

# San José Charter Review Commission

## DRAFT Final Recommendations

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## Summary of Recommended Changes

The San José Charter [Review](#) Commission approved the following recommendations by a majority vote.

### Governance Structure

#### Charter Recommendations

##### **With Regards To A “Mayor-Council” Government Structure**

The Commission finds the “Mayor-Council” government structure governance model to be in direct conflict with Council’s directive #5 to “Consider additional measures and potential Charter amendments, as needed, that will improve accountability, representation, and inclusion at San José City Hall.” The Commission believes that moving to a “Mayor-Council” government structure will not improve accountability, representation, or inclusion at San José City Hall.

##### **Establish Future Charter Review Commissions**

Appoint Charter Review Commissions at the second regular meeting of Council in the year 2028, and of each succeeding tenth year thereafter, and at any time council may call for such a commission, to review and recommend amendments to this Charter.

##### **Allow Council Members To Make Nominations for City Manager Candidates**

Members of the Council shall also have the ability to nominate prospective City Managers, along with the Mayor, for a majority vote approval by Council.

### Policy Recommendations

##### **Consider Adding Council Districts**

Explore whether smaller districts might offer more focus on communities of greater need. Study this question before the next redistricting process begins, and early enough to schedule a public vote if a change is recommended.

## Voting & Elections

### Charter Recommendations

#### **With Regards To Moving District Elections**

The Commission finds that transitioning even and odd number districts to the alternative election cycle (e.g., even districts to the gubernatorial cycle and odd districts to the presidential) would knowingly decrease turnout in some districts while increasing it in others. As such, the Commission could not discern any clear benefits to the city as a whole and decided not to make a recommendation that would alter the timing of city council elections.

#### **Move San José Mayoral Elections from Gubernatorial to Presidential Election Years**

Change the timing of San Jose's mayoral elections from the gubernatorial cycle to the presidential cycle beginning in 2024. To initially sequence the city's mayoral elections to the presidential cycle, the candidate elected mayor in 2022 would serve a 2 year term with that term expiring in 2024. All candidates for mayor, including the then incumbent mayor, would be eligible to run for a regular 4 year mayoral term in 2024.

#### **Implement Ranked Choice Voting**

Allow voters to rank multiple candidates in San José elections via Ranked Choice Voting, an election system in which voters rank the candidates for office in order of preference, and the ballots are counted in rounds that simulate a series of runoffs until one candidate receives a majority of votes.

#### **Elevate The Board Of Fair Campaigns And Political Practices To The City Charter**

Elevate the San José Board of Fair Campaign and Political Practices from the Municipal Code to the City Charter.

## Policing, Municipal Law, Accountability & Inclusion

### Charter Recommendations

#### Reform Boards and Commissions

- A. Remove citizenship requirement for all applicable Boards and Commissions as ~~required~~permitted by [Senate Bill 225](#), which revised membership requirements to all government ~~\_~~boards and commissions in California;
- B. Ensure all Board and Commissions a) receive training in ethics, civics, and diversity, equity and inclusion, b) elect their chairs and vice-chairs democratically, and c) incorporate racial and social equity analysis to promote the use of an “equity lens” for decision-making;
- C. Provide a stipend to all members of Boards and Commissions.

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#### Add A Native Land Acknowledgement To The San Jose City Charter

Include a Native Land Acknowledgment in the San Jose City Charter to show that the City of San Jose is aware of its atrocious history and the irreparable harm that the Muwekma Ohlone have suffered as a result of government policies that exterminated their native language, cultural practices, and religious rights, as the first step towards healing and attempting to reconcile with our native community.

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~~Formally include a land rights acknowledgement granted by the The Muwekma Ohlone Tribe in San José's Charter.~~

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#### Use Gender-Inclusive Language In The City Charter And City Documents

Update gendered language in the Charter and official City documents (e.g., ordinances, resolutions, and City policies) to be gender inclusive or gender neutral.

**Commented [MS1]:** The City of San Jose is not granting land rights to anyone. In fact, it would be illegal. The Muwekma Ohlone tribe is not granting themselves an acknowledgement, as this document seems to indicate.

Commissioner Segura, after reading what was written here, wrote the language I inserted in the introduction section below. An abbreviated version of her writing has been placed here. I truncated it to conform with the brevity of this section as a whole.

