



City Council Meeting MINUTES

Tuesday, September 15, 2020

1:30 PM

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

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

SEPTEMBER 15, 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 and webinar.

The Council meeting was teleconferenced from remote locations.

- **Call to Order and Roll Call**

20-1055 Closed Session [See Page 17 for Closed Session Minutes](#)

The Council of the City of San José reconvened into Open Session on Tuesday, September 15, 2020 at 1:30 p.m.

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

Absent: Councilmembers - All Present.

6:00 p.m. - Evening Session - *The previously scheduled evening session was cancelled*

- **Pledge of Allegiance**

Mayor Sam Liccardo led the Pledge of Allegiance.

- **Invocation (District 8)**

Councilmember Sylvia Arenas provided an inspirational video clip of human rights activist Jaswant Singh Khalra who has left a profound legacy among the Sikh community.

- **Orders of the Day**

Upon motion by Councilmember Magdalena Carrasco, seconded by Vice Mayor Chappie Jones, and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Councilmember Magdalena Carrasco including a Consent item recognizing September as Hispanic Heritage Month, honoring its traditions and beauty, acknowledging the on-going struggles and injustices faced by the community and denouncing immigration policies that are continuing to tear families apart. (11-0.)

- Closed Session Report

None provided.

1. CEREMONIAL ITEMS

None provided.

2. CONSENT CALENDAR

Upon motion by Councilmember Dev Davis, seconded by Councilmember Maya Esparza and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (11-0.)

Public Comments: Blair Beekman referenced several items, noting the July 28 meeting minutes and spoke to its strong mayor component, appreciation to the Airport Commission for their thorough reporting; referencing the Fourth Quarter Financial Reports for Fiscal Year 2019-2020, and advocating for well-reasoned ideas brought forth in proposed State bills.

2.1 20-1059 Approval of City Council Minutes.

(a) City Council Special Meeting Amended Minutes of July 28, 2020.
CEQA: Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

Action: The City Council Minutes were approved. (11-0.)

2.2 20-1056 Final Adoption of Ordinances.

(a) Ordinance No. 30466 - An Ordinance of the City of San José Granting Hummingbird Energy Storage, LLC, a Franchise to Use or to Lay and Use, Interconnection and Transmission Wiring and Appurtenances for the Purpose of Transmitting and Distributing Electricity In, Along, Across, Upon and Under Certain Public Streets and Rights-Of-Way within the City of San José.

[Passed for Publication on 8/25/2020 - Item 3.4 (20-925)]

(b) Ordinance No. 30471 - An Ordinance of the City of San José Rezoning Certain Real Property of Approximately 19.70 Gross Acres Situated on the Southeast Corner of East Brokaw Road and Junction Avenue (550-600 East Brokaw Road) (APN: 237-08-079) from the A(PD) Planned Development Zoning District to the CIC Combined Industrial/Commercial Zoning District.

[Passed for Publication on 8/25/2020 - Item 10.1 (a) (20-933)]

(Item Continued on the Next Page)

2.2 (Cont'd.)

(c) Ordinance No. 30472 - An Ordinance of the City of San José Rezoning Certain Real Property of Approximately 0.28 Gross Acre Situated on the South Side of Brace Avenue Approximately 280 Feet Easterly of Newport Avenue (1168 Brace Avenue) from the R-1-8 Single-Family Residence Zoning District to the R-M(PD) Planned Development Zoning District.

[Passed for Publication on 8/25/2020 - Item 10.1 (b)(a) (20-934)]

(d) Ordinance No. 30474 - An Ordinance of the City of San José Amending Chapter 27.04 of Title 27 of the San José Municipal Code to Add a New Section 27.04.100 and Amending Section 27.10.080 of Chapter 27.10 of Title 27 of the San José Municipal Code to Clarify Sections Related to the Procurement of Public Works.

[Passed for Publication on 9/1/2020 - Item 2.9 (20-958)]

Action: Ordinance No. 30466, Ordinance No. 30471, Ordinance No. 30472, and Ordinance No. 30474 were adopted. (11-0.)

(e) Ordinance No. 30475 - **DEFERRED** - An Ordinance of the City of San José Adding Chapter 5.11 to Title 5 of the San José Municipal Code Enacting a Requirement that New Non-Residential Development Pay a Commercial Linkage Fee for the Provision of Affordable Housing.

[Passed for Publication on 9/1/2020 - Item 8.2 (c)(1) (20-969)]

DEFERRED TO 9/22/2020 PER ADMINISTRATION

2.3 Approval of Council Committee Minutes.

None provided.

2.4 Mayor and Council Excused Absence Requests.

20-1060

Mayor and Council Excused Absence Requests.

Request for an excused absence for Councilmember Esparza, from the Regular Meeting of the AD-HOC Committee for Housing Construction and Development Services on August 27, 2020 due to illness.

CEQA: Not a Project, File No. PP17-010, City Organizational and Administrative Activities resulting in no changes to the physical environment. (Esparza)

Action: The excused absence request was approved. (11-0.)

2.5 City Council Travel Reports.

None provided.

2.6 Report from the Council Liaison to the Retirement Boards.

None provided.

2.7 20-1029 **Amendment to Master Services Agreement with Logik Systems, Inc. for Hosted E-Discovery and Document Management.**

Adopt a resolution authorizing the City Attorney to negotiate and execute a Fifth Amendment to the Master Services Agreement with Logik Systems, Inc. for hosted e-discovery and document management, increasing the maximum amount of compensation by \$91,250, for a total compensation amount of \$320,549, and extending the term beginning September 28, 2017 through September 27, 2021.

CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. (City Attorney)

Action: **Resolution No. 79706** amending the Master Services Agreement was adopted. (11-0.)

2.8 20-1030 **Amendment to Consultant Services Agreement with Kimley Horn & Associates, Inc. for the Airport Runway Incursion Mitigation/Design Standards Analysis Study.**

Approve a Third Amendment to the Consultant Services Agreement with Kimley Horn & Associates, Inc. for the Runway Incursion Mitigation/Design Standards Analysis Study at the Norman Y. Mineta San José International Airport, extending the term of the Agreement to September 30, 2021, with no change in maximum compensation.

CEQA: Not a Project, File No. PP17-002, Consultant services for design, study, inspection, or other professional services with no commitment to future action. (Airport)

Action: The Amendment to the Consultant Services Agreement was approved. (11-0.)

2.9 20-1048 **Airport Concession Disadvantaged Business Enterprise Program for Federal Fiscal Years 2021-2023.**

Adopt a resolution:

(a) Approving the proposed Airport Concession Disadvantaged Business Enterprise (ACDBE) program update in accordance with the regulations of the Federal Aviation Administration (FAA) for the Norman Y. Mineta San José International Airport;

(b) Approve the three-year ACDBE race-neutral goal of 10.10% for all Airport Concessions, other than car rentals, for Federal Fiscal Years (FFY) 2021-2023;

(c) Approve the three-year ACDBE race-neutral goal of 0.40% for rental cars for FFY 2021-2023;

(d) Authorizing the City Manager to submit the three-year ACDBE program to the FAA; and

(d) Authorizing the City Manager to submit the three-year ACDBE program to the FAA; and

(Item Continued on the Next Page)

2.9 (Cont'd.)

(e) Authorizing the City Manager to make revisions to the three-year ACDBE plan as requested by the FAA.

CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. (Airport)

Action: **Resolution No. 79707** regarding the Airport Concession Disadvantaged Business Enterprise Program was adopted. (11-0.)

2.10 20-1031 Actions Related to Purchase Orders with Telos Identity Management Solutions, LLC for Designated Aviation Channeling Services at the Mineta San José International Airport.

Adopt a resolution authorizing the City Manager to:

(a) Execute purchase order(s) with Telos Identity Management Solutions, LLC (Ashburn, VA) for Designated Aviation Channeling services at the Airport, including related professional services, equipment, materials, software subscription and transaction fees, support, and maintenance, for an initial two-year term beginning October 1, 2020, and up to 5 one-year options to extend the term through September 30, 2027, for a maximum compensation not to exceed \$118,930 for the first year from October 1, 2020 through September 30, 2021, subject to the appropriation of funds; and

(b) Amend purchase order(s) during the initial term to increase compensation for up to \$100,000 from contingency for increases in demand and unanticipated expenses to ensure full regulatory compliance and optimize system performance and operation, subject to the appropriation of funds.

CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. (Finance)

Action: **Resolution No. 79708**, regarding actions related to purchase orders with Telos Identity Management Solutions, LLC was adopted. (11-0.)

2.11 20-1032 Fourth Quarter Financial Reports for Fiscal Year 2019-2020.

As recommended by the Public Safety, Finance and Strategic Support Committee on August 20, 2020, accept the Fourth Quarter (period ending June 30, 2020) Financial Reports for Fiscal Year 2019-2020 for the following programs:

- (a) Debt Management;
- (b) Investment Management; and
- (c) Revenue Management.

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

Action: The Fourth Quarter Financial Reports for Fiscal Year 2019-2020 were accepted. (11-0.)

2.12 20-1033 Temporary Amendment to the City of San José Investment Policy.

Adopt a resolution approving revisions to Council Policy 1-12, "City of San José Investment Policy", to temporarily increase the average weighted maturity of the investment portfolio from 2 years to 2.5 years through June 30, 2021.

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

Action: **Resolution No. 79709** approving revisions to Council Policy 1-12 was adopted. (11-0.)

2.13 20-1049 Parking Citation Delinquent Fee Amnesty Program.

(a) Adopt a resolution establishing a time limited Parking Citation Delinquent Fee Amnesty Program ("Amnesty Program") to temporarily reduce outstanding parking citations back to the original issued fine amount by waiving accumulated delinquent fees on outstanding parking citations issued on or before March 19, 2020.

(b) Adopt a resolution authorizing the City Manager to negotiate and execute an amendment to the agreement with the City's current parking citation processing and collection vendor, Turbo Data Systems, for additional services related to the administration of the Amnesty Program for an amount not to exceed \$200,000.

CEQA: Not a Project, File No. PP17-003, Agreements and Contracts that will result in no physical changes to the environment; and Statutorily Exempt, File No. PP17-005, CEQA Guidelines Section 15273, Rates, Tolls, Fares and Charges. (Transportation)

Action: (a) **Resolution No. 79710**, establishing a time limited Parking Citation Delinquent Fee Amnesty Program; and (b) **Resolution No. 79711** regarding an amendment to an agreement with Turbo Data Systems, were adopted. (11-0.)

2.14 20-1097 Approval of National Preparedness Month Sponsored by Council District 6 as a City Council Sponsored Special Event to Expend City Funds and Accept Donations of Materials and Services for the Event.

