

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

**SAN JOSE, CALIFORNIA**

**WEDNESDAY, AUGUST 5, 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. Public comments were accepted via eComment, email, by phone/Webinar or online.*

The Council meeting was teleconferenced from remote locations and convened at 2:00 p.m.

Present: Councilmembers - Arenas, Davis, Jones, Khamis; Liccardo.

Absent: Councilmembers - All Present.

**1. Review August 11, 2020 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)**

Public Comments: (1) Paul Soto spoke to police misconduct complaints, opining there is no objective way to review police officers' offenses using the strategy presented. (2) Blair Beekman addressed community energy, democratic practices for sustainability, and surveillance at the Berryessa BART station. He questioned officers' use of rubber bullets and tear gas.

Mayor Sam Liccardo addressed Item 4.1 regarding duty manual amendments, suggesting changing the language to incorporate other modifications as directed by Council. Discussion followed with City Manager, David Sykes regarding broadening the scope of this item. A change to be reflected in today's ROGC Item G (5), such as 'Change duty manual amendments and other related changes in policy' was determined.

Action: Upon motion by Councilmember Dev Davis, seconded by Councilmember Sylvia Arenas and carried unanimously, the August 11, 2020 agenda with Adds, including the consolidated plan was approved, with Items 3.3 and 4.1 to be heard together and not before 5 p.m. *During the discussion of Item G (5), Items 4.1 Police Department Duty Manual Amendments and 3.3 Report on Police Misconduct Complaints Received During Period of Civil Unrest were deferred to the Council Meeting of August 18, 2020.* 11-0.

2. **Review August 18, 2020 Draft 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)**

Mayor Sam Liccardo suggested that when State measures are considered, they should be heard last on the agenda. It was determined to hear Item 3.6 last.

Public Comments: Blair Beekman promoted progressive ideas for downtown high-rise inclusionary fees. He addressed CARES and COVID items, adding members of the State Assembly are working towards good rent protection ideas.

Action: Upon motion by Vice Mayor Chappie Jones, seconded by Councilmember Dev Davis, and carried unanimously, the Committee accepted the August 18, 2020 Draft Agenda, with Item 3.6, Proposition 16 on the November 3, 2020 California General Election Ballot, to be heard last. (5-0.)

**B. Review of Upcoming Meeting Agenda(s)**

None provided.

**C. Legislative Update**

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

There were none presented.

**D. Meeting Schedules**

**1. Diridon Station Area Plan/Google Downtown West Mixed-Use Development Study Session. (Economic Development)**

Action: Upon motion by Vice Mayor Chappie Jones, seconded by Councilmember Dev Davis and carried unanimously, a City Council Study Session entitled Diridon Station Area Plan/Google Downtown West Mixed-Use Development was scheduled for Thursday, September 24 from 9:00 a.m. - 1:00 p.m., and the draft Study Session agenda was approved. (5-0)

**E. The Public Record for July 23, 2020 – July 30, 2020. (City Clerk)**

Public Comments: Blair Beekman summarized his letters to the public record regarding federal mandates, advocating broadband and telecom notifications be sent in a timely manner.

Action: Upon motion by Councilmember Dev Davis, seconded by Vice Mayor Chappie Jones, carried unanimously, the Public Record for July 23, 2020 – July 30, 2020 was noted and filed. (5-0.)

## **F. Boards, Commissions and Committees**

None provided.

## **G. Rules Committee Reviews, Recommendations and Approvals**

- 1. Consent Calendar – None**
- 2. Monthly Auditor’s Report of Activities for June and July 2020. (City Auditor)**

*The Monthly Auditor’s Report Item was heard with Item G3.*

- 3. City Auditor’s Fiscal Year 2020-21 Work Plan. (City Auditor)**

City Auditor Joe Rois indicated there were no Monthly Auditor’s Report of Activities issued for June or July and went on to present a report for the Fiscal Year 2020-21 Work Plan.

Public Comments: (1) Blair Beekman advocated for working toward progressive changes and thanked staff for their efforts. (2) Paul Soto noted the loss of good ideas due to bureaucracy and urged importance of prioritizing areas of sexual assault and domestic violence.

Councilmember Dev Davis asked to prioritize the CEQA review process, and Councilmember Johnny Khamis requested greater analysis of the police staffing audit regarding tracking cancellation of 911 calls due to police officer understaffing.

Councilmember Sylvia Arenas urged prioritization of establishing a baseline regarding sexual assault and human trafficking, assessing response times for survivors.

Prioritization of these items was discussed. The City Auditor indicated the memorialization of the sidewalk repair program and animal services to allow for the items brought forward by Councilmembers Arenas, Davis and Khamis.

Action: Upon motion by Councilmember Sylvia Arenas, seconded by Vice Mayor Chappie Jones and carried unanimously, the Monthly Auditor’s Report of Activities for June and July 2020 and City Auditor’s Fiscal Year 2020-21 Work Plan were approved, with the Sexual Assaults and Human Trafficking audit with Councilmember Sylvia Arenas’ recommended criteria, the CEQA Review as recommended by Councilmember Dev Davis and Councilmember Johnny Khamis’ recommendation regarding cancellation of 911 calls to be added to the new project list, including deprioritizing the sidewalk repair program and animal services items. (5-0.)

#### **4. Street Naming Policy (Council Policy 6-5) Update. (Mayor and Jones)**

Vice Mayor Chappie Jones discussed challenges of changing street names and the need to streamline the process. Discussion followed, and Rosalynn Hughey, Director, Planning, Building and Code Enforcement, responded to questions.