#### Create A Police Commission, an Independent Investigation Department, ~~AA~~And An Office ~~oof~~ The Inspector General

- A. Create and add a Police Commission ~~\_~~to the City Charter that conducts regular (e.g. monthly) public hearings on San Jose Police Department policies, rules, practices, customs, and General Orders, as well as address the public's concerns regarding problems with the Office of the Independent Investigations Department, the Office of

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the Inspector General, and the San Jose Police Department. The Police Commission shall have subpoena authority and full unfettered and unredacted access to the documents contained by any City department or any employee relating to SJPD;

- B. Convert the Office of the Independent Police Auditor to the Independent Investigations Department, with subpoena authority and full unfettered and unredacted access to the documents contained by any City department or any employee relating to SJPD with powers of subpoena, and full and unredacted access to all documents in the possession of the San Jose Police Department;
- C. Create an Office of the Inspector General, with subpoena authority and full unfettered and unredacted access to the documents contained by any City department or any employee relating to SJPD, to assist the Police Oversight Commission in conducting reviews of patterns, practice, trends, systems, and policies at the Police Department.

### **Establish Equity Values, Equity Standards, and Equity Assessments**

- A. Add a statement of values to the Charter that defines social equity, inclusion, and racial and social justice as guiding principles for the decisions, policies, budgets, programs, and practices of the City;
- B. Outline objectives intended to advanced the aforementioned values through the areas of safety, environmental health, water and sanitation, parks and recreation, mobility and transportation, economic development, housing standards, workforce protection and housing amenities;
- C. Conduct an equity assessment for the annual operating and capital budgets as contained in the Recommended Budgets generated by the City Manager each fiscal year and for major policies and programs to be decided upon by the City Council.

### ~~Address Equity and Inclusion In City Programming and Budgeting~~

~~Align Department Statements of Policy and City budgeting processes with proposed Equity Values, Equity Standards, and Equity Assessments.~~

The purpose of this recommendation is to guarantee San Jose residents are equitably included in the benefits of City services and have the benefit of equal access to City services. The Mayor, City

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Council and the City Manager need to promote equity and inclusion among all residents especially in the budget for the City of San Jose. The absence of this requirement in the Charter has and may continue to cause inequities.

Therefore, it is recommended the City Charter be amended with recommended language for Article IV The Council, Article V The Mayor and Article VII City Manager. This recommendation is specific adherences to the Commission recommendation on Equity Values, Equity Standards, Equity Assessments. Article IV the Council would require adherence to the Statement of Values; Article V The Mayor would require specific adherence to Equity Assessment; Article VII City Manager would require specific adherence to Equity Standards.

### **Establish Regular Department-Level Audits**

Ensure that department-wide performance audits are conducted for all city departments, to assess key performance against their mission, goals and objectives in order to ensure accountability and fiscal responsibility as well to identify theft, fraud, embezzlement, campaign finance violations, or other crimes.-

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## Policy Recommendations

### **Create A Climate Action Commission**

Create a "Climate Action Commission" (CAC) in the municipal code, composed of a combination of 17 community members and special eligibility seats to study, create reports, and recommend policy and programs that help to identifyaddress, -and-mitigate, and prepare for the impacts of climate change and global heating as it may manifest in San Jose, and to support and give feedback on the public facing program of Climate Smart San Jose.-

### **Support A Community Opportunity To Purchase Act**

Support policies that will prioritize establishing and continuing to support a Community Opportunity to Purchase Act (COPA) and creating new sources of funding for affordable housing community ownership models and anti-displacement and the continuation of tenant protections.

### **Promote Home Ownership Opportunities for Low Income Residents of San José**



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The Commission recommends that Council explore new policies to support the purchase of affordable housing by low income San José residents while not impacting existing policies or resources available to support affordable rental housing for its residents.

### **Strengthen Community Input To The Smart City Advisory and Innovation and Technology Advisory Boards**

Alter appointments to San Jose's Smart City Advisory Board and the Innovation and Technology Advisory Board with the goal of strengthening community input on the ~~effects and~~ consequences of machine learning, artificial intelligence, surveillance and other technology~~technological change~~.

### **Minimum Experience Requirement For Serving As A San Jose Police Department Internal Affairs Investigator.**

All investigators in the SJPD Internal Affairs shall have at least 10 years of experience as a police officer or an investigator.

**Commented [MS2]:** Lawrence, the community wanted machine learning, artificial intelligence, and surveillance technology specifically and continuously looked at because of how dangerous these things specifically can be. City Council reviewing general technology was never the worry.

