



# City Council Meeting

## Draft Minutes/Synopsis

**Tuesday, June 9, 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



## MINUTES OF THE CITY COUNCIL MEETING

SAN JOSÉ, CALIFORNIA

TUESDAY, JUNE 9, 2020

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

The Council meeting was teleconferenced from remote locations. The Council of the City of San José convened in a Regular Session at 11:01 AM on Tuesday, June 9, 2020. (See Page 21 for Closed Session Minutes.)

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

Absent: Councilmembers - All Present.

• **CALL TO ORDER AND ROLL CALL: 11:01 AM.**

### INVOCATION

(District 6: Rev. Dr. Bryan James Franzen, Pastor Westminster Presbyterian Church)

### PLEDGE OF ALLEGIANCE

Mayor Liccardo led the Pledge of Allegiance.

### ORDERS OF THE DAY

The motion by Councilmember Dev Davis, to move approval of Orders of the Day with all the Mayor's recommendations as indicated, with additional recommendation that all other items, (besides 3.6), be limited to a 10-minute discussion for each Councilmember to speak per item, (except item 3.1 limited to 15 minutes), seconded by Councilmember Johnny Khamis, did not get voted on. Upon substitute motion by Councilmember Maya Esparza to move approval of Orders of the Day with (no time limits on discussion per item), seconded by Councilmember Magdalena Carrasco, and carried unanimously, the Orders of the Day and the Amended Agenda were accepted, with items 3.6, add 3.7, added, and item 3.6 to be heard immediately after closed session reports, and have enough time for public comment and for a full discussion until 1:00PM lunch break and resume Council deliberations on Item 3.6 on Friday, June 12, 2020 at 11:30 A.M. Item 3.6 today will immediately be followed by item 3.1, with Item 10.3 deferred to 6/16/20. [\* see new item 3.6, "Discussion and Actions Related to Police Use of Force and Crowd Control Measures" to be added under orders of the day, requires a determination by a two-thirds (2/3) vote of the members of the council present at the meeting, or, if less than two-thirds (2/3) of the members of the council are present at the meeting, a unanimous vote of those members present that there is a need to take immediate action and the need to take action arose after the posting of the agenda. Consolidated Open Government and Ethics Resolution No. 77135, Section 2.3.2.1.F.1.b; Council's Rules of Conduct, Resolution No. 79367, Rule 3(d). Placement of Council Agenda Items After Rules, Resolution No. 79485.

*(Item Continued on the Next Page)*

## ORDERS OF THE DAY (Cont'd)

\* See new item 3.7, " Ratification of the Declaration of the Director of Emergency Services Suspending Enforcement of Certain Provisions in Land Use Requirements in the San José Municipal Code." to be added under orders of the day, requires a determination by a two-thirds (2/3) vote of the members of the council present at the meeting, or, if less than two-thirds (2/3) of the members of the council are present at the meeting, a unanimous vote of those members present that there is a need to take immediate action and the need to take action arose after the posting of the agenda. Consolidated Open Government and Ethics Resolution No. 77135, Section 2.3.2.1.F.1.b; Council's Rules of Conduct, Resolution No. 79367, Rule 3(d); Placement of Council Agenda Items After Rules, Resolution No. 79485.  
(9-0-2. Noes: Davis, Khamis)

### • CLOSED SESSION REPORT

City Attorney, Rick Doyle stated that he was given authority to join on one matter. That matter will be disclosed upon filing and the vote was unanimous.

### 1. CEREMONIAL ITEMS

None presented.

### 2. CONSENT CALENDAR

Public Comments: Blair Beekman offered comments on consent calendar, in relation to technology, housing consideration and the corvid 19 world.

Upon motion by Councilmember Pam Foley, seconded by Councilmember Sylvia Arenas, and carried unanimously, the Consent Calendar was approved, with items 2.10, 2.16 and 2.18 pulled, and the below listed actions taken as indicated.

(11-0)

#### **2.1 20-638 Approval of City Council Minutes.**

##### **Recommendation:**

(a) Regular City Council Meeting Minutes of March 10, 2020.

(b) Regular City Council Meeting Minutes of April 21, 2020.

(c) Regular City Council Meeting Minutes of May 5, 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 Regular City Council Meeting Minutes of March 10, 2020, Regular City Council Meeting Minutes of April 21, 2020, and Regular City Council Meeting Minutes of May 5, 2020, were approved.

#### **2.2 Final Adoption of Ordinances.**

#### **2.3 Approval of Council Committee Minutes.**

#### **2.4 Mayor and Council Excused Absence Requests.**

**2.5 City Council Travel Reports.****2.6 Report from the Council Liaison to the Retirement Boards.****2.7 20-615 Amendment to the Agreement with David J. Powers & Associates Inc. for Airport Environmental Services.**

**Recommendation:** Approve a Second Amendment to the Master Consultant Services Agreement with David J. Powers & Associates Inc. for Airport environmental analysis services, increasing maximum compensation from \$1,250,000 to \$1,850,000, and extending the term from June 30, 2020 to June 30, 2023.  
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: Amendment to the Agreement with David J. Powers & Associates Inc. for Airport Environmental Services, was approved.