(a) Approve September 2020 as National Preparedness Month to be recognized by the City Council on Tuesday, September 15, 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.

Councilmember Dev Davis promoted community planning, encouraging the public to be aware of natural disasters and preparation, and the importance of having a plan and an emergency kit. Director of the Office of Emergency Management, Ray Riordan, offered direction to the community regarding preparedness and directed the public to the website Ready.gov for useful information.

Action: The City Council Sponsored Special Event was approved. (11-0.)

2.15 20-1105 Retroactive Approval of Recognizing September 6, 2020 as Jaswant Singh Khalra Day 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.

As recommended by the Rules and Open Government Committee on September 9, 2020:

(a) Retroactively approve Jaswant Singh Khalra Day scheduled on September 6, 2020 as a City Council sponsored Special Event and approve the expenditure of funds.

(b) Retroactively approve and accept donations from various individuals, businesses or community groups to support the event.

Councilmember Sylvia Arenas honored Jaswant Singh Khalra, reiterating his profound contribution as a human rights activist. She noted that the day of his passing is honored annually by the Sikh Community with an opportunity to promote dignity and human values.

Action: The City Council Sponsored Special Event was retroactively approved. (11-0.)

2.16 20-1108 Approval of D2 SAP Grant.

As recommended by the Rules and Open Government Committee on September 9, 2020, approve a request to approve a \$700.00 grant to the San Jose Surf Soccer Club to help support their general fund for general operating and administrative expenses.

CEQA: Not a Project, File No. PP17-010, City Organizational & Administrative Activities resulting in no changes to the physical environment. (Jimenez)

[Rules Committee referral 09/09/2020 - Item G.4]

Action: Approval of D2 SAP Grant was accepted. (11-0.)

3. STRATEGIC SUPPORT

3.1 Report of the City Manager, David Sykes (Verbal Report)

None provided.

3.2 Labor Negotiations Update.

None provided.

3.3 20-1035 Coronavirus Relief Funds for Resident Assistance Efforts. - DEFERRED

Approve the Resident Assistance funding allocation plan for approximately \$2 million in Coronavirus Relief Funds.
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) [Deferred from 9/1/2020 - Item 3.4 (20-971)]
DEFERRED TO 9/22/2020 PER ADMINISTRATION

3.4 20-1036 Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing for the Reissuance of California Enterprise Development Authority Revenue Obligations for the Benefit of Valley Christian Schools.

(a) Hold a Tax Equity and Fiscal Responsibility Act (“TEFRA”) Public Hearing for the reissuance of up to \$48,250,000 in tax-exempt obligations (“the “2017 Obligations”) by the California Enterprise Development Authority (the “Authority” or “CEDA”). The proceeds of the 2017 Obligations were loaned to Valley Christian Schools, a California nonprofit religious corporation, duly organized and existing under the laws of the State of California (the “School”) pursuant to that certain Loan Agreement, dated as of June 1, 2017, by and among First Republic Bank, the California Enterprise Development Authority and the School (the “Loan Agreement”). The proceeds of the 2017 Obligations loaned to the School were used for the purpose of (1) financing, refinancing or reimbursing the School for (i) the construction, installation and equipping of elementary school buildings and playground and parking improvements located at 1500 Leigh Avenue, San José, California, and a high school baseball stadium and field and various improvements, and (ii) the acquisition, construction, installation, improvement, renovation, furnishing and equipping of a junior high school and high school campus owned by the Borrower located at 100 Skyway Drive, San José, California, and an acquisition of approximately 11.37 acres of land immediately adjacent thereto.

(b) Consideration of a resolution approving the reissuance of 2017 Obligations by the Authority in a principal amount of up to \$48,250,000 to be used to refinance the cost associated with certain educational facilities and to pay certain expenses incurred in connection with the reissuance of the 2017 Obligations.

CEQA: Valley Christian Schools Planned Development Rezoning Environmental Impact Report (Resolution No. 76915), and Addenda thereto, File No. PDC12-12-012; Mitigated Negative Declaration for the Valley Christian Elementary School. File No. CP01-06-047. Council Districts 2 and 6. (Finance)

Public Comments: Mayor Sam Liccardo opened the public hearing. There was no public testimony from the floor. Mayor Sam Liccardo closed the public hearing.

Action: Upon motion by Councilmember Sergio Jimenez, seconded by Councilmember Pam Foley and carried unanimously, **Resolution No. 79712** approving the reissuance of 2017 Obligations by the California Enterprise Development Authority, was adopted. (11-0.)

3.5 20-1065 Proposition 17 (The Free the Vote California Act).

As recommended by the Rules and Open Government Committee on September 2, 2020, adopt a position of support for Proposition 17 - The Free the Vote California Act.

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

[Rules Committee referral 09/02/2020- Item G.3]

Heard Last

Public testimony was heard both in the afternoon session and in the evening. Action on this item was determined in the evening session.

Public Comments: Eight members of the public, including Blair Beekman, NAACP President Reverend Jethroe Moore, members of PACT and Shay Franco Clausen spoke in support, advocating for fairness and an inclusive electoral turnout and righting past wrongs. One member of the public spoke in opposition to Proposition 17.

Action: Upon motion by Councilmember Maya Esparza, seconded by Councilmember Magdalena Carrasco and carried unanimously, a position of support was adopted for Proposition 17. (10-0-1. Absent: Khamis.)