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## Recommendations

The following recommendations were approved by the Commission by majority vote, and consist of suggested changes to San José's Charter, as well as additional policy recommendations for Council's consideration. This section is organized into the Commission's three areas of focus, and the verbiage for each recommendation is taken directly from the Recommendation Memos developed by each ad hoc subcommittee, and approved by the Commission, with minor editing for clarity, readability and uniformity.

Please note that any new or revised Charter section numbers referenced below are for illustrative purposes only. Additionally, if one or more recommendations are moved forward by the Council, the City Attorney's office will implement these recommendations as directed by Council and reconcile them into the [City Charter](#).

## Governance Structure

### Preface

This area of focus covers the following directives from Council:

1. Examine the current governance structure as well as a governance structure consistent with the "Mayor-Council" government structure found in other cities in the United States in which the Mayor has executive authority and the Council has legislative authority;
2. Research and solicit community input on strong mayor and other potential charter reforms to improve and update the City's governance structure, including the direction to "Align mayoral executive authority with residents' and local business' reasonable expectations for responsive and accountable democratic governance in a major U.S. city";

These directives informed the research and deliberations of the Governance Structure ad hoc subcommittee, as well as the recommendations they put forth for consideration by the full Commission.

## Charter Recommendations

### **With Regards To A “Mayor-Council” Government Structure**

With regards to the specific question of moving to a “Mayor-Council” government structure in Council’s directive #1, the Commission found this governance model to be in direct conflict with Council’s directive #5 to “Consider additional measures and potential charter amendments, as needed, that will improve accountability, representation, and inclusion at San José City Hall.”

It is the Commission’s opinion that moving to a “Mayor-Council” government structure will not improve accountability, representation, or inclusion at San José City Hall.

If mayoral power is expanded in San José, this increased power will impact and potentially limit the current powers of our Council Members who are voted to represent their districts in San José. Residents in the council districts won’t be able to lean on their Council Member because they will be limited in power to help address their concerns, which will be detrimental to the community overall because council districts are usually the first point of contact for residents when it comes to accessing city services. In addition, giving the mayor more power would further disenfranchise residents who live in historically under-resourced districts.

According to the latest census the race ethnicity breakdown for San José is:

- 39.9 % White
- 3% Black or African American
- 0.6% Native American
- 35.9% Asian
- 0.5% Pacific Island or Native Hawaiian
- 5.3% Two or more races
- 31.6% Hispanic or Latino

This data shows the incredible diversity of San José. However, San José also faces a long documented wealth gap. According to the income data from the 2010 Census, high income households are concentrated in District 10, 9, 8, 4, whereas, low-income households are in District 3, 5 and 7 (US Census, 2010: see Appendix 1, Section 2). Election turnout is also higher in the high income council districts versus low-income council districts. This widening income gap also impacts social capital. According to a study published by the International Monetary Fund that examined whether the downward trend in social capital is responding to the increasing gaps in income found that,

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*"... the increasing income inequality trends in recent decades for many advanced countries may have negatively affected overall trust levels, and thereby, increased social gaps in society in the wake of widening income gaps. Given that trust has been found to be an important determinant of the macro-economic performance of many countries, these findings suggest an important, albeit indirect, way that increasing inequality may be adversely affecting a country's growth and development over time."*

Moving to a Mayor-Council form of government will dilute the overall power and representation of communities of color, further burdening and widening the gap of inequitable policies through an inequitable practice that siphons the shared collective power to one person, the Mayor. This will also impact social capital because trust in city government will be eroded by districts that will continue to be disenfranchised. San José has historically been known as the Valley of Heart's delight, where people know who their neighbors are. It is not in San José's DNA to centralize power into one seat.

Strong political leadership isn't the only thing needed to build a thriving and equitable community. We also need intentional and thoughtful Council members who will work hard to understand their constituencies and their needs, and an effective mayor will work with council members to establish appropriate policy to benefit the wider community.

"There are two important features of council-manager government that have an impact on mayoral leadership. First, the mayor and council are "constitutionally" checking and balancing each other; they are part of a governing body. Second, the mayor does not execute or directly promote the accomplishments of tasks. Thus the mayor can and should exert a different kind of leadership. The mayor leads by empowering others-in particular, the council and manager - rather than seeking power for himself or herself, and the mayor accomplishes objectives through enhancing the performance of others."  
- (Svara, James "Effective Mayoral Leadership in Council-Manager Cities: Reassessing the Facilitative Model").

