



# **City Council Meeting Agenda**

**Friday, June 12, 2020**

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



*The City of San José is committed to open and honest government and strives to consistently meet the community's expectations by providing excellent service, in a positive and timely manner, and in the full view of the public.*

Welcome to the San José City Council meeting!

This Agenda contains both a Consent Calendar section for routine business items that require Council approval, and general business items arranged to correspond with San José's City Service Areas (CSAs). City Service Areas represent the policy-making level for strategic planning, policy setting, and investment decisions in the critical functions the City provides to the community. They are:

- **Strategic Support** - The internal functions that enable the CSAs to provide direct services to the community in an effective and efficient manner.
- **Public Safety** - Commitment to excellence in public safety by investing in neighborhood partnerships as well as prevention, enforcement, and emergency preparedness services.
- **Transportation & Aviation Services** - A safe and efficient transportation system that contributes to the livability and economic health of the City; and provide for the air transportation needs of the community and the region at levels that is acceptable to the community.
- **Environmental and Utility Services** - Manage environmental services and utility systems to ensure a sustainable environment for the community.
- **Neighborhood Services** - Serve, foster, and strengthen community by providing access to lifelong learning and opportunities to enjoy life.
- **Community & Economic Development** - Manage the growth and change of the community in order to create and preserve healthy neighborhoods and ensure a diverse range of employment and housing opportunities.

You may speak to the City Council about any discussion item that is on the agenda, and you may also speak during Open Forum on items that are not on the agenda and are within the subject matter jurisdiction of the City Council or Successor Agency to the Redevelopment Agency Board. If you wish to speak to the City Council, please refer to the following guidelines:

- o **Fill out a Yellow Speaker's Card and submit it to the City Clerk seated at the front table. Do this before the meeting or before the item is heard.** This will ensure that your name is called for the item(s) that you wish to address, and it will help ensure the meeting runs smoothly for all participants.
- o When the Council reaches your item on the agenda, the Mayor will open the public hearing and call your name. Please address the Council from the podium, which is located to the left of the City Clerk's table.

- o Each speaker generally has two minutes to speak per item. The amount of time allotted to speakers may vary at the Mayor's discretion, depending on the number of speakers or the length of the agenda.
- o To assist you in tracking your speaking time, there is a display on the podium. The green light turns on when you begin speaking; the yellow light turns on when you have 30 seconds left; and the red light turns on when your speaking time is up.

Please be advised that, by law, the City Council is unable to discuss or take action on issues presented during Open Forum. According to State Law (the Brown Act) items must first be noticed on the agenda before any discussion or action.

**The San José City Council meets every Tuesday at 1:30 p.m. and Tuesday at 6 p.m. as needed, unless otherwise noted. The City Council, or less than a quorum, may adjourn any regular, special or adjourned meeting to a later date, time and place specified in the order of adjournment. If all members are absent, the City Clerk may declare the meeting adjourned to a stated date, time and place. If you have any questions, please direct them to the City Clerk's staff seated at the tables just below the dais. Thank you for taking the time to attend today's meeting. We look forward to seeing you at future meetings.**

**Agendas, Staff Reports and some associated documents for City Council items may be viewed on the Internet at <https://www.sanjoselegistar.com/Calendar.aspx>. Council Meetings are televised live and rebroadcast on Channel 26.**

**All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the Office of the City Clerk at San José City Hall, 200 E. Santa Clara Street, Tower 14th Floor, San José, CA 95113 at the same time that the public records are distributed or made available to the legislative body. Any draft contracts, ordinances and resolutions posted on the Internet site or distributed in advance of the Council meeting may not be the final documents approved by the City Council. Contact the Office of the City Clerk at (408) 535-1260 or [CityClerk@sanjoseca.gov](mailto:CityClerk@sanjoseca.gov) for the final document.**

**American Disability Act: To request an alternative format agenda under the Americans with Disabilities Act for City-sponsored meetings, events or printer materials, please call (408) 535-1260 as soon as possible, but at least three business days before the meeting.**