4. PUBLIC SAFETY SERVICES

4.1 20-1042 Fireworks Ordinance Workplan Status Update. - DEFERRED

Accept the status report on the implementation of the Fireworks Ordinance Workplan Post-Fourth of July 2020.

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

[Rules Committee referral 08/19/2020 - Item G.2; 09/09/2020 - Item G.3]

Deferred to Mid to Late October Per Rules and Open Government Committee

Note: Items 4.2, 4.3 and 4.4 were heard together.

4.2 20-1045 Release of Police Department Video Footage.

As recommended by the Rules and Open Government Committee on August 26, 2020:

(a) The Council deem as “incidents of extraordinary public interest” the three publicized encounters between SJPd officers and protesters during the May 2020 period of unrest, as identified on (http://www.sjpd.org/records/protest_videos.html) and in the Council

(Item Continued on the Next Page)

4.2 (Cont'd.)

memorandum dated June 5, 2020 from Vice Mayor Jones and Council Members Peralez, Diep, and Carrasco, and Mayor Liccardo as:

(1) The incident involving the collision between the police motorcycle and the running pedestrian;

(2) 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

(3) The incident involving an officer responding to a protester with expletives, including “shut up, b***h.”

(b) Within 2 weeks of Council vote on this item, the City Manager shall release body-worn camera or other City-generated video and audio clips regarding each of the incidents of extraordinary public interest identified in paragraph (a), under the following conditions:

(1) All video sources shall be provided, but where multiple such sources exist and production of all sources would unduly consume time and labor, the City shall identify the three videos that most clearly and fully capture the event;

(2) At least ten minutes of footage prior to the actual interaction or event shall be provided in each case, to ensure the viewer has the benefit of the full context of the incident; and

(3) Provision of this video shall be limited only by the exceptions outlined in state law under SB 748 for responses to Public Record Act requests for video of “critical incidents,” mandating disclosure except where would doing so would “substantially interfere” with an ongoing criminal or administrative investigation, such as “endangering a witness’ or confidential source’s safety,” as demonstrated by clear and convincing evidence.

(c) Return to Council with an ordinance or Council Policy requiring release of body-worn camera footage under similar conditions similar to those described in Paragraph (b) for all incidents that the Council deems to be “police incidents of extraordinary public interest,” unless Staff recommends different conditions based on public input and Staff’s experience.

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

(Mayor) [Rules Committee referral 08/26/2020- Item G.4]

Heard Concurrently with Items 4.3 And 4.4

Discussion evolved regarding staff returning in the short term with preliminary guidelines while a more formal policy is constructed.

Action: Upon motion by Councilmember Johnny Khamis, seconded by Councilmember Maya Esparza and carried unanimously, recommendations as presented were accepted, with staff to return with a draft policy or ordinance until a more formal policy can be determined requiring release of body-worn camera footage for incidents that the Council deems to be “police incidents of extraordinary public interest.” (11-0.)

Note: Council recessed at 6:00 p.m. during the discussion of Items 4.2 – 4.4 and resumed at 7 p.m. with all Council Members present.

4.3 20-1046 Police Department Duty Manual Amendments. - CONTINUED FROM 8/18/2020

(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; and

(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); Continued from 8/18/2020 - Item 4.4 (20-884)]

Heard Concurrently with Items 4.2 And 4.4

City Manager, David Sykes provided contextual and framing comments on the preliminary After-Action Report. Acting Police Chief Dave Knopf offered a presentation on the Police Department video footage and revisions to the Police Department Duty Manual, and Acting Assistant Chief David Tindall provided the preliminary after action report. The Acting Police Chief, Acting Assistant Chief and Captain Jason Dwyer responded to extensive questions from Council, and an involved discussion ensued.

Mayor Sam Liccardo opened the floor for public comment.

Public Comments: Thirteen members of the public offered comments, criticism, questions and recommendations. Among those who spoke were members of PACT, Scott Largent, Megan Swift, Sparky Harlan (Bill Wilson Center), Blair Beekman, Mitch Mankin, and Sharon Dhanda (South Bay Coalition to End Human Trafficking).

Discussion continued from the August 18, 2020 meeting of Council regarding Police Department Duty Manual amendments

Independent Police Auditor Shivaun Nurre spoke to the After-Action Report and RFP status, and Acting City Attorney Nora Frimann offered clarifications regarding citations given.

Councilmember Maya Esparza indicated that on August 18, 2020, she had moved to incorporate Councilmember Sylvia Arenas August 17, 2020 memorandum into the motion to approve. Councilmember Sylvia Arenas asked that Item 1(a) "Aligning measurable outcomes across law enforcement agencies and community service providers" from her memo be moved to 2(a), thereby moving it to the PSFSS work plan. Councilmember Maya Esparza and Vice Mayor Chappie Jones approved the amendment to the motion.

(Item Continued on the Next Page)

4.3 (Cont'd.)

Councilmember Maya Esparza asked that when an exception occurs and minors are handcuffed upon arrest, a referral be made to the IPA. Independent Police Auditor Shivaun Nurre noted that this may be accomplished pending outcome of the November ballot measure.

Action: On a call for the question, the motion from August 18, 2020 was carried, as amended.