According to Section 702 of San José's Charter, the Council may remove the City Manager from office at any time. The City Manager may also be removed from office by the People of the City pursuant and subject to the provisions of Section 1604 of the Charter according to Section 703. Based on these provisions in the Charter, there are less obstacles involved in removing a City Manager vs a Mayor under any form of governance since a Mayor can only be removed by the voters through a recall election.

Furthermore, if a Mayor has the authority to hire and fire other city officials outside the merit system, it could be perceived due to political connections or favors, instead of hiring qualified or

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trained professionals as department heads. There is the temptation to make decisions regarding the hiring and firing of key department head positions such as the police chief, public works director, and finance director based on the applicant's political support rather than his or her professional qualifications, which could have an impact on how their department delivers city services, which could unintentionally burden BIPOC residents in San José.

City managers are typically hired based on their educational background, experience, and administrative ability, without regard to their political views, and they have incentive to act, as the name suggests, as managers of the city operations. This argument was also made by former City Manager Norberto Duenas during our study session on April 5th, 2021 (Charter Review Commission meeting, 4/5/2021: see Appendix 1, Section 3).

Studies show that self-interested elected officials are more likely to 'bureaucratize' their administrations. The main testable proposition is that, in governments with a higher concentration of powers, politicians will bureaucratize their administrations to overcome time inconsistency problems in their relationships with public employees. This prediction is tested with data drawn from US municipalities, where two main types of local governments co-exist: mayor-council and council-manager. Results show that municipal governments with a higher concentration of powers (i.e. mayor-council) tend to have more bureaucratized administrations.

The commission identified two primary arguments against maintaining the current Council-Manager form (or for expanding Mayoral powers):

1. Under our current governance form, the Mayor is viewed as a figurehead and doesn't have enough power to get things done, whereas the City Manager has too much power and is not directly accountable to the public.

However, the fact is that the City Manager has to answer to the council members, which include the Mayor. If the City Manager isn't performing their job satisfactorily, it is the job of the Council and the Mayor to hold them accountable. The Mayor and Council can employ management strategies like annual evaluations that are public, performance markers, ensuring that the City Manager and their department is properly resourced. Under the current governance structure the Mayor is granted enough power to achieve their vision through collaboration, an example of this is Mayor Chuck Reed's Green Vision, which he was able to see to fruition because he had the support of the Council.

2. Former Mayor Ron Gonzales also shared in the Commission study session on April 5 that, under the current governance structure, the Mayor already has enhanced powers. An

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example of this is the ability of the Mayor to prepare the city's budget message, which lays out the policy direction for the city manager. Mayor Gonzales also passed bond measures for affordable housing, open spaces, strong neighborhood initiative and libraries using the leadership of the Mayor's office during his tenure.

We believe that everyone will benefit, including the Mayor, by keeping our governance structure the same, as it maintains equity in the process.

### **Allow Council Members To Make Nominations for City Manager Candidates**

#### **What is the recommendation?**

Members of the Council shall also have the ability to nominate prospective City Managers, along with the Mayor, for majority vote approval of City Council.

This recommendation was passed on October 18th, 2021 with 19 aye, 2 nay and 1 absent votes.

#### **What problem(s) does this recommendation address?**

As stated above, it is the Commission's position that moving to a "Mayor-Council" government structure will not improve accountability, representation, or inclusion at San José City Hall. If mayoral power is expanded in San José, this increased power will impact and potentially limit the current powers of our Council Members who are voted to represent their districts in San José.

Instead, improvements should be made to the "Council-Manager" structure to further ensure accountability, representation, or inclusion at San José City Hall.

#### **Why is this particular change being recommended?**

This change will increase equitable representation in the applicant pool for the City Manager appointment process. The Mayor and Council already regularly review candidates based on skill and experience. Allowing the entire Council to submit (if they so choose or to back another Council

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Member's nomination) will foster collaboration and ensure equitable representation by allowing Council Members to submit an applicant that aligns with their/constituents' values.

In this amendment, more power will be shared with Council but at no cost to the Mayor's pre-existing appointment powers. Additionally, by enabling Council Members to submit their own nominations, the process will improve efficiency and avoid situations where nominee(s) are rejected, forcing the Mayor to restart the time-sensitive process.

This change is feasible and will empower the council districts to increase representation.

### **What are the arguments against this proposal?**

The Commission has identified no arguments against this proposal.

