

CITY COUNCIL AGENDA

SPECIAL CITY COUNCIL MEETING ON VARIOUS POLICE RELATED REPORTS

JUNE 21, 2007

6:00 P.M.

CITY HALL COUNCIL CHAMBERS

SYNOPSIS

- **Outcome**

- **Review and discussion of the various recommendations and key issues contained in various reports relating to the San José Police Department and the Independent Police Auditor;**
- **Council consideration of recommendations from the City Manager, Police Department, Independent Police Auditor (IPA) and/or Human Rights Commission (HRC);**
- **Presentation on police oversight models and national trends; and,**
- **Obtain public input.**

PETE CONSTANT
FORREST WILLIAMS
SAM LICCARDO
KANSEN CHU
NORA CAMPOS

DISTRICT 1
DISTRICT 2
DISTRICT 3
DISTRICT 4
DISTRICT 5

CHUCK REED, MAYOR

PIERLUIGI OLIVERIO
MADISON P. NGUYEN
DAVID D CORTESE, VICE MAYOR
JUDY CHIRCO
NANCY PYLE

DISTRICT 6
DISTRICT 7
DISTRICT 8
DISTRICT 9
DISTRICT 10

Welcome to the San José City Council meeting!

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

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

Items listed in Section 9 require approval of both the City Council and the San José Redevelopment Agency Board.

You may speak to the City Council about any item that is on the agenda, and you may also speak on items that are not on the agenda during Open Forum. If you wish to speak to the City Council, please refer to the following guidelines:

- **Fill out a Yellow Speaker's Card and submit it to the City Clerk seated at the front table. Do this before the meeting or before the item is heard.** This will ensure that your name is called for the item(s) that you wish to address, and it will help ensure the meeting runs smoothly for all participants.
- When the Council reaches your item on the agenda, Mayor Reed will open the public hearing and call your name. Please address the Council from the podium, which is located to the left of the City Clerk's table.
- Each speaker generally has two minutes to speak per item. The amount of time allotted to speakers may vary at the Mayor's discretion, depending on the number of speakers or the length of the agenda.
- To assist you in tracking your speaking time, there is a display on the podium. The green light turns on when you begin speaking; the yellow light turns on when you have 30 seconds left; and the red light turns on when your speaking time is up.

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

The San José City Council meets every Tuesday at 1:30 p.m. and every first and third Tuesday at 7 p.m., unless otherwise noted. If you have any questions, please direct them to the City Clerk's staff seated at the tables just below the dais. Thank you for taking the time to attend today's meeting. We look forward to seeing you at future meetings.

Agendas and Staff Reports for City Council items may be viewed on the Internet at <http://www.sanjoseca.gov/clerk/agenda.asp>. Council Meetings are televised live and rebroadcast on Channel 26.

To arrange an accommodation under the Americans with Disabilities Act to participate in this public meeting, please call (408) 535-1260 or (408) 294-9337 (TTY) at least two business days before the meeting.

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

- **Call to Order and Roll Call**
6:09 p.m. - Special Council Meeting, Council Chambers, City Hall
Absent Council Members: None.

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Reports and additional documents may be viewed on the Internet at:
<http://www.sanjoseca.gov/June21SpecialCouncilMeeting/default.asp>

- (1) **OPENING REMARKS & REVIEW OF SPECIAL COUNCIL MEETING FORMAT**
Mayor Reed presented opening remarks and described the events for the evening.
- (2) **PRESENTATION OF POLICE RELATED REPORTS & RECOMMENDATIONS**
 - (a)(1) **2006 Independent Police Auditor Annual Report. (Independent Police Auditor)**

IPA Recommendations:

- (a) That the Mayor and City Council:
 - (1) Direct the City Manager to direct the SJPD to implement a complaint process which utilizes objective criteria for complaint classification in collaboration with the IPA.
 - (2) Grant the IPA concurrent authority over the classification of complaints.
- (b) That the Mayor and City Council:
 - (1) Direct the City Manager to direct the SJPD to conduct administrative investigation in all critical incidents in which an officer's use of force or any other department action results in death or serious bodily injury.
 - (2) Mandate that the IPA review the administrative investigation in all such cases.

SPECIAL CITY COUNCIL MEETING

(2) PRESENTATION OF POLICE RELATED REPORTS & RECOMMENDATIONS

(A)(1) 2006 Independent Police Auditor Annual Report (Cont'd.)