Upon motion by Councilmember Maya Esparza, seconded by Vice Mayor Chappie Jones and carried unanimously, Police Department Duty Manual Amendments were accepted, including approval of Councilmember Sylvia Arenas memorandum, dated August 17, 2020, as revised, 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.~~

a.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.

b.e. 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.

a. Align measurable outcomes across law enforcement agencies and community service providers.

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.

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 SJPD:

(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.

Additionally, include referral to IPA when an exception occurs when minors are handcuffed pending outcome of the November ballot measure.

(10-1. Noes: Liccardo.)

4.4 20-1047 Police Department Preliminary After Action Report for the Public Protests, Civil Unrest, and Law Enforcement Response from May 29 - June 7, 2020.

Accept the Police Department's After-Action Report for the public protests, civil unrest, and law enforcement response from May 29 - June 7, 2020.

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 8/25/2020 - Item 4.1 (20-928)]

Heard Concurrently with Items 4.2 And 4.3

Action: Upon motion by Councilmember Sylvia Arenas, seconded by Councilmember Maya Esparza and carried unanimously, the Police Department's After-Action Report was accepted. (11-0.)

5. TRANSPORTATION & AVIATION SERVICES

6. ENVIRONMENTAL & UTILITY SERVICES

7. NEIGHBORHOOD SERVICES

8. COMMUNITY & ECONOMIC DEVELOPMENT

8.1 20-1050 Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing for the Markham Plaza II Apartments Located at 2010 Monterey Road.

(a) Hold a Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") public hearing for the issuance not to exceed \$25,000,000 in tax-exempt private-activity bonds by City to finance the acquisition by Markham Plaza II, L.P and rehabilitation of the Markham Plaza II Apartments, formerly Tully Gardens II Apartments, a 152-unit apartment complex located at 2010 Monterey Road in San José.

(b) Adopt a resolution approving the issuance of Revenue Bonds by the City in an aggregate principal amount not to exceed \$25,000,000 to finance the acquisition and rehabilitation of a 152-unit multifamily rental housing facility for the benefit of Markham Plaza II, LP, a California limited partnership, or an entity to be created by Core Affordable Housing, LLC (or an affiliate), and certain other matters relating thereto.

(Item Continued on the Next Page)

8.1 (Cont'd.)

(c) Adopt a resolution authorizing:

(1) A change in the existing affordability restriction for Markham Plaza II Apartments (formerly Tully Gardens II Apartments) to allow a change from 151 units affordable to extremely low-income (“ELI”) households at up to 30% of Area Median Income (“AMI”) and one unrestricted manager’s unit to 76 units affordable to ELI households at up to 30% of AMI and 75 units to be restricted affordable to very low-income households for new or over income tenants only at up to 35% of AMI;

(2) An increase to rents and income up to 60% AMI (low-income) for all units in the event of foreclosure or for new tenants in subsidized units in the event of the expiration or involuntary termination of subsidy contracts, provided the City has determined the increase is needed for feasibility of the development and allowed by other funds;

(3) The extension of the existing City’s loan term by an additional 17 years; until the 55th anniversary of the closing of the bond financing, and a decrease in the City’s loan interest rate from 4.77% fixed, compounded annually to 3% fixed, compounded annually;

(4) The subordination of the City’s Deeds of Trust to a County option to purchase the land, provided that the City shall have a right of first refusal to purchase the land; and

(5) The Director of Housing to negotiate and execute any City loan documents, grant documents, amendments, and all other documents related to these actions.

CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.
Council District 7. (Housing/Finance)

Mayor Sam Liccardo opened the public hearing. There was no public testimony from the floor. Mayor Sam Liccardo closed the public hearing.

Councilmember Maya Esparza expressed her appreciation to everyone involved with this project.

Motion: Councilmember Maya Esparza moved approval of staffs’ recommendations, including her memorandum dated September 14, 2020. The motion was seconded by Councilmember Sylvia Arenas.

Action: On a call for the question, the motion carried unanimously, including Councilmember Esparza’s memorandum of September 14, 2020 to include “ensuring the hiring of a second on-site security guard covering 8pm to 8am in addition to the 24-hour security guard”. (b) **Resolution No. 79713**, approving the issuance of Revenue Bonds by the City in an aggregate principal amount not to exceed \$25,000,000; and (c) **Resolution No. 79714** regarding affordability restriction for Markham Plaza II Apartments were adopted. (10-0-1. Absent: Khamis.)

8.2 20-1051 Approval of a Loan Commitment to Blossom Hill, L.P. for the Development of Blossom Hill Senior Apartments.

(a) Adopt a resolution:

(1) Approving a total commitment of up to \$16,375,000 in Low and Moderate Income Housing Asset Funds and \$2,000,000 in affordable housing impact fees from the Multi-Source Housing Fund for a Construction-Permanent Loan to Charities Housing Development Corporation of Santa Clara County, or an affiliated entity, for the Blossom Hill Senior Apartments, a new affordable development to be located at 397 Blossom Hill Road, which is being developed to offer 147 rent--and income--restricted apartments for extremely low-income and very low-income senior households and two unrestricted manager's unit ("Development").

(2) Authorizing the Director of Housing to negotiate and execute loan documents, amendments and all other documents, including any amendments thereto, related to the City financing for the Development.

(3) Approving a loan-to-value ratio of greater than 100% for this loan.

(b) Adopt the following 2020-2021 Appropriation Ordinance Amendments in the Low and Moderate Income Housing Asset Fund:

(1) Decrease the Housing Project Reserve appropriation by \$16,375,000; and

(2) Increase the appropriation to the Housing Department for Housing Loans and Grants by \$16,375,000.