Action: Upon motion by Councilmember Johnny Khamis, seconded by Vice Mayor Chappie Jones, and carried unanimously, an amendment to the City Council Policy on Street Renaming related to the following provision under “Renaming of Other Named Major Rights of Way”- Changing the following definition from: 3. “Affected property owners” means property owners and/or occupants and businesses located along the street whose name is proposed for change. to 3. “Affected property owners” means property owners and/or occupants and businesses with an address on the street whose name is proposed for change was agendized for City Council discussion and placed on the Tuesday, August 11, 2020 Council Agenda for action. (5-0.)

#### **5. Actions Related to Police Reform, Reimagining Police, and Strengthening the Investigative Authority of the Office of the Independent Police Auditor. (Mayor, Jones, Diep and Carrasco)**

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:
  - a. Reallocating resources to introduce investigatory capacity within the IPA by the conclusion of negotiations;
  - b. Enabling the IPA to make factual findings based on its investigations of misconduct allegations; and
  - c. 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:
  - a. Identify and implement an alternative to binding arbitration for disciplinary appeals, and/or
  - b. Reform the arbitration process to enable greater accountability and transparency, in:
    - i. Arbitrator selection;
    - ii. Limitation of the arbitrator’s scope of review, such as by requiring deference to the factual findings of the IPA;
    - iii. Public disclosure of arbitration decisions;
    - iv. Appeal of arbitration decisions to a court of competent jurisdiction; and/or
    - v. Other worthwhile reforms made apparent through discussions with the community and in negotiation with the POA.

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## 5. Actions Related to Police Reform (Cont'd.)

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.
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.

Public Comments: Paul Soto offered criticism of the Internal Affairs unit and asked that officers' body cams be turned over to IA when there are incidents, including blood and urine tests of officers.

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## 5. Actions Related to Police Reform (Cont'd.)

Mayor Sam Liccardo brought up the discussion of the community process, and City Manager, David Sykes discussed the inclusion of community stakeholders, the workforce and leadership, the POA, the Mayor and Council, and giving Council a plan for getting the work done.

Consolidated items, Item 4.1 Police Department Duty Manual Amendments, and 3.3 Report on Police Misconduct Complaints Received During Period of Civil Unrest, previously agendaized for August 11, 2020, were deferred for discussion and action to the August 18 Council Meeting.

Action: Upon motion by Vice Mayor Chappie Jones, seconded by Councilmember Johnny Khamis and carried unanimously, *Actions Related to Police Reform, Reimagining Police, and Strengthening the Investigative Authority of the Office of the Independent Police Auditor* was approved and included with Items 3.3 and 4.1 from the August 11, 2020 agenda, and were placed on the Tuesday, August 18, 2020 Council Agenda for action. (5-0.).

## 6. Temporary Modification to Arts Commission & Extension of Terms of Termed-Out Commissioners. (Khamis and Davis)

Note: Staff was directed to return to City Council on August 11, 2020, with a Sunshine Waiver\*, for Council Action:

1. A temporary modification to Council Policy 0-4: Consolidated Policy Governing Boards and Commissions to expand the voting membership of the Arts Commission by four temporary seats to be effective July 1 - Dec 31, 2020. On 11:59 PM December 31, 2020 these four temporary seats will terminate and those appointed to these temporary seats will conclude their service to the Arts Commission. The commission will revert back to its previous 11-member configuration as of midnight on January 1, 2021.
2. Re-Appointment of the four commissioners whose terms expired on June 30th to the four temporary seats, in continuation of their previous service, as follows: Albert Le, Ron Muriera, Ramona Snyder, and Roma Dawson.

*\*NOTE: Because further discussion was not placed on the Agenda for August 4th, as requested by the Council on June 30, the request for the shortened agenda timeline and Sunshine Waiver is driven by the urgency of the fact that the Arts Commission is scheduled to convene on the third Monday of the month, which, in August, will be August 17. If the item were to wait, the commissioners in question would be denied participation in yet another commission*

Public Comments: (1) Ramona Snyder asked that the four commissioners whose terms expired on June 30th be allowed fair treatment and expressed her frustrations regarding the way this situation was handled. (2) Roma Dawson thanked Councilmembers Khamis for bringing attention to this matter.

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## 6. (Cont'd.)

Assistant City Attorney Nora Frimann responded to questions regarding the amendment of the ordinance. Mayor Sam Liccardo spoke to the commissioners' concerns.

Action: Upon motion by Councilmember Dev Davis, seconded by Councilmember Johnny Khamis and carried unanimously, the July 30, 2020 memorandum from Councilmembers Davis and Khamis was accepted, with this action regarding the Temporary Modification to Arts Commission & Extension of Terms of Termed-Out Commissioners to be placed on the August 11, 2010 agenda for discussion and action. (5-0.)

### H. Review of additions to Council Committee Agendas/Work Plans

1. **Community and Economic Development Committee - none provided.**
2. **Neighborhood Services and Education Committee**
3. **Transportation and Environment Committee – none provided.**
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 Improvement Committee**

There were none presented.

### I. Open Government

None provided.

## OPEN FORUM

1. In addressing the police actions against Scarlett Marielle, Paul Soto opined the police department's loss of a moral compass.
2. Martha O'Connell expressed the importance of commissioners having remote access to Housing Commission meetings.
3. Blair Beekman spoke to importance of democracy.
4. Scott Largent spoke to difficulties in accessing meetings on his Smart Phone.

### G. Adjournment

Mayor Sam Liccardo adjourned the Committee meeting at 3:48 p.m.

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Mayor Sam Liccardo, Chair  
Rules and Open Government Committee

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