**2.8 20-616 Set a Public Hearing on the Levy of the Proposed Downtown Business Improvement District Assessments.**

**Recommendation:** Preliminarily approve the report as filed by the Downtown Business Improvement District Advisory Board, or as modified by Council, and adopt a resolution of intention to levy the annual assessment for Fiscal Year 2020-2021, to suspend collection of the Downtown Business Improvement District assessments for businesses that qualify for the business tax financial hardship exemption under the City's general business tax ordinance and set Tuesday, June 30, 2020 at 1:30 p.m. as the date and time for the public hearing on the levy of the proposed assessments.  
CEQA: Review for Exemption, File No. PP08-048, CEQA Guidelines Section 15061(b), Review for Exemption. (Economic Development)

Action: Deferred to 6/16/2020 Per Administration.

**2.9 20-617 Set a Public Hearing on the Levy of the Proposed Japantown Business Improvement District Assessments.**

**Recommendation:** Preliminarily approve the report as filed by the Japantown Business Improvement District Advisory Board, or as modified by Council, and adopt a resolution of intention to levy the annual assessment for Fiscal Year 2020-2021 and set Tuesday, June 30, 2020 at 1:30 p.m. as the date and time for the public hearing on the levy of the proposed assessments.  
CEQA: Review for Exemption, File No. PP08-048, CEQA Guidelines Section 15061(b), Review for Exemption. (Economic Development)

Action: Deferred to 6/16/2020 Per Administration.

**2.10 20-618****Proposed Extension of Natural Gas Infrastructure Prohibition Ordinance and Amendments to Title 24 of the San José Municipal Code Related to Mixed Fuel Buildings.****Recommendation:**

- (a) Accept the update on staff analysis as to whether or not the City should require electrification for buildings over three stories.
- (b) Direct City Manager to return to Council in September 2020 with a natural gas prohibition ordinance amendment to be implemented on June 1, 2021 and covering all building types:
- (1) Including mid-rise and high-rise multifamily buildings, as supported by cost effectiveness studies, and
  - (2) Exempting restaurants, hospitals, industrial, and manufacturing facilities.
- (c) Approve an ordinance amending Section 24.12.300 of Chapter 24.12 of Title 24 of the San José Municipal Code Related to the Reach Code Requirements for Mixed Fuel Buildings to make clerical amendments.
- (d) Authorize the City Manager to submit an amended reach code submittal package to the California Energy Commission for its approval as required by law.
- CEQA: Categorically Exempt, File No. PP19-067, CEQA Guidelines Section 15307 Actions by Regulatory Agencies for Protection of the Environment.  
(Environmental Services/Planning, Building and Code Enforcement)

Councilmember Johnny Khamis commented on the blackouts during the summer and natural gas generators to continue getting service, expressed concern, and discomfort with PG&E's financial condition as well as their natural gas lines capacity.

Environmental Services Climate Smart Deputy Director Ken Davies, responded to question and stated his commitment to doing more outreach this summer using the community database that was developed last fall.

Public Comments: Offering comments were: Linda Hutchins-Knowles, (Mothers Out Front, Southbay) Blair Beekman, Dacschle Wiltz, (Sierra Club); Huang Eng Truong, Roy, and Jamie Minden.

Action: Upon motion by Councilmember Pam Foley, seconded by Councilmember Dev Davis, and carried unanimously, Ordinance No. 30431, was passed for publication. (10-0-1. Noes: Khamis)

**2.11 20-619****Amendment to the Agreement with Turbo Data Systems, Inc. for Parking Citation Processing/Collection System and Customer Service Center.****Recommendation:**

Adopt a resolution authorizing the City Manager to execute the Fifth Amendment to the Agreement with Turbo Data Systems, Inc. (Tustin, CA) for Parking Citation Processing/Collection System and Customer Service Center to extend services for up to two additional one-year option terms through June 30, 2022 under the same terms and conditions for a maximum compensation of \$896,465 for July 1, 2020 through June 30, 2021, subject to the annual 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. 79540, was adopted.

**2.12 20-620****Willow Glen Community Benefit and Improvement District Annual Report for Fiscal Year 2020-2021.****Recommendation:**

Adopt a resolution:

- (a) Approving the Willow Glen Community Benefit and Improvement District Annual Report for Fiscal Year 2020-2021 as filed or modified by Council;
- (b) Confirming the individual assessments as proposed, or modified by Council; and
- (c) Directing the Director of Public Works to deliver the assessment role to the County for collection with the property taxes.

CEQA: Categorically Exempt, File No. PP18-060, Existing Facilities. Council District 6. (Public Works)

Action: Resolution No. 79541, was adopted.

**2.13 20-621****Maintenance District Annual Budget Reports for Fiscal Year 2020-2021.****Recommendation:**

Adopt resolutions approving and confirming the Annual Budget Reports for Fiscal Year 2020-2021 for City of San José Maintenance Districts 1, 2, 5, 8, 9, 11, 13, 15, 18, 19, 20, 21, and 22 and levying the assessments therein.

CEQA: Categorically Exempt, File No. PP18-060, Existing Facilities. Council Districts 2, 3, 4, and 8. (Public Works)

Action: Resolution Nos. 79542, 79543, 79544, 79545, 79546, 79547, 79548, 79549, 79550, 79551, 79552, 79553, and 79554 were adopted.