- (c) That the Mayor and City Council consider granting the IPA specific limited authority to investigate. Exercise of such authority would be limited to:
 - (1) Investigation of community-initiated complaints, which IA did not investigate;
 - (2) Investigation of critical incidents in which any SJPD action resulted in death or serious bodily injury and the SJPD did not conduct an administrative investigation;
 - (3) Investigations of complaints or critical incidents that are deemed by the IPA to be incomplete.
- (d) Updates to the San José Municipal Code to reflect previous Council action, as outlined in the IPA's 2006 Annual Report.

(A)(2) Administration's Response to the Annual Report. (City Manager's Office/Police Department)

Administration Recommendations:

- (a) Recommend that the City Council conduct a review of the Independent Police Auditor's auditing practices, controls, and/or procedures every two years and to report to the City Council on the findings such a report.
- (b) Direction to the City Manager to:
 - (1) Accept the Police Department's self-initiated practice, as of April 2007, of tracking police officers' names on Inquiries for a six month period and direct the City Manager to report on the status of this effort once six months of data are available, along with a staff resource and "value added" impact report.
 - (2) Accept the Administration's self-initiated process of evaluating IA Unit classification definitions.
- (c) Direction to the City Manager and Independent Police Auditor to work together to develop information packets for individuals contacting the IPA or IA Unit.

(B)(1) Community Forums Reports: "The Police in San José: What's working, what isn't and what can be improved?" (Independent Police Auditor/ Human Rights Commission)

IPA/HRC Recommendations:

- (a) That the City Council request the City Manager to direct the SJPD to do the following:
 - (1) Prioritize and implement officer training to (a) reinforce existing San Jose Police Department policies regarding respectful treatment of the public; (b) improve communication between police officers and the public; and, (c) increase racial, ethnic and cultural sensitivity among police officers.

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(2) PRESENTATION OF POLICE RELATED REPORTS & RECOMMENDATIONS

- (B)(1) (a) (2) Report to the Council on a semi-annual basis for a two year period starting in September of 2007 on the status of the above recommendation.
- (b) Request that Council review and consider community concerns about police accountability raised during the community forums, in IPA reports, and in the 2005-2006 Santa Clara County Grand Jury Report; take measures to strengthen the City's police oversight process; and, consider the call for increased civilian oversight in San Jose.

(B)(2) Human Rights Commission supplemental recommendations related to police services (Human Rights Commission)

Human Rights Commission Recommendations:

- (a) All officers will carry business cards and will be required to give them out on request, for any stop or arrest.
- (b) Police will adopt a procedure for connecting non-English-speaking persons with the AT&T language services available through the San Jose Police Department dispatch.
- (c) Sensitivity and cultural awareness training will be required of all members of the Police Department and implemented in a cascading manner where each level is responsible for participating in the training of the officers and their immediate subordinate level.

(B) (3) Administration's Response to the Community Forums Report and HRC Supplemental Recommendations. (City Manager's Office)

Administration Recommendations:

- (a) Direction to the City Manager to work with the SJPD and HRC to identify partnership/interactions to increase awareness of areas of mutual interest regarding police services and to present a work plan to a Council Committee.
- (b) Council determination on whether it would like for the City Manager to develop and present to a Council Committee a work plan, including the costs of such a public opinion poll, to measure and evaluate:
- (1) General community attitude toward the SJPD.
- (2) General community evaluation of the services provided by the SJPD.
- (3) General community perception of the most important issues facing the Police Department (e.g., racial profiling by the SJPD; communications skills, excessive use of force).
- (4) General community knowledge of the Citizen Complaint Process.

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- (2) **PRESENTATION OF POLICE RELATED REPORTS & RECOMMENDATIONS**
- (B)(3) (c) Suspend any action on recommendations as presented in the Community Forums report, authored by the HRC and IPA, until the above recommendations are completed and receipt of the IPA's clarification/validation of circumstances provided in the testimony is obtained, as directed by the Rules & Open Government Committee.
- (d) Suspend any action on the HRC supplemental recommendations, other than the Administration's efforts to implement business cards for all police officers.
- (e) Accept the SJPD's self-initiated process to reestablish the Citizens' Police Academy and grant priority for participation to HRC members.

(C)(1) San José Internal Affairs Peer Review Study (Macias Consulting Group)

Macias' Items of Consideration:

- (a) **Consideration 1:** Eliminating the collection of disputes, inquiries, or other complaints pertaining to traffic violations until the matter is addressed by traffic court.
- (b) **Consideration 2:** Establishing policies on the types of "Inquiries" that will be formally tracked and captured.
- (c) **Consideration 3:** Changing the name of the "Inquiries" category to "Non-Complaints".
- (d) **Consideration 4:** Establishing policies that state that "Inquiries" are not considered complaints, but continue to require the reporting on "Inquiries" by the IPA.
- (e) **Consideration 5:** Train SJPD or City employees to mediate complaints.
- (f) **Consideration 6:** Continue to support the IPA's role in the auditing of IA activities regarding the citizen complaint process.
- (g) **Consideration 7:** Require an independent and annual evaluation of key performance measures of the SJPD citizen complaint process that were included in this study. This evaluation could be performed by the IPA or other analysts in other City departments.