(c) Adopt the following 2020-2021 Appropriation Ordinance Amendments in the Multi-Source Housing Fund:

(1) Decrease the Housing Project Reserve appropriation by \$2,000,000; and

(2) Increase the appropriation to the Housing Department for Housing Loans and Grants by \$2,000,000.

CEQA: Mitigated Negative Declaration for the Blossom Hill Senior Apartments Mixed-Use Project, File Nos. CP18-022 and T18-034. Council District 2. (Housing/City Manager)

The presentation for Items 8.2 and 8.3 were heard together.

Director of Housing Jacky Morales-Ferrand and Deputy Director of Housing, Rachel VanderVeen offered a presentation.

Council members offered their appreciation to Charity Housing, staff, and all involved.

Public Comments: One member of the public indicated disagreement with more housing.

Action: Upon motion by Councilmember Sergio Jimenez, seconded by Councilmember Pam Foley and carried unanimously (a) **Resolution No. 79715**, regarding a Loan Commitment to Blossom Hill, L.P. for the Development of Blossom Hill Senior Apartments; and (b) Appropriation **Ordinance No. 30476** regarding Amendments in the Low and Moderate Income Housing Asset Fund; and (c) Appropriation **Ordinance No. 30477**, regarding Amendments in the Multi-Source Housing Fund; were adopted. (10-0-1. Absent: Khamis)

8.3 20-1052 Approval of a Loan Commitment to MP Moorpark Associates, L.P., for the Development of 1710 Moorpark Development.

(a) Adopt a resolution:

(1) Approving up to a total commitment of up to \$10,971,000 in Low and Moderate Income Housing Asset Funds for a Construction-Permanent Loan to MidPen Housing Corporation, or an affiliated development entity, for the 1710 Moorpark project, located at 1710 Moorpark, which is being developed to offer 106 affordable, rent-restricted apartments, and two unrestricted manager's units ("Development");

(2) Authorizing the Director of Housing to negotiate and execute loan documents and all other documents, including any amendments thereto, related to City financing for Development;

(3) Approving a loan-to-value ratio of greater than 100% for this loan; and

(4) Authorizing a change in City Loan terms to allow an increase in the Development's rents and income up to 60% of the Area Median Income (or low income threshold) for new tenants in the event of the expiration or termination of subsidy contracts, and for all tenants in the event of a foreclosure, to the extent the City has determined such increase is needed for feasibility of the Development.

(b) Adopt the following Appropriation Ordinance Amendments in the Low and Moderate Income Housing Asset Fund:

(1) Decrease the Housing Development Reserve appropriation by \$10,971,000; and

(2) Increase the Housing Loans and Grants appropriation to the Housing Department by \$10,971,000.

CEQA: Not a Project, PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. Council District 6. (Housing/City Manager)

Action: Upon motion by Councilmember Dev Davis, seconded by Councilmember Pam Foley and carried unanimously, (a) **Resolution No. 79716**, regarding approval of a Loan Commitment to MP Moorpark Associates, L.P., for the Development of 1710 Moorpark Development; and (b) **Appropriation Ordinance No. 30478** regarding Amendments in the Low and Moderate Income Housing Asset Fund were adopted. (10-0-1. Absent: Khamis.)

9. REDEVELOPMENT – SUCCESSOR AGENCY

10. LAND USE

10.1 Land Use on Consent Calendar

(a) **20-1053 C20-006-Conforming Rezoning of Certain Real Property Located at 931 Meridian Avenue.**

Approve an ordinance rezoning an approximately 0.16-gross acre site, located on the west side of Meridian Avenue, approximately 470 feet south of Fruitdale Avenue (931 Meridian Avenue), from the R-M Multiple Residence Zoning District to the CP Commercial Pedestrian Zoning District.

CEQA: Determination of Consistency with the Envision San José 2040 General Plan EIR (Resolution No. 76041) and the Envision San José General Plan Supplemental EIR (Resolution No. 77617), and Addenda thereto. Council District 6. (Planning, Building and Code Enforcement)
Heard Immediately After Consent

Action: **Ordinance No. 30479** approving C20-006-Conforming Rezoning of Certain Real Property Located at 931 Meridian Avenue was passed for publication. (11-0.)

(b) **20-1054 PP20-011- Amendment to Title 20 (Zoning Ordinance or Zoning Code) of the San José Municipal Code for Proposed Quarterly Zoning Code Update.**

(1) Consider the Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (FEIR), for which findings were adopted by City Council through Resolution No. 76041 on November 1, 2011, and Supplemental EIR Resolution No. 77617, adopted by City Council on December 15, 2015, and Addenda thereto (SCH#2009072096). Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope of the earlier approved programs and the Final Program EIRs adequately describe the activity for purposes of CEQA. The project does not involve new significant effects beyond those analyzed in the Final Program EIRs;

(2) Approve an ordinance of the City of San José amending various sections of Title 20 (Zoning Ordinance or Zoning Code) of the San José Municipal Code to:

(i) amend Part 4.5, Accessory Dwelling Units, to make minor clarifying text alterations within Sections 20.30.460, 'Single-Family Dwelling' lot, 20.30.470, 'Junior Accessory Dwelling Units - Single family dwelling lot,' and 20.30.480, 'Two-Family and Multi-Family Dwelling lots;

(ii) amend Part 2.5 - Transient Occupancy as an Incidental Use to a Residence, to make a minor clarifying text change to Section 20.80.150;

(iii) amend Part 9, Home Occupations Section 20.80.700, to include Accessory Dwelling Units; and (iv) amend Tables 20-50, 20-90, 20-110, and 20-150 within Sections 20.30.100, 20.40.100, 20.50.100, and 20.75.200

(Item Continued on the Next Page)

10.1 Land Use on Consent Calendar

1(b) (Cont'd.)

to change permitting requirements for day care center uses from a Conditional Use to a Special Use; and to make other technical, non-substantive, or formatting changes within those sections of Title 20 of the San José Municipal Code.

