrasco, Esparza, Arenas)

(b) Adopt a resolution amending the 2020-2021 Schedule of Fees and Charges (Resolution No. 72737, as amended) to reduce the Inclusionary In Lieu Fee under San José Municipal Code Chapter 5.08 to reflect the schedule in the resolution above for qualifying Downtown High-Rise Residential Developments receiving Certificates of Occupancy for 80% of dwelling units by June 30, 2025.

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

(Economic Development/Housing)

Action: **Resolution No. 79688** was adopted.

(7-0-4. Noes: Jimenez, Carrasco, Esparza, Arenas)

(Item Continued on the Next Page)

9. REDEVELOPMENT – SUCCESSOR AGENCY**10. LAND USE****10.1 Land Use on Consent Calendar**

No Land Use items on Consent Calendar.

END OF CONSENT CALENDAR**10 Land Use - Regular Agenda**

None presented.

• OPEN FORUM

1. Paul Soto stated that he had been to hundreds of hours of Council meetings. He never sat in one where there was so much reticence, and so much vague language being used in the conduct of the city's business. As a citizen, I understood nothing that was said.
2. Robert Aguirre noted that Items 4.1 to 4.4 were heard jointly, and Council permitted only one minute of comment from the public. Yet, once that was completed, the items were broken up again and voted on those separately. That was unfair to the public.
3. Kathryn Hedges supports Robert's remarks. We just don't seem to be considering teaching the police how to de-escalate situations.
4. Krystal Campsiee: requested a referral back to staff to consider waiving the marijuana business tax for medical marijuana card holders.
- 5.. Victor Jose Vazquez questioned the assumptions that the people were violent, aggressive or offensive during the protests relative to the police.
- 6.. Scott Largent commented that tonight's was hard meeting to sit through. it doesn't seem like the Police Department is going to take responsibility for what happened. you're going to have more people protesting out in front of city hall.
7. Moto G stated that there is no respect for the public. Items 4.1 to 4.4 were supposed to happen after 2:00PM. It was pushed all the way to 9:00PM without informing the public.
8. Lucia Garcia stated that we have to define what violence means, because I was in one of these protests and somebody threw a bottle of water, that landed near the police officers. They attacked me.
9. Bobby Gonzalez commented that nearly two thousand officers opening the substation hasn't been a priority for a decade due to low staffing levels.
10. D3 resident stated that the meeting's language was very ambiguous, and today's questions were the same questions that were asked in June. I do appreciate how the Mayor described the inaccuracy of the projectiles, so thank you for that.
11. Kristen, (San José resident), is appalled at how much resistance there was for such a minute reform of taking away rubber bullets in a crowd setting, not even completely.

• **ADJOURNMENT**

Mayor Liccardo adjourned the Council Meeting session at 12:18PM

Minutes Recorded, Prepared and Respectfully Submitted by,

Toni J. Taber, CMC
City Clerk

lo/8-18-20 MIN

MINUTES OF SAN JOSE CITY COUNCIL CLOSED SESSION AGENDA

The Council meeting was teleconferenced from remote locations. The Council of the City of San José convened for Closed Session by teleconference on Tuesday, August 18, 2020.

Present: Councilmembers - Liccardo, Jones, Jimenez, Peralez, Diep, Carrasco, Davis, Esparza Arenas, Foley, Khamis.

Absent: Councilmembers - All present

Upon motion unanimously adopted, Council recessed to a Closed Session by teleconference to:

(A) confer with LEGAL COUNSEL – EXISTING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(d)(1): 1. Case Name: Bowles v. City, et al. Name(s) of Parties(s) Involved: JOHN BOWLES, CITY OF SAN JOSE, TODD YO, WILLIAM WOLFE, ERICK ENDERLE. Court: U.S. District Court, Northern District of California. Case No.: 5:19-cv-01027-NC. Amount of Money or Other Relief Sought: Damages according to proof. 2. Case Name: San Jose Mercury News LLC v. City, et al. Name(s) of Parties(s) Involved: SAN JOSE MERCURY NEWS LLC; CITY OF SAN JOSE; SAN JOSE POLICE DEPARTMENT; EDGARDO GARCIA, in his capacity as Chief of Police; and DOES 1-20. Court: Superior Court of the State of California, County of Santa Clara. Case No.: 20-CV-368449. Amount of Money or Other Relief Sought: Verified Petition for Writ of Mandate Pursuant to the California Public Records Act and the California Constitution; Complaint for Declaratory and Injunctive Relief; Request for Attorney’s Fees and Costs. (B) confer WITH LEGAL COUNSEL - ANTICIPATED LITIGATION: Initiation of litigation pursuant to subsection (c) of Section 54956.9 of the Government Code: Number of matter(s) to be discussed: 1. (C) PUBLIC EMPLOYMENT/PUBLIC EMPLOYEE APPOINTMENT PURSUANT TO GOVERNMENT CODE SECTION 54957: Department or Agency: City Attorney’s Office. Title: City Attorney.

By unanimous consent, Council recessed from the Closed Session to reconvene to Regular Session at 11:03 PM by teleconference.

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On occasion the City Council may consider agenda items out of order.