(2) **Administration Recommendation:** Council accept the items for consideration submitted by Macias Consulting Group as included in the IA Study, with the exception of "Consideration 5: Train SJPD or City employees to mediate complaints," given that the SJPD currently has a Voluntary Mediation Program and that focus should be on increases police officer and community awareness.

(3) **Independent Police Auditor's response to the San José Internal Affairs Peer Review Study. (Independent Police Auditor and Consultant Richard Jerome)**

SPECIAL CITY COUNCIL MEETING

(2) PRESENTATION OF POLICE RELATED REPORTS & RECOMMENDATIONS (Cont'd.)

(D)(1) 2006 San José Police Department Annual Force Response Report (AFRR). (Police Department)

Administration Recommendation: Suspend any action or conclusions on the AFRR until a more rigorous statistical data analysis is conducted by an independent third party based on multi-year data.

(2) Independent Police Auditor's response to the 2006 San José Police Department Annual Force Response Report. (Independent Police Auditor and Consultant Richard Jerome)

(E)(1) Presentation on Police Oversight Models and National Trends (Lance Bayer)

(2) IPA Response to the Presentation (Independent Police Auditor and Consultant Richard Jerome)

PUBLIC COMMENT

There were sixty speakers who spoke regarding the Police related reports and recommendations.

COUNCIL DISCUSSION AND DIRECTION

The memorandum from Mayor Reed, Vice Mayor Cortese and Council Members Nguyen and Constant, dated June 18, 2007, was approved with amendments, as amended:

- (1) Confirm the Independent Police Auditor's (IPA) right to challenge the Police Department's classification of complaints and inquiries, with ultimate resolution by the City Manager.**
- (2) Direct the Police Chief to establish policies on the types of inquiries that should be made a part of the early warning and intervention counseling system.**
- (3) Direct the Police Chief to develop a specific policy prohibiting retaliation against complainants.**
- (4) Direct the Police Chief to continue to incorporate rudeness awareness training and reinforce the need for respectful treatment into regular training for all officers.**
- (5) Add regular monitoring of major downtown nighttime events, i.e. Cinco de Mayo and Mardi Gras to the work plan of the Human Rights Commission (HRC).**

COUNCIL DISCUSSION AND DIRECTION (Cont'd.)

- (6) Continue use of the mediation process and publicize its availability.
- (7) Direct the City Manager, *Police Chief* and the Independent Police Auditor to work together to develop information packets *in multiple languages* for individuals contacting the IPA or Internal Affairs Unit (IA).
- (8) Restrict the inclusion of data regarding the dispute of routine traffic citations from reports of complaints and inquires until the matter is addressed by the traffic report. Complaints that are strictly disputes of the citation should be resolved by the traffic court and eliminated from the reports of complaints and inquiries.
- (9) Direct the IPA and IA to develop a packet of intake materials to be given to the complainants at both agencies to include complaint definitions, an explaining of the process and necessary forms.
- (10) Direct the City Manager to work with the IPA and IA to develop a standardized script that explains the inquiry process, which IPA and IA Staff will read at the time of intake.
- (11) Confirm the IPA's existing authority to review officer-involved shootings and in-custody death cases. Direct the City Attorney to return to the City Council at the first meeting in August with a report on the litigation impacts of moving all in-custody death cases that are a result of a use of force to the same level of auditing by the IPA as officer-involved shootings. *The City Attorney was further directed to analyze the countywide protocol for in-custody deaths, as well as other critical incidents.*
- (12) Direct the City Manager to work with the Police Chief *and IPA* to develop a revised complaint process that determines classifications based upon objective criteria and definitions for complaint categories. They are to bring regular updates on their progress to the Public Safety, Finance and Strategic Support Committee. *This will allow the IPA to be involved as part of the process, work collaboratively and review progress.* Final recommendations are to be brought back to the City Council within 6 months.
- (13) Direct the City manager to collaborate with the IPA on a report outlining the status of all the recommendations adopted at the Special Council Meeting. This report is to be brought forward in conjunction with the IPA's mid year report.

ADJOURNMENT

The Council of the City of San José was adjourned at 10:28 p.m.