### **Proposed Charter Language**

Amend "ARTICLE VII CITY MANAGER SECTION 700 Appointment", Term and Compensation of the Charter as follows:

There shall be a City Manager. The Mayor and members of the Council shall have the ability to nominate one or more candidates for Council consideration for appointment to the position of City Manager. The City Manager shall be appointed by the Council for an indefinite term. The Council shall fix the compensation of the City Manager.

## **Establish Future Charter Review Commissions**

### **What is the recommendation?**

Appoint Charter Review Commissions at the second regular meeting of Council in the year 2028, and of each succeeding tenth year thereafter, and at any time council may call for such a commission, to review and recommend amendments to this Charter.

This recommendation was passed on October 18th, 2021 with 21 aye, 0 nay and 1 absent votes.

### **What problem(s) does this recommendation address?**

The current Charter Review Commission was established by the Mayor and City Council as a singular event. The previous San José Charter Review Commission, similarly established, completed its final report in 1985. Hence, over 35 years have passed since San José's Charter was

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thoroughly reviewed. San José experienced significant change during that time. An earlier review of the Charter may have been more appropriate.

Historically in San José, the Charter has only been reviewed when requested by the Mayor and/or City Council, usually from public concern over a specific issue. Considering the dynamic change of the San José community, a periodic review of the Charter is more appropriate to determine if any changes are needed, rather than waiting for a specific issue or problem to initiate the review.

This proposal benefits the San José community at large by providing a requirement for residents to review the City Charter at least every 10 years.

### **Why is this particular change being recommended?**

Similar sections in other city charters exist that establish charter review commissions on a regular basis making this recommendation feasible and needed. Furthermore, the general San José community will benefit from this proposal since it establishes a mechanism in the Charter for the residents to review it on a regular basis.

The recommendation was changed after the Commission had a discussion and came to an agreement to remove the notion that the Commission would send revisions directly to the ballot.

### **What are the arguments against this proposal?**

The Charter is the foundation of San José's government and sets forth guiding principles for its governance. As such, the Charter should be kept as general as possible to allow the Mayor and Council flexibility to address the needs of the community through policy. The Charter should not be used to directly set policy, address the "issue of the day," or advance a political agenda of any person.

A mandated periodic review of the Charter provides an opportunity for the Charter amendment process to be used inappropriately. Limiting review of the Charter minimizes this risk and focuses future reviews on Charter issues identified by the Mayor and/or Council, presumably by input from the community.

The Mayor and City Council are the elected representatives of the community with a full time focus on its needs. As such, they are closer to issues that may require an amendment to the Charter, and are in a better position to determine when a Charter Review Commission is needed.

### **Proposed Charter Language**



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Add a new section to the Charter, "ARTICLE X BOARDS AND COMMISSIONS Section 1002.1 Charter Review Commission," as follows:

A Charter Review Commission shall be appointed at the second regular meeting of council in the year 2028 and of each succeeding tenth year thereafter, and at any time council may call for such a commission, to review and recommend amendments to this Charter. The Charter Review Commission shall be reflective of the City in terms of its racial and ethnic diversity, age and geography. The mayor shall nominate three (3) Charter Review Commission members, and each member of the Council shall nominate two (2) Charter Review Commission members from their District, who shall all be subject to confirmation by the Council. The term of the Charter Review Commission shall be no more than two years unless extended by the City Council. The Charter Review Commission shall determine its own rules of procedure. No member of the Charter Review Commission shall serve as an elective officer of the City during the member's service on the Charter Review Commission. The City Council may establish, by ordinance, criteria for eligibility on the Charter Review Commission. The Mayor or Council may request that the Charter Review Commission review specific sections of the Charter, but the work and recommendations of the Charter Review Commission shall not be limited to such specific sections. The Charter Review Commission shall be provided all reasonable resources it identifies are needed to complete its review. The Commission shall provide a written report of its findings to the City Council.

Nothing in this section shall limit the authority of council to submit any proposed charter amendment to a vote of the people unless otherwise provided for in this charter.

A vacancy exists on the Charter Review Commission upon a member's resignation, death, inability to serve or failure of a member without cause to attend three successive regular meetings. If there is a vacancy on the Charter Commission, the Mayor or Council member who made the original nomination, or that member's successor in office, shall nominate a person to fill the unexpired term of office, subject to confirmation by Council.

## Policy Recommendations

### Explore Adding Council Districts

**What is the recommendation?**

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Explore whether smaller districts might offer more focus on communities of greater need. This question should be studied before the next redistricting process begins, and early enough to schedule a public vote if a