**2.14 20-622****Downtown San José Property-Based Business Improvement District Annual for Fiscal Year 2020-2021.****Recommendation:**

Adopt a resolution:

- (a) Approving the Downtown San José Property-Based Improvement District Annual Report prepared by the Downtown San José Property Owners' Association for Fiscal Year 2020-2021, as filed or modified by Council;
- (b) Confirming the individual assessments as proposed by the Downtown San José Property Owners Association, or as modified by Council; and
- (c) Directing the Director of Public Works to deliver the assessment roll to the County for collection with the property taxes.

CEQA: Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action. Council District 3. (Transportation/Public Works)

Action: Resolution No. 79555, was adopted.

**2.15 20-623****2020 Local Streets Resurfacing #3 Project.****Recommendation:**

- (a) Approve award of a construction contract for the 2020 Local Streets Resurfacing #3 Project, to the low bidder, DeSilva Gates Construction LP, in the amount of \$7,434,000.
- (b) Approve an approximate 10% contingency in the amount of \$743,400.

CEQA: Categorically Exempt, File No. PP18-029, CEQA Guidelines Section 15301(c), Existing Facilities. Council Districts 1 and 6.

(Transportation)

Action: The 2020 Local Streets Resurfacing #3 Project, was approved.

2.16 20-662

**Approval of Philippine Independence 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.**

**Recommendation:**

As recommended by the Rules and Open Government Committee on June 3, 2020:

(a) Approve recognition of Philippine Independence Day scheduled on Friday, June 12, 2020 as a City Council sponsored Special Event and approve the expenditure of funds; and

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

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

[Rules Committee referral 6/3/20 - Item G.1.a]

Councilmember Sylvia Arenas commented on Philippines Independence Day, commemorated the declaration of independence after four decades of colonial rule to emphasize solidarity with the Filipino American community in the call to fight for equity.

Public Comments: Blair Beekman commented on Philippines Independence Day today and observed that the funding that is going to the Philippines right now that is military and that is very harsh. There's a chance we can make such funding more in terms of human rights and such funding should be geared toward the concept of equity.

Action: Upon motion by Councilmember Maya Esparza to move approval, seconded by Councilmember Sylvia Arenas, and carried unanimously, the Philippine Independence Day Council District 8 Special Event was approved, and expenditure of funds; and acceptance of donations from various individuals, businesses, or community groups to support the event, was approved.  
(11-0)

2.17 20-663

**Retroactive Approval of Shop Local Spotlight Community Event 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.**

**Recommendation:**

(a) Retroactively approve the Shop Local Spotlight scheduled from Thursday, May 28, 2020 through the month of June as a City Council sponsored Special Event and approve the expenditure of funds; and

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

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

[Rules Committee referral 6/3/20 - Item A.1.a]

Action: The Shop Local Spotlight Community Council District 8 Special Event was approved, and expenditure of funds; and acceptance of donations from various individuals, businesses, or community groups to support the event, was approved.

2.18 20-664

**Approval of Pride Month Sponsored by Council District 6 and Council District 9 as a City Council Sponsored Special Event to Expend City Funds and Accept Donations of Materials and Services for the Event.****Recommendation:**

(a) Approve Pride Month to be recognized by the City Council on Tuesday, June 9, 2020 as a City Council sponsored Special Event and approve the expenditure of funds; and

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

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

[Rules Committee referral 6/3/20 - Item A.1.a]

Councilmember Dev Davis proclaimed June as pride month for this year, marking the 50th anniversary of the annual LGBTQ celebration and pride traditions. She recognized the impact that lesbian, gay, bisexual, transgender, and queer individuals have had, locally, nationally, and internationally.

Councilmember Pam Foley drew parallels between two civil rights movements. The one occurring right now and the one we made great progress with. Sometimes, it takes a tragedy to remove oppression.

Public Comments: Blair Beekman offered commented on good gay pride in the post street alleyway, and they are changing the trees in the post street alleyway.

Action: Upon motion by Councilmember Pam Foley to move approval, seconded by Councilmember Dev Davis, and carried unanimously, the Pride Month Council District 9 Special Event was approved, and expenditure of funds; and acceptance of donations from various individuals, businesses, or community groups to support the event, was approved.

(11-0)

2.19 20-665

**Summary Vacation of the 25-Foot and 12.5-Foot Setback Easements Within Tract No. 2026.****Recommendation:**

Adopt a resolution:

(a) Approving the report of the Director of Public Works setting forth the facts justifying the summary vacation of the 25-foot and 12.5-foot public easements for light and air ("Setback Easements") located within Tract No. 2026;

(b) Summarily vacating the Setback Easements, which are excess; and

(c) Directing the City Clerk to record a certified copy of the resolution of vacation with the Office of the Recorder, County of Santa Clara.

CEQA: Categorically Exempt, File No. ER20-093, CEQA Guidelines Section 15305, Minor Alterations in Land Use Limitations. Council

District 6. (Public Works)

[Rules Committee referral 6/3/20 - Item A.1.a]

Action: Resolution No. 79556, was adopted.



**2.20 20-666****Ratification of the Declaration of the Director of Emergency Services Altering Enforcement of the Construction Hours in the San José Municipal Code.****Recommendation:**

Adopt a resolution confirming and ratifying the Declaration issued by the Director of Emergency Services altering enforcement of the construction hours ordinance in the San José Municipal Code.

CEQA: Statutorily Exempt, Section 15269, Emergency Projects Undertaken for specific actions necessary to prevent or mitigate an emergency.