CEQA: Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (FEIR), for which findings were adopted by City Council through Resolution No. 76041 on November 1, 2011, and Supplemental EIR Resolution No. 77617, adopted by City Council on December 15, 2015, and Addenda thereto (SCH#2009072096). (Planning, Building and Code Enforcement)

Heard Immediately After Consent

Action: Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (FEIR) was determined; and **Ordinance No. 30480** amending various sections of Title 20 (Zoning Ordinance or Zoning Code) of the San José Municipal Code was passed for publication. (11-0.)

END OF CONSENT CALENDAR

10 Land Use - Regular Agenda – none provided.

OPEN FORUM

1. Blair Beekman spoke to public parking as it relates to the SAP/BART issue. He expressed unfair practices used when allowing public comment for the Consent Calendar.
2. Scott Largent spoke on video footage taken during protests and the need for restraint by the police department.
3. Roland LeBrun urged a ban on gas blowers during certain hours.
4. A public speaker spoke against new developments and BMW motorcycles for the police department. He expressed a “no” vote for Prop 17.
5. Luann from D6 urged more attention to sexual assault and domestic violence, the need for reimagining of the police force and for more community policing.

ADJOURNMENT

The Council of the City of San José was adjourned at 10:00 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Toni J. Taber, CMC
City Clerk

CLOSED SESSION MINUTES

TUESDAY, SEPTEMBER 15, 2020

The Council of the City of San José convened into Closed Session at 9:32 a.m.
The Session was teleconferenced from remote locations.

Present: Councilmembers - Arenas, Diep, Jimenez, Jones, Esparza, Peralez, Esparza,
Foley; Liccardo.

Absent: Councilmembers - Carrasco, Khamis.

Items discussed:

A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION:

Initiation of litigation pursuant to Section 54956.9(d)(4) of the Government Code:

Number of matter(s) to be discussed: 1

B. CONFERENCE 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: In re: Claim of Carrillo
Name(s) of Parties(s) Involved:
Court: Workers Compensation Appeals Court
Case No.: ADJ2894620
ADJ2503023
ADJ4165745
Amount of Money or Other Relief Sought: Benefits
3. 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
Court: Superior Court of the State of California, County of

Santa Clara

Case No.: 20-CV-368449

Amount of Money or Damages according to proof
Other Relief Sought:

4. Case Name: FCC Small Cell Order

Name(s) of Parties(s) CITY OF SAN JOSE, California; CITY OF ARCADIA,
Involved: California; CITY OF BELLEVUE, Washington; CITY OF
BURIEN, Washington; CITY OF BURLINGAME,
California; CULVER CITY, California; TOWN OF
FAIRFAX, California; CITY OF GIG HARBOR,
Washington; CITY OF ISSAQUAH, Washington; CITY
OF KIRKLAND, Washington; CITY OF LAS VEGAS,
Nevada; CITY OF LOS ANGELES, California; COUNTY
OF LOS ANGELES, California; CITY OF MONTEREY,
California; CITY OF ONTARIO, California; CITY OF
PIEDMONT, California; CITY OF PORTLAND, Oregon;
CITY OF SAN JACINTO, California; CITY OF
SHAFTER, California; CITY OF YUMA, Arizona,
UNITED STATES OF AMERICA; FEDERAL
COMMUNICATIONS COMMISSION

Court: U. S. Court of Appeals for the Ninth Circuit

Case No.: 18-72883

Amount of Money or Damages according to proof
Other Relief Sought:

5. Case Name: Sanderlin, et al., v City, et al.

Name(s) of Parties(s) DERRICK SANDERLIN, CAYLA SANDERLIN,
Involved: BREANNA CONTRERAS, PIETRO DI DONATO,
SHANTE THOMAS, ADIRA SHARKEY, JOSEPH
STUKES, CITY OF SAN JOSE, EDGARDO GARCIA,
JASON DWYER, CHRISTOPHER SCIBA, JONATHAN
BYERS, JARED YUEN

Court: U.S. District Court, Northern District of California

Case No.: 20-cv-04824

Amount of Money or Damages according to proof
Other Relief Sought:

C. CONFERENCE WITH LABOR NEGOTIATOR PURSUANT TO GOVERNMENT CODE SECTION 54957.6:

City Negotiator: Jennifer Schembri, Director of Employee Relations

Employee Organizations:

1. Organization or Name and Title of Unrepresented Employees: **Association of Building, Mechanical and Electrical Inspectors (ABMEI)**

Nature of negotiations: wages/salaries, hours, working conditions, etc.