**Accommodations: Any member of the public who needs accommodations should email the ADA Coordinator at [ADA@sanjoseca.gov](mailto:ADA@sanjoseca.gov) or by calling (408) 535-8430. The ADA Coordinator will use their best efforts to provide reasonable accommodations to provide as much accessibility as possible while also maintaining public safety in accordance with the City procedure for resolving reasonable accommodation requests.**

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

## \* COVID-19 NOTICE \*

Consistent with the California Governor's Executive Order No. N-29-20, Resolution No. 79485 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 will not be physically open to the public and the City Council will be teleconferencing from remote locations.

### **How to observe the Meeting (no public comment):**

- 1) Cable Channel 26,
- 2) <https://www.sanjoseca.gov/news-stories/watch-a-meeting>, or
- 3) <https://www.youtube.com/CityofSanJoseCalifornia>

### **How to submit written Public Comment before the City Council Meeting:**

- 1) Use the eComment tab located on the City Council Agenda page. eComments are also directly sent to the ilegislare application used by City Council and staff.
- 2) By email to [city.clerk@sanjoseca.gov](mailto:city.clerk@sanjoseca.gov) by 12:00 p.m. the day of the meeting. Those emails will be attached to the Council Item under "Letters from the Public." Please identify the Agenda Item Number in the subject line of your email.

### **How to submit written Public Comment during the City Council Meeting:**

- 1) Email during the meeting to [councilmeeting@sanjoseca.gov](mailto:councilmeeting@sanjoseca.gov), identifying the Agenda Item Number in the email subject line. Comments received will be included as a part of the meeting record but will not be read aloud during the meeting.

### **How to provide spoken Public Comment during the City Council Meeting:**

- 1) By phone (888) 475-4499. Webinar ID: 971 4719 4171. Click \*9 to raise a hand to speak.
- 2) By online <https://zoom.us/j/97147194171>.
  - a. Use a current, up-to-date browser: Chrome 30+, Firefox 27+, Microsoft Edge 12+, Safari 7+. Certain functionality may be disabled in older browsers including Internet Explorer. Mute all other audio before speaking. Using multiple devices can cause an audio feedback.
  - b. Enter an email address and name. The name will be visible online and will be used to notify you that it is your turn to speak.
  - c. When the Mayor calls for the item on which you wish to speak, click on "raise hand." Speakers will be notified shortly before they are called to speak.
  - d. When called, please limit your remarks to the time limit allotted.

**ADJOURNED REGULAR MEETING & SPECIAL MEETING**  
**Call to Order and Roll Call**

**11:30 a.m. Adjourned Regular Meeting, and Special Meeting**

**3. STRATEGIC SUPPORT**

**3.1**    [20-713](#)            **Discussion and Actions Related to Police Use of Force and Crowd Control Measures.**

**Recommendation:**

Per the current state of emergency for civil unrest and under Emergency Orders, seek 2/3 approval from council to place the following item on the Council agenda, to direct the City Manager-through the Chief of Police and other staff-and Independent Police Auditor to:

- (a) Describe in detail which requisite conditions- of violence or destructive conduct-the SJPD duty manual authorizes for the deployment the following methods or uses of force for what is commonly referred to as “crowd control”:
  - (1) Officers in significant numbers (eg: two dozen or more) in “riot gear”.
  - (2) Tear gas.
  - (3) Kinetic impact projectiles (KIPs) such as rubber or foam bullets.
  - (4) “Flash-bang” devices.
  - (5) Use of batons and/or physical contact.
- (b) For each of the days/ episodes in which any of these approaches were deployed during the recent protests, describe in specific detail the circumstances that gave rise to the decision to uses of any of these methods or uses of force since May 29.
- (c) In light of recent experience, indicate what changes to the Duty Manual the Department should or will consider to any of these policies or protocols for crowd control.
- (d) Either at today’s meeting or at the earliest possible opportunity, indicate why Council should not prohibit the use within dense crowds of kinetic impact projectiles (KIP), i.e., rubber of foams bullets, either by directing the City Manager to amend the SJPD Duty Manual, or alternatively directing the City Attorney to amend San José Municipal Code Section 10.32. Specifically:
  - (1) Reveal whether the safety of KIP design or composition has substantially improved since the time of the studies referenced in this memorandum, below;
  - (2) Describe the approximate number of rounds discharged in crowds over the past week;
  - (3) Explicitly evaluate the relative imprecision of this tool, and its likelihood of striking persons other than its intended targets; and
  - (4) Compare options, including (a) other less-than-lethal tools, other than a batonstrike;
    - (b) substantially reducing the frequency of their use by raising the threshold justifying discharge, and (c) an assessment of whether any alternative KIP composition will reduce the risk of harm to members of the public.