(Planning, Building and Code Enforcement)

[Rules Committee referral 6/3/20 - Item A.1.a]

Action: Resolution No. 79557, was adopted.

**3. STRATEGIC SUPPORT****3.1 20-624****Report of the City Manager, David Sykes.****Recommendation:**

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

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

**Heard before Consent**

City Manager David Sykes provided updates regarding the City's response to COVID-19. The City Manager recognized an extra-ordinary individual, Walter Lin, Deputy Public Works Director that oversees fleet facilities and radio division in public works. He has been involved with securing PPE for our City employees, collaborating with local breweries to manufacture needed hand sanitizer as well as with setting up the covid-19 testing sites. In addition to setting up temporary shelters for our un-housed community. Further, Walter and his team have been involved with modifying workspaces and all the cleaning protocols to keep all our city facilities and employees safe; and has been running the EOC Logistics Branch. Walter is a very quiet leader, with an unparalleled work ethic.

Deputy City Manager Kip Harkness, and the leadership team from the City's Emergency Operations Center provided updates, including acknowledging exceptional City staffing and discussed recent EOC efforts to provide childcare and summer camps, bolster financial recovery resources for the community, and resume fire inspections.

San José Fire Department Chief Robert Sapien provided highlights of a recent wildfire in south San José and the response of multiple departments and agencies. The City has provided administrative leave to benefited employees since March 17, 2020, who are unable to work due to the County's shelter in place order and the corresponding closure of City programs and facilities, employees' own illness, instruction to quarantine, caring for an ill family member, and employees affected by a school closure. However, all City employees have recently been notified by email on June 10, 2020, that the City has decided to end the provision of administrative leave for COVID-related absences once an employee exhausts the 14-calendar days of leave that qualifies as Emergency Paid Sick Leave (EPSLA). This change will take effect June 28, 2020

*(Item Continued on the Next Page)*

**3.1 20-624 Report of the City Manager, David Sykes. (Cont'd)**

Public Comments: Offering comments on the Report of the City Manager, were: Wendy Mahaney, Veronica, (D5); Blair Beekman, Melisa Hun, Delana Hughes, Michelle Melendez, Barkley, (D6); Last digits of telephone #51840, Bhawvani, Last four digits of telephone #: 8635, Peter Chu, Unnamed speaker, Unnamed speaker, Gabrielle Sinova, David Cohen, and Matthew.

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

**3.2 Labor Negotiations Update.****3.3 20-625 Preliminary Review of Controls to Document COVID-19 Recovery Costs.**

**Recommendation:** Accept the Preliminary Review of Controls to Document COVID-19 Recovery Costs. CEQA: Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action. (City Auditor)  
**Heard immediately following item 3.1**

City Auditor Joe Rois gave a presentation and responded to questions.

Public Comments: Blair Beekman commented on the importance of this work in terms of how we develop relationship with FEMA.

Action: Upon motion by Councilmember Johnny Khamis to move approval, seconded by Councilmember Dev Davis, and carried unanimously, Preliminary Review of Controls to Document COVID 19 Recovery Costs was approved.  
(11-0)

**3.4 20-667 Update on the Agreement with Santa Clara County for Cost of Distribution of Food and Necessities.**

**Recommendation:** Provide an update on the status of the Santa Clara County Food Reimbursement Agreement negotiation and recommended next steps. CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. (City Manager)  
[Rules Committee referral 6/3/20 - Item A.1.a]

City Manager David Sykes provided a brief update on the City's agreement with Santa Clara County for cost of distribution of food and necessities and noted that they have agreed to the financial terms. The City will continue providing services for the remainder of the year for a cost of \$1,035,000.

Deputy City Manager Angel Rios responded to questions.

Action: No motion was required. Council accepted the Update.

**3.5 20-668****Public Member Appointment to the Board of Administration for Police and Fire Department Retirement Plan.****Recommendation:**

(a) Interview two applicants for appointment to the Public Member Seat; and  
 (b) Appoint one applicant as a Public Member on the Board of Administration for the Police and Fire Department Retirement Plan to a term ending November 30, 2022.  
 CEQA: Not a Project, File No. PP17-010, City Administrative Activities, resulting in no changes to the physical environment. (City Clerk)  
 [Rules Committee referral 6/3/20 - Item A.1.a]

The Council interviewed the first candidate, Sunita Ganapathi, before the dinner break.

Sunita Ganapathi described her work-related experience, involving among other, eight years of managing an internal portfolio and investment research at Wells Fargo, moving from risk-taking to the risk management side of the business, totaling \$400M portfolio. She responded to questions.

- **Council recessed for dinner at 6:06PM**
- **Council reconvened at 6:35PM**

The City Council interviewed the second candidate David Kwan, who described his work-related background, involving 27 years- experience of institutional money management in various capacities as a portfolio manager, as a researcher, trader, and as a strategist; business insights from the investment world. He responded to questions.

Action: Upon motion by Councilmember Pam Foley to move approval, seconded by Councilmember Dev Davis, and carried unanimously, the appointment of Sunita Ganapati to the Board of Administration for Police and Fire Department Retirement Plan, was approved,  
 (11-0)

**3.6 20-673****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”:

*(Item Continued on the Next Page)*

## 3.6 20-673

**Discussion and Actions Related to Police Use of Force and Crowd Control (Cont'd)**

- (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 or 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.

