

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING A NEW COUNCIL POLICY NO. 5-7 ENTITLED “PUBLIC RELEASE OF VIDEO FOOTAGE FOR POLICE INCIDENTS OF EXTRAORDINARY PUBLIC INTEREST”

WHEREAS, on June 9, 2020, the City Council directed the City of San José (“City”) Administration to release the video footage in its possession related to three incidents of extraordinary public interest that occurred during the May 29 – June 7, 2020 protests; and

WHEREAS, the Police Department released the video footage it had collected from the public domain, but withheld Department-generated video footage because it was related to ongoing criminal, administrative, and civil matters and investigations; and

WHEREAS, while choosing to withhold these videos aligned with existing law and past practice, it did not meet the evolving community expectations of openness and transparency, and on September 15, 2020 the City Council directed the Administration to (1) release body-worn camera or other City-generated video and audio clips regarding each of the incidents of extraordinary public interest, and (2) develop a Council Policy requiring release of body-worn camera footage under the following conditions for incidents that the City Council deems to be “police incidents of extraordinary public interest”:

- 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;
- If available, 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

- Provision of this video shall be limited only by the exceptions outlined in state law under AB 748 for responses to Public Records 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; and

WHEREAS, the Police Department has developed an addition to the Duty Manual that establishes a procedure under which the Chief of Police may release video footage for incidents of extraordinary public interest at his or her own discretion, at the direction of the City Manager, or at the direction of the City Council; and

WHEREAS, the City Council desires to establish a new City Council Policy No. 5-7 entitled “Public Release of Video Footage for Police Incidents of Extraordinary Public Interest”, establishing a procedure by which the City Council may direct the City Administration to publicly release video footage for police incidents of extraordinary public interest and, taken together with the Duty Manual addition, providing a comprehensive framework for making decisions on release of video footage of incidents of extraordinary public interest;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

A new City Council Policy No. 5-7 entitled “Public Release of Video Footage for Police Incidents of Extraordinary Public Interest”, which policy is attached hereto as Exhibit “A” and incorporated herein by this reference as though fully set forth herein, is hereby approved.

ADOPTED this _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

EXHIBIT A

City of San José, California

COUNCIL POLICY

TITLE Public Release of Video Footage for Police Incidents of Extraordinary Public Interest.	PAGE 1 of 5	POLICY NUMBER 5-7
EFFECTIVE DATE:	REVISED DATE:	
APPROVED BY COUNCIL ACTION: November 10, 2020, Item 4.1		

BACKGROUND

On May 25, 2020, George Floyd died while in police custody in Minneapolis. On May 29, 2020, protests across the nation erupted into violent encounters between police and the public. The community of San Jose was not immune to the violence, much of which was captured on video. Video footage came from Police Department Body Worn Cameras and several other sources. The City Council directed that the Administration release the video footage in its possession related to three police incidents that had occurred during the protests and that were of extraordinary public interest.

The Police Department released the video footage that it had collected from the public domain, but withheld Department generated video footage because it was related to ongoing criminal, administrative, and civil matters and investigations. While choosing to withhold these videos comported with existing law and past practice, they did not meet the evolving community expectations of openness and transparency.

On September 15, 2020, the City Council directed the Administration to release body-worn camera or other City-generated video and audio clips regarding each of the incidents of extraordinary public interest. On the same date, the City Council directed the Administration to return to the City Council with an ordinance or City Council Policy requiring release of body-worn camera footage under the following conditions for incidents that the City Council deems to be “police incidents of extraordinary public interest”:

- 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;
- 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 (if available); and
- Provision of this video shall be limited only by the exceptions outlined in state law under AB 748 for responses to Public Records Act requests for video of “critical incidents,” mandating disclosure except where 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.

To complement this City Council Policy, the Police Department has developed an addition to their Duty Manual that establishes a procedure under which the Chief of Police will release video footage for incidents of extraordinary public interest. The Chief shall release such footage at his or her own discretion, at the direction of the City Manager, or at the direction of the City Council.

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Taken together, the Police Department Duty Manual addition and the City Council Policy provide a comprehensive framework for making decisions on release of video footage of incidents of extraordinary public interest.

SECTIONS

- I. DEEMING VIDEO FOOTAGE TO BE OF “INCIDENTS OF EXTRAORDINARY PUBLIC INTEREST”.**
- II. PROCEDURES FOR RELEASING VIDEO FOOTAGE OF INCIDENTS OF EXTRAORDINARY PUBLIC INTEREST WHEN THE RELATED INCIDENT COMPORTS WITH EXISTING PUBLIC RECORDS LAWS THAT MANDATE RELEASE OF THE FOOTAGE.**
- III. PROCEDURES WHEN VIDEO FOOTAGE DOES NOT MEET THE THRESHOLD FOR RELEASE UNDER EXISTING PUBLIC RECORDS LAWS.**
- IV. LIMITATIONS ON RELEASE OF VIDEO FOOTAGE.**

DEFINITIONS

For purposes of this Policy, the following definitions are in effect throughout:

Video Footage – Video footage includes video that was created by the Police Department (e.g. Body Worn Camera, Helicopter, or Department owned security cameras) or that has come into the possession of the Department either as evidence or from the public domain.