- (e) To provide greater transparency to the public and accountability:
- (1) For the approximately half-dozen video clips that have raised substantial public concern on social media regarding potential SJPD misconduct or possible unlawful use of force, release to the public any videos in possession or readily available to SJPD that provide a fuller picture of the incident, such as longer duration (particularly the period prior to the video clip in question), alternative view angles, etc., within two weeks, so long as consistent with what is allowable under California state law.
    - i. Those videos should include, at a minimum,
      - the incident involving the collision between the police motorcycle and the running pedestrian, and
      - the incident involving a physical altercation between police and a male who is pulled back behind the police line by multiple officers, and subjected to repeated blows by police, and
      - the incident involving an officer responding to a protester with expletives
    - (2) At the earliest opportunity for public hearing--whether at our upcoming Independent Police Auditor use of force review or for the after-action report-- public hearing, present to the Council and public the IPA and SJPD findings relating to investigations and investigation reviews of each of those clips.
  - (f) Establish a process, consistent with that advocated by the Obama Foundation's My Brother's Keeper Alliance Mayoral Action Pledge, to review our "use of force" policies, engage our community, seek the feedback of our community on the findings, and reform those policies consistent with the best thinking nationally. The process should engage the entire community, including faith leaders, social justice advocates, leadership within our communities of color, criminal justice experts, the police union, the police rank-and-file, the Chief of Police, and the Independent Police Auditor.
  - (g) Return to Council by the first week of August with ballot language articulating the expansion of authority for the Independent Police Auditor. This language should provide a higher level of transparency and accountability over "use of force" investigations and access to police records, including body worn camera footage, as achieved through negotiation with the Police Officers' Association. Further explore additional expansion of IPA authority within the legal parameters mandated by the California Supreme Court's decision in Seal Beach Peace Officers Association v. Seal Beach. This can include language to allow for future expansion of authority through a meet and

confer process that doesn't require a Charter Amendment.  
CEQA: Not a Project, File No. PP17-008, General Procedure and  
Policy Making resulting in no changes to the physical environment.  
(Mayor, Jones, Peralez, Diep, Carrasco)  
[Continued from 6/9/2020 - Item 3.6 (20-673)]

**Attachments**[Memorandum](#)[Memorandum from Foley, 6/9/2020](#)[Memorandum from Peralez, 6/11/2020](#)[Memorandum from Jimenez, 6/11/2020](#)[Memorandum from Arenas, 6/11/2020](#)[Memorandum from Esparza, 6/11/2020](#)[Memorandum from Diep, 6/12/2020](#)[Letter from the San Jose Youth Commission](#)[Letters from the Public 1 of 7](#)[Letters from the Public 2 of 7](#)[Letters from the Public 3 of 7](#)[Letters from the Public 4 of 7](#)[Letters from the Public 5 of 7](#)[Letters from the Public 6 of 7](#)[Letters from the Public 7 of 7](#)

- **Open Forum**

Members of the Public are invited to speak on any item that does not appear on today's Agenda and that is within the subject matter jurisdiction of the City Council.