*(Item Continued on the Next Page)*

## 3.6 20-673

**Discussion and Actions Related to Police Use of Force and Crowd Control (Cont'd)**

(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)

**Heard first, before 3.1, 3.3 and consent, per Orders of the Day.**

City Manager David Sykes provided introductory remarks, welcomed questions, and direction, as well as stressed the lack of ready answers. As an organization, however, we take responsibility, and this organization will embrace change and improvement.

Police Chief Eddie Garcia expressed his frustration about what transpired and observed that we pride ourselves as a transparent Police Department. The PD is committed to improvement. We will hold ourselves accountable for the actions of this past week, learn and get better.

Police Special Operations Commander, Captain Jason Dwyer reviewed some of the events of the past week, and described in detail, which conditions the San José Police Duty Manual authorizes, including the deployment for crowd control purposes.

City Attorney Rick Doyle commented on the release of video of the protests, and stated his readiness to work with the Department to release information per the California Public Records Act request or voluntarily. This will be implemented on a case by case basis and to the extent there aren't litigation and/or claims filed. There might be grounds for redaction, but the CAO will keep the Council apprised, and will come back with more info.

Public Comments: Offering comments on the Discussion and Actions Related to Police Use of Force and Crowd Control Measures were: Mary Helen Doherty, (representing SURGE and PACT); Elsvard, (District 1); Alex McGregor, Mr. Gutierrez, Alridge Mitchell, Rhea, (District 6); John Davis, Rachel, Areej Hassan, Atif, Omar, Lena

*(Item Continued on the Next Page)*

**3.6 20-673 Discussion and Actions Related to Police Use of Force and Crowd Control (Cont'd)**

Abuhaban, Jeff, Meko, Taylor, Aaron Zisser, (Former Independent Police Auditor for San José); Last four digits of telephone #: 4379, Last four digits of telephone #: 7912, Veronica Magdalena, Sarah Ensminger, Joe Tymer, Casey James, A.S., Kyle Lightner, Makena Murray, Jesse Springer, Anushree, James, Jeanette Holsworth, (District 1); Bhawgavi, Kat Richter, Angie, Vivian, veronica, Christina Munoz, (D3); Megan Swift, Mario De La Torre, Krystal, Jessica Matthews, Eli Dihm, Blair Beekman, Onazakis, Blaine, Jose Villareal and Jenny Higgins Barndanini.

Mayor Liccardo called an end to public comments, declared that session closed after the last speaker and noted that we'd take a break and then resume with the remainder of our calendar. We will have a much longer period to engage with the community on this very important issue on Friday, at 11:30 A.M.

Action: No motion was required. Council recessed at 1:00PM, with clarification that, the use of force from today's memo and counsel item from 3.6 will continue Friday.

- Council recessed at 1:00PM
- Council reconvened at 2:01PM

**3.7 20-674 Ratification of the Declaration of the Director of Emergency Services Suspending Enforcement of Certain Provisions in Land Use Requirements in the San José Municipal Code.**

**Recommendation:** Adopt a resolution confirming and ratifying the Declaration of the Director of Emergency Services of the City of San José suspending enforcement of certain provisions in land use permits and approvals and zoning and encroachment requirements in the San José Municipal Code issued June 4, 2020 ("Emergency Order"). CEQA: Categorically Exempt, File No. ER20-114, CEQA Section 15304(e) Minor Alterations to Land. (Economic Development)

Economic Development Director Kim Welsh, and Office of Economic Development Downtown Manager Blage Zolalich gave a presentation and responded to questions.

Public Comments: Offering comments were: Blair Beekman, and Eddie Truong.

Action: Upon motion by Councilmember Dev Davis, to move approval, seconded by Councilmember Magdalena Carrasco, and carried unanimously, Resolution No. 79558 was adopted, and staff report, approved.  
(11-0)

**4. PUBLIC SAFETY SERVICES**

## 5. TRANSPORTATION & AVIATION SERVICES

### 5.1 20-626 **Actions Related to the Design and Construction of the Charcot Avenue Extension from Paragon Drive to Oakland Road and I-880 Overcrossing Project.**

#### Recommendation:

(a) Adopt a resolution certifying the Charcot Avenue Extension Project Environmental Impact Report (EIR) (SCH # 2018042084) and making certain findings concerning significant impacts, mitigation measures, and alternatives, adopting a Statement of Overriding Considerations, and adopting the related Mitigation Monitoring and Reporting Program all in accordance with the California Environmental Quality Act (CEQA), and

(b) Approve the full Charcot Avenue Extension as depicted in the Site Plan and described in the project's EIR to construct a two-lane extension of Charcot Avenue from Paragon Drive on the west to Oakland Road on the east, a distance of approximately 0.6 mile. The Project includes construction of an overcrossing across O'Toole Avenue and I-880 and improvements to Silk Wood Lane. The Project would also construct bicycle/pedestrian facilities on Charcot Avenue, including sidewalks and separated (Class IV) bikeways, between Paragon Drive and Oakland Road.

CEQA: Charcot Avenue Extension Environmental Impact Report (SCH # 2018042084). File No. PP18-044. Council District 4.

(Transportation/Planning, Building and Code Enforcement)

**Not heard before 5:00 p.m.**

Transportation Director John Ristow, Office of Economic Development Deputy Director Chris Burton, Transportation Division Manager Zahir Gulzadah, and David Powers and Associates' John Hessler gave a presentation and responded to questions.