Name of Existing Contract or MOA: Memorandum of Agreement – City of San José and Association of Building, Mechanical and Electrical Inspectors (ABMEI)

How to Obtain a copy of Existing Contract or MOA: Web: <http://www.sanjoseca.gov/index.aspx?NID=508>
Telephone – Employee Relations: (408) 535-8150
2. Organization or Name and Title of Unrepresented Employees: **Association of Engineers & Architects (AEA)**

Nature of negotiations: wages/salaries, hours, working conditions, etc.

Name of Existing Contract or MOA: Memorandum of Agreement — City of San José and Association of Engineers & Architects (AEA)

How to Obtain a copy of Existing Contract or MOA: Web: <http://www.sanjoseca.gov/index.aspx?NID=508>
Telephone – Employee Relations: (408) 535-8150
3. Organization or Name and Title of Unrepresented Employees: **Association of Maintenance Supervisory Personnel (AMSP)**

Nature of negotiations: wages/salaries, hours, working conditions, etc.

Name of Existing Contract or MOA: City of San José - Association of Maintenance Supervisory Personnel (AMSP) Benefit & Compensation Summary

How to Obtain a copy of Existing Contract or MOA: Web: <http://www.sanjoseca.gov/index.aspx?NID=508>
Telephone – Employee Relations: (408) 535-8150

4. Organization or Name and Title of Unrepresented Employees: **City Association of Management Personnel Agreement (CAMP)**
- Nature of negotiations: wages/salaries, hours, working conditions, etc.
- Name of Existing Contract or MOA: Benefit & Compensation Summary — City of San José and City Association of Management Personnel Agreement
- How to Obtain a copy of Existing Contract or MOA: Web: <http://www.sanjoseca.gov/index.aspx?NID=508>
Telephone – Employee Relations: (408) 535-8150
5. Organization or Name and Title of Unrepresented Employees: **International Association of Firefighters (IAFF), Local 230 (IAFF#230)**
- Nature of negotiations: wages/salaries, hours, working conditions, etc.
- Name of Existing Contract or MOA: Memorandum of Agreement Between City of San José and International Association of Firefighters (IAFF), Local 230
- How to Obtain a copy of Existing Contract or MOA: Web: <http://www.sanjoseca.gov/index.aspx?NID=508>
Telephone – Employee Relations: (408) 535-8150
6. Organization or Name and Title of Unrepresented Employees: **International Brotherhood of Electrical Workers, Local 332 (IBEW)**
- Nature of negotiations: wages/salaries, hours, working conditions, etc.
- Name of Existing Contract or MOA: Memorandum of Agreement Between City of San José and International Brotherhood of Electrical Workers, Local 332 (IBEW)
- How to Obtain a copy of Existing Contract or MOA: Web: <http://www.sanjoseca.gov/index.aspx?NID=508>
Telephone – Employee Relations: (408) 535-8150
7. Organization or Name and Title of Unrepresented Employees: **Municipal Employees’ Federation, AFSCME Local 101, AFL-CIO (MEF)**
- Nature of negotiations: wages/salaries, hours, working conditions, etc.

- Name of Existing Contract or MOA: Memorandum of Agreement — City of San José and Municipal Employees’ Federation, AFSCME Local 101, AFL-CIO
- How to Obtain a copy of Existing Contract or MOA: Web: <http://www.sanjoseca.gov/index.aspx?NID=508>
Telephone – Employee Relations: (408) 535-8150
8. Organization or Name and Title of Unrepresented Employees: **International Union of Operating Engineers, Local No. 3 (OE#3)**
- Nature of negotiations: wages/salaries, hours, working conditions, etc.
- Name of Existing Contract or MOA: Memorandum of Agreement Between City of San José and International Union of Operating Engineers, Local No. 3 (OE#3)
- How to Obtain a copy of Existing Contract or MOA: Web: <http://www.sanjoseca.gov/index.aspx?NID=508>
Telephone – Employee Relations: (408) 535-8150
9. Organization or Name and Title of Unrepresented Employees: **Peace Officer Park Ranger Association (POPRA)**
- Nature of negotiations: wages/salaries, hours, working conditions, etc.
- Name of Existing Contract or MOA: Memorandum of Agreement — City of San José and Peace Officer Park Ranger Association
- How to Obtain a copy of Existing Contract or MOA: Web: <http://www.sanjoseca.gov/index.aspx?NID=508>
Telephone – Employee Relations: (408) 535-8150
10. Organization or Name and Title of Unrepresented Employees: **San José Police Officers’ Association (SJPOA)**
- Nature of negotiations: wages/salaries, hours, working conditions, etc.
- Name of Existing Contract or MOA: Memorandum of Agreement — City of San José and San José Polices’ Association
- How to Obtain a copy of Existing Contract or MOA: Web: <http://www.sanjoseca.gov/index.aspx?NID=508>
Telephone – Employee Relations: (408) 535-8150

11. Organization or Name and Title of Unrepresented Employees: **Association of Legal Professionals of San José (ALP)**
- Nature of negotiations: wages/salaries, hours, working conditions, etc.
- Name of Existing Contract or MOA: Memorandum of Agreement – City of San José and Association of Legal Professionals of San José
- How to Obtain a copy of Existing Contract or MOA: Web: <http://www.sanjoseca.gov/index.aspx?NID=508>
MOA: Telephone – Employee Relations: (408) 535-8150

The Closed Session Meeting was Adjourned at 11:04 a.m. and reconvened into Open Session at 1:30 p.m.