- **Adjournment**

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## CITY OF SAN JOSE CODE OF CONDUCT FOR PUBLIC MEETINGS IN THE COUNCIL CHAMBERS AND COMMITTEE ROOMS

The Code of Conduct is intended to promote open meetings that welcome debate of public policy issues being discussed by the City Council, their Committees, and City Boards and Commissions in an atmosphere of fairness, courtesy, and respect for differing points of view.

### 1. Public Meeting Decorum:

- a) Persons in the audience will refrain from behavior which will disrupt the public meeting. This will include making loud noises, clapping, shouting, booing, hissing or engaging in any other activity in a manner that disturbs, disrupts or impedes the orderly conduct of the meeting.
- b) Persons in the audience will refrain from creating, provoking or participating in any type of disturbance involving unwelcome physical contact.
- c) Persons in the audience will refrain from using cellular phones and/or pagers while the meeting is in session.
- d) Appropriate attire, including shoes and shirts are required in the Council Chambers and Committee Rooms at all times.
- e) Persons in the audience will not place their feet on the seats in front of them.
- f) No food, drink (other than bottled water with a cap), or chewing gum will be allowed in the Council Chambers and Committee Rooms, except as otherwise pre-approved by City staff.
- g) All persons entering the Council Chambers and Committee Rooms, including their bags, purses, briefcases and similar belongings, may be subject to search for weapons and other dangerous materials.

### 2. Signs, Objects or Symbolic Material:

- a) Objects and symbolic materials, such as signs or banners, will be allowed in the Council Chambers and Committee Rooms, with the following restrictions: § No objects will be larger than 2 feet by 3 feet.
  - No sticks, posts, poles or other such items will be attached to the signs or other symbolic materials.
  - The items cannot create a building maintenance problem or a fire or safety hazard.
- b) Persons with objects and symbolic materials such as signs must remain seated when displaying them and must not raise the items above shoulder level, obstruct the view or passage of other attendees, or otherwise disturb the business of the meeting.
- c) Objects that are deemed a threat to persons at the meeting or the facility infrastructure are not allowed. City staff is authorized to remove items and/or individuals from the Council Chambers and Committee Rooms if a threat exists or is perceived to exist. Prohibited items include, but are not limited to: firearms (including replicas and antiques), toy guns, explosive material, and ammunition; knives and other edged weapons; illegal drugs and drug paraphernalia; laser pointers, scissors, razors, scalpels, box cutting knives, and other cutting tools; letter openers, corkscrews, can openers with points, knitting needles, and hooks; hairspray, pepper spray, and aerosol containers; tools; glass containers; and large backpacks and suitcases that contain items unrelated to the meeting.

**CITY OF SAN JOSE CODE OF CONDUCT FOR PUBLIC MEETINGS IN  
THE COUNCIL CHAMBERS AND COMMITTEE ROOMS (CONT'D.)**

3. Addressing the Council, Committee, Board or Commission:

- a) Persons wishing to speak on an agenda item or during open forum are requested to complete a speaker card and submit the card to the City Clerk or other administrative staff at the meeting.
- b) Meeting attendees are usually given two (2) minutes to speak on any discussion item and/or during open forum; the time limit is in the discretion of the Chair of the meeting and may be limited when appropriate. Applicants and appellants in land use matters are usually given more time to speak. Speakers using a translator will be given twice the time allotted to ensure non-English speakers receive the same opportunity to directly address the Council, Committee, Board or Commission.
- c) Speakers should discuss topics related to City business on the agenda.
- d) Speakers' comments should be addressed to the full body. Requests to engage the Mayor, Council Members, Board Members, Commissioners or Staff in conversation will not be honored. Abusive language is inappropriate.
- e) Speakers will not bring to the podium any items other than a prepared written statement, writing materials, or objects that have been inspected by security staff.
- f) If an individual wishes to submit written information, he or she may give it to the City Clerk or other administrative staff at the meeting.
- g) Speakers and any other members of the public will not approach the dais at any time without prior consent from the Chair of the meeting.

Failure to comply with this Code of Conduct which will disturb, disrupt or impede the orderly conduct of the meeting may result in removal from the meeting and/or possible arrest.