Public Comments: Offering comments were: Deena Said, Ben English, El Licati, Sean McCullough, Lynn Linquaco, Thea T., Scott Berta, Martha Gelli, Meko, Robin Roemer, Cécile Wei-Yu Hung, Margaret Zhang, Susan Butler-Graham, Isabelle Chaquui, Clements Tohado, Linda: Hutchins-Knowles, Stephanie Morris, Huia Anh Truong, Scott Mace, Zaq, Wendy Guadiwicz, Anika, Yoko, Leena, Monica, Amelia Wang, David Cohen, Nikita Singha, Jamie Minden, Ada Marquez, Monica Mellon, Rene Schell, (PhD); phone #4040, Harrold Freedman, Stacey Amorin, David Poschell, Audrey Wee, Blair Beekman, Neil, Unnamed speaker, Joe Zavone, Leic, Roland Lebrun, Juliane Gershom, Daniel Huynh, Alexander Castro, Amika, Virginia, and Audrey Rust.

Action: Upon motion by Councilmember Lan Diep to move approval, seconded by Vice Mayor Chappie Jones, and carried unanimously, Resolution No. 79559 was adopted, including approval of the motion to adopt the EIR in section A of staff memo:

a) Adopt a resolution certifying the Charcot Avenue Extension Project Environmental Impact Report (EIR) (SCH # 2018042084) and making certain findings concerning significant impacts, mitigation measures, alternatives, adopting a Statement of Overriding Considerations, and adopting the related Mitigation Monitoring and Reporting Program all in accordance with the California Environmental Quality Act (CEQA)

*(Item Continued on the Next Page)*

## 5.1 20-626 Actions Related to the Design and Construction of the Charcot Avenue (Cont'd)

Also approved is alternative F, the three lane project, with staff directed to potentially explore not allowing large trucks from driving down this path.

This was modified with a friendly amendment and additional clarifications that staff sit down with the Superintendent and her team to address specific issues with concerns of the school district in relation to safety of the children, in terms of a crosswalk in certain locations whereby it's not just a two-lane road but it's an enhanced crosswalk, or tunnels, and at that point, it would be three lanes further out in Oakland Road for the children's crossing in ways that address the safety of the children and other concerns you may have about the campus and the impacts on the vicinity.  
(6-3-2. Noes: Peralez, Carrasco, Foley. Absent: Esparza, Arenas).

## 6. ENVIRONMENTAL & UTILITY SERVICES

### 6.1 20-627 San José Municipal Water System 2020-2021 Water Rates and Charges.

#### Recommendation:

- (a) Hold a Public Hearing on proposed San José Municipal Water System 2020-2021 potable and recycled water rates and charges.
- (b) Adopt resolutions maintaining San José Municipal Water System potable and recycled water rates and charges at current 2019-2020 amounts, effective July 1, 2020. CEQA: Statutorily Exempt, File No. PP17-005, CEQA Guidelines Section 15273 Rates, Tolls, Fares, and Charges, Adjustment to Fees, Rates, and Fares without changes to or expansion of services. Council Districts 2, 4, 7 and 8. (Environmental Services)

Mayor Liccardo declared the Public Hearing open.

There was no presentation for this item. City Clerk Toni Taber read a statement that 226 valid written protests were received representing less than one percent of all customers, therefore, the Council may consider staff's recommendation for Municipal Water System rate increases.

Environmental Services Director, Kerrie Romanow responded to questions.

Public Comments: There were no cards.

Mayor Liccardo declared the Public Hearing closed.

Action: Upon motion by Councilmember Johnny Khamis to move approval of item B, seconded by Vice Mayor Chappie Jones, and carried unanimously, Resolution No. 79560 was adopted, and, Resolution No. 79561 was adopted.  
(10-1. Absent: Esparza)



**6.2 20-628****Recycle Plus Rates for Single Family and Multi-Family Residential Solid Waste Services.****Recommendation:**

Adopt a resolution to amend the current Recycle Plus rate resolution effective July 1, 2020, as follows:

- (a) Increase residential solid waste service rates for single-family households by nine percent; and
- (b) Increase residential solid waste service rates for multi-family households by five percent.

CEQA: Statutorily Exempt, File No. PP17-005, CEQA Guidelines Section 15273 Adjustment to Fees, Rates & Fares without changes to or expansion of services. (Environmental Services)

**Not heard before 6:00 P.M.**

There was no presentation for this item. City Clerk Toni Taber read a read a statement that 964 valid written protest were received representing less than one percent of all customers, therefore the Council may consider staff's recommendation for Recycle Plus rate increases.

Environmental Services Director Kerrie Romanow and Budget Director, Jim Shannon responded to questions.

Public Comments: There were no cards.

Action: Upon motion by Councilmember Pam Foley to move approval of staff's recommendation, seconded by Councilmember Sylvia Arenas, and carried unanimously, Resolution No. 79562 was adopted. (10-1. Absent: Esparza)

**6.3 20-629****Sewer Service and Use Charges and Storm Sewer Service Charges for 2020-2021.****Recommendation:**

(a) Adopt a resolution setting the following Sewer Service and Use Charge rates for 2020-2021:

- (1) Single-Family Residential: \$41.64 (Monthly Rate)
- (2) Multi-Family Residential: \$27.90 per unit (Monthly Rate)
- (3) Mobile Home: \$31.43 per unit (Monthly Rate)
- (4) Non-Monitored Commercial and Industrial: See Attachment A to staff memorandum
- (5) Monitored Industrial: See Attachment A to staff memorandum

There was no presentation for this item.