Incidents of Extraordinary Public Interest – Incidents of Extraordinary Public Interest include, but are not necessarily limited to, those in which interactions between the police and the public result in significant and sustained public outcry for an understanding of the known facts and circumstances that led up to the incident and how it unfolded, such as in major protests or controversial uses of force.

Existing Public Records Law – State statutes dictate what types of incidents qualify for the release of publicly held video footage. These statutes include but are not limited to: Penal Code 832.7 & 832.8 (commonly known as SB-1421), Government Code 6254 (recently amended by AB-748), and Penal Code 13650 (commonly known as SB-978). As a body of work, these statutes also address when the release of such records can be withheld, delayed, and redacted.

Public Release of Video Footage – Conspicuously posting video footage on City and/or Department websites for viewing by the general public.

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SECTION I: DEEMING VIDEO FOOTAGE TO BE OF “EXTRAORDINARY PUBLIC INTEREST”

Purpose

This section establishes a systematic procedure for identifying video footage that is in the possession of the Police Department as being of extraordinary public interest thereby enabling the City Council to direct the Administration to release related video footage to the public.

A. PROCESS AND PROCEDURE

1. Identifying Video of Potential Concern: When the Mayor or a member of the City Council becomes aware of an incident of extraordinary public interest for which the Police Department likely possesses video footage and which the Mayor or Council Member believes should be released to the public, that person may seek to agendize the item for consideration by the City Council.
2. Agendizing the Item: The request by the Mayor or member of the City Council to have the item heard by the City Council shall be conducted through existing procedures by bringing the matter before the Rules & Open Government Committee to be placed on the agenda of the City Council.
3. City Council Consideration: Prior to voting to release the video footage in question, the City Council shall consider whether the release of the video footage may be exempted from release under existing public records law. The City Council shall only withhold release of video footage of incidents of extraordinary public interest where such footage is exempted from release under California Government Code Section 6254(f)(4) as supported by clear and convincing evidence, or where blurring is necessary to protect the safety of City employees. Government Code Section 6254(f)(4) sets out criteria for withholding release of video or audio recordings of “critical incidents.”
4. Vote of the City Council: After making the considerations described above, the Council may direct the release of the footage in question by a majority vote giving direction to the City Administration to publicly release the footage in a time and manner as described in the motion.

SECTION II: PROCEDURES FOR RELEASING VIDEO FOOTAGE OF INCIDENTS OF EXTRAORDINARY PUBLIC INTEREST WHEN THE RELATED INCIDENT COMPORTS WITH EXISTING PUBLIC RECORDS LAWS THAT MANDATE RELEASE OF THE FOOTAGE.

Purpose

Should video footage that the City Council has voted to release already be subject to release under existing public records law, this section describes what parameters may or may not be set by the City Council's direction.

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Policy

- A. Timing of Public Release: The City Council may elect to accelerate the timing of the public release of the video to a time sooner than is required by the operative statute.
- B. Redactions: Redactions of the video footage shall comply with the operative statute and may not be restricted or expanded upon by the City Council.

SECTION III: PROCEDURES WHEN VIDEO FOOTAGE DOES NOT MEET THE THRESHOLD FOR RELEASE UNDER EXISTING PUBLIC RECORDS LAWS.

Purpose

This section describes what parameters may be set by the City Council when voting to release video footage that is not already subject to release under existing public records law.

Policy

- A. Timing of Public Release: The City Council may select the timeline of its choosing for the public release of the video footage in question.
- B. Notification: The Police Department will provide notification to any officer and the Union, when an officer's photograph, identity or other private information is revealed in the footage, prior to releasing any footage or image. The notification will be reasonably calculated to provide the officer with an opportunity to request that the City withhold their photograph, identity or other private information, before any footage is released. Any request to withhold any portion of footage or an image must be made in writing by the officer to the Chief of Police by a deadline provided in the notification described above. A final determination as to whether an officer's photograph, identity or other private information is revealed in the footage shall be made by the City.
- C. Threat Assessment: The Police Department will conduct a threat assessment to determine if evidence exists of threat, harassment, intimidation, or harm to any officer. Officers notified of the City's intent to release their photograph, identity or other private information will have a right to contact the SJPd to inquire as to whether it is aware of any threat against them. The Police Department shall respond to such inquiries prior to releasing any footage or image. Where evidence of threat, harassment, intimidation, or harm to an officer whose photograph, identity or other private information may be revealed in footage or an image exists, the San Jose Police Department will redact the footage pursuant to the following redaction guidelines.
- D. Redactions: Unless otherwise stated in the motion, the standards for redaction shall come from the California Public Records Act or related laws, including Penal Code Sections 832.7 and 832.8, pertaining to release of such video. When the City determines that an officer's photograph, identity or other private information shall be withheld, the San Jose Police Department will blur or otherwise redact all footage that depicts such images of the applicable officer prior to releasing the footage.

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SECTION IV: LIMITATIONS ON RELEASE OF VIDEO FOOTAGE

Purpose

This section provides guidance to the City Council when determining whether to place restrictions on how much video footage to be released in response to an incident of extraordinary public interest.

Policy

- A. Source and Number of Videos: Where multiple sources of video exist and production of all sources would unduly consume the time and labor of staff, the City shall identify the three videos that most clearly and fully capture the event.
- B. Video Length: At least ten minutes of footage prior to the actual interaction or event shall be provided in each case (if available), to ensure the viewer has the benefit of the full context of the incident.