Environmental Services Director, Kerrie Romanow responded to questions.

Public Comments: There were no cards.

Action: Upon motion by Councilmember Pam Foley to move approval, seconded by Vice Mayor Chappie Jones, and carried unanimously, Resolution No. 79563 was adopted.

(10-1. Absent: Esparza)

*(Item Continued on the Next Page)*

**6.3 20-629 Sewer Service and Use Charges and Storm Sewer Service Charges for... (Cont'd)**

(b) Adopt a resolution setting the following Storm Sewer Service Charge rates for 2020-2021:

- (1) Single-Family Residential and Duplex: \$7.87 (Monthly Rate)
- (2) Mobile Home: \$3.94 per unit (Monthly Rate)
- (3) Residential Condominium: \$4.30 per unit (Monthly Rate)
- (4) Large Multi-Family Residential (5 or more units): \$4.30 per unit (Monthly Rate)
- (5) Small Multi-Family Residential (3-4 units): \$14.95 (Monthly Rate)
- (6) Commercial, Institutional and Industrial: See Attachment B to staff

memorandum

CEQA: Statutorily Exempt, File No. PP17-005, CEQA Guidelines Section 15273 Adjustment to Fees, Rates & Fares without changes to or expansion of services. (Environmental Services)

Action: Resolution No. 79564 was adopted.  
(10-1. Absent: Esparza)

**7. NEIGHBORHOOD SERVICES****8. COMMUNITY & ECONOMIC DEVELOPMENT****8.1 20-630 Economic Recovery Temporary Cap on New or Increased Infrastructure Fees for Development.**

**Recommendation:** Adopt a resolution approving a temporary cap on (i) any future new fees on development citywide for public infrastructure (excluding affordable housing); and (ii) future increases to the existing Diridon Basic Infrastructure Impact Fee. The temporary maximum rates in the recommendation would apply to building permits issued before January 1, 2023 as follows:

- (a) Retail/Industrial: \$8.16 per square foot
- (b) Office/R&D: \$12.20 per square foot
- (c) Hotel: \$5,962.00 per room
- (d) Residential: \$5,470.00 per unit

CEQA: Statutorily Exempt, File No. PP17-005, CEQA Guidelines Section 15273 Rates, Tolls, Fares, and Charges, Adjustment to Fees, Rates, and Fares without changes to or expansion of services.

(Economic Development)

Action: Deferred to 6/16/2020 Per Administration.

**9. REDEVELOPMENT – SUCCESSOR AGENCY**

**10. LAND USE****10.1 Land Use on Consent Calendar**

- (a) **20-631 HLA86 031 01 and MA19 004 Historic Landmark Designation and Historical Property Contract for the “Smith House” Located at 3556 San Felipe Road.**

**Recommendation:**

Adopt resolutions:

(1) Amending the designation of the City Landmark (Smith House) with a reduced legal boundary for the “Smith House” on a 0.44-gross acre site located at 3556 San Felipe Road (APN: 659-04-056).

(2) Approving the Historical Property Contract (California Mills Act Contract) between the City of San José and property owner, Oakmont of Evergreen, LLC.

CEQA: Categorically Exempt, CEQA Guidelines Section 15331 for Historical Resource Restoration/Rehabilitation. Historic Landmarks Commission recommends approval.

Council District 8. (Planning, Building and Code Enforcement)

**Heard in the afternoon after consent**

There was no presentation for this item.

Public Comments: There were no cards.

Action: Upon motion by Councilmember Johnny Khamis to move approval, seconded by Vice Mayor Chappie Jones, and carried unanimously, Resolution No. 79565 was adopted, and, Resolution No. 79566 was adopted.

(10-1. Absent: Esparza)

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

- 10.2 20-632 PDC18-025 - Planned Development Rezoning for Real Property Located at 1197 Lick Avenue.**

**Recommendation:**

(a) Adopt a resolution adopting the Tamien Station Transit-Oriented Development Mitigated Negative Declaration, for which an Initial Study was prepared, and adopting an associated Mitigation Monitoring and Reporting Plan, all in accordance with the California Environmental Quality Act (CEQA), as amended.

(b) Approve an ordinance rezoning an approximately 6.96- gross acre site on certain real property located on the westerly side of Lick Avenue approximately 470 feet northerly of West Alma Avenue (1197 Lick Avenue) from the A(PD) Planned Development Zoning District to the R-M(PD) Planned Development Zoning District.

CEQA: Mitigated Negative Declaration for the Tamien Station Transit-Oriented Development. Planning Commission recommends approval (5-0-1; Bonilla absent).

File No. PDC18-025. Council District 3.

(Planning, Building and Code Enforcement)

**Heard in the afternoon**

*(Item Continued on the Next Page)*

**10.2 20-632****PDC18-025 - Planned Development Rezoning for Real Property Located (Cont'd)**

Planning, Building and Code Enforcement Director, Rosalyn Hughey gave a presentation and responded to questions.

The Applicant, represented by Michael Van Avery and Chris Neal presented to Council.

Public Comments: Offering comments were: Roland Lebrun, Eddie Truong, Jeff Buchanan, (Working Partnership USA); Omar Torres, Greg Kepfoyle, Mark Lopez, Deacon Rubin Solorio, and Geraldo,

Action: Upon motion by Councilmember Raul Peralez to move approval, seconded by Councilmember Lan Diep, and carried unanimously, Resolution No. 79567 was adopted, and Ordinance No. 30432, was passed for publication.  
(10-1. Absent: Esparza)

**10.3 20-633****H19-016 - Site Development Permit for Certain Real Property Located at the Northeast Corner of South Almaden Boulevard and Park Avenue (150 S. Almaden Boulevard).****Recommendation:**

(a) Adopt a resolution certifying the City View Plaza Project Tower Supplemental Environmental Impact Report (SCH#2018022032) and making certain findings concerning significant impacts, mitigation measures, and alternatives, adopting a Statement of Overriding Considerations, and adopting the related Mitigation Monitoring and Reporting Program, all in accordance with the California Environmental Quality Act (CEQA); and

(b) Adopt a resolution approving, subject to conditions, a Site Development Permit to allow the demolition of nine existing on-site buildings (including candidate City Landmarks), the removal of 14 ordinance size trees, and the construction of an approximately 3.79 million square foot development comprised of 24,000 square feet of ground floor retail and 3,640,033 square feet of office space and including a request for 24-hour construction and Downtown Design Guidelines exceptions on an approximately 8.1-gross acre site on certain real property located at the northeast corner of South Almaden Boulevard and Park Avenue.

CEQA: City View Plaza Project Tower Supplemental Environmental Impact Report to the Downtown Strategy 2040 Environmental Impact Report (Resolution No. 78942). Planning Commission recommends approval (6-0). File No. H19-016. Council District 3. (Planning, Building and Code Enforcement)  
[Deferred from 6/2/2020 - Item 10.2 (20-608)]

Action: Deferred to 6/16/2020 Per Administration.

## MINUTES OF SAN JOSE CITY COUNCIL CLOSED SESSION AGENDA

The Council meeting was teleconferenced from remote locations. The Council of the City of San José convened for Closed Session by teleconference at 9:33AM on Tuesday, June 9, 2020.

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

Absent: Councilmembers - Esparza.

Upon motion unanimously adopted, Council recessed at 10:28 AM. to a Closed Session by teleconference to: (A) confer with legal counsel anticipated litigation pursuant to government code section 54956.9(d)(4) of the Government Code: Number of matter(s) to be discussed: 1 (B) confer with legal counsel – existing litigation pursuant to government code section 54956.9(d)(1): 1. Case Name: In re: Claim of Birch Name(s) of Parties(s) Involved: Court: Workers Compensation Appeals Court Case No.: ADJ11812573 Amount of Money or Other Relief Sought: Benefits. 2. Case Name: In re: Claim of Padilla Name(s) of Parties(s) Involved: Court: Workers Compensation Appeals Court Case No.: ADJ11955650 Amount of Money or Other Relief Sought: Benefits. 3. Case Name: Sutter's Place, Inc. dba Bay 101 v. City Name(s) of Parties(s) Involved: Sutter's Place, Inc. dba Bay 101; City of San Jose; the Division Of Gaming Control. Court: Superior Court of California, County of Santa Clara Case No.: 1-13-CV-258057 Amount of Money or Other Relief Sought: Damages according to proof. (C) Confer with Real Property Designated Representatives Pursuant to Government Code Section 54956.8: 1. Property Street Address, Parcel Number, or Other Unique Reference of Property: Vista Montana, San Jose Negotiating Parties: Nanci Klein for the City of San José and Scott Kepner for Delaware Retail Control, LLC; Vista Glik LLC; Vista IFT, LLC; Vista KBRT, LLC; SMF Vista LLC; GTP Vista, LLC; and RAF Vista, LLC Under Negotiation: The direction will concern price and terms of payment. Likely Range of Value of Property: Negotiated price based on appraisal and comparable property values. (D) Conference Regarding Potential Threat to Public Services or Facilities Pursuant to Government Code Section 54957(a): Consultation with: Chief of Police

By unanimous consent, Council recessed from the Closed Session at 10:28 AM to reconvene to Regular Session at 11:00 AM by teleconference.

### • OPEN FORUM

1. Blair Beekman offered comments on the decent ideas of the equity and the future of good local everyday community democracy.
2. Linda urged Council to revisit its votes, stating that it's not too late for one of you to change your mind and stop this project.

### • Adjournment

**This meeting is in memory of William James “Bill” Del Biaggio Jr., a business leader, philanthropist, and community leader. Living in San José his entire life, Bill continually worked to improve his community through the Guadalupe River Park & Gardens, Via Services, History San José, and many more. Bill was a pillar of the community and his passing is a loss for all of San José.**

• **ADJOURNMENT**

Mayor Liccardo adjourned the Council Meeting session at 11:03 PM

Minutes Recorded, Prepared and Respectfully Submitted by,

Toni J. Taber, CMC  
City Clerk

lo/6-9-20 MIN

**Agendas, Staff Reports, and some associated documents for City Council items may be viewed on the Internet at <http://www.sanjoseca.gov/index.aspx?NID=3549>. 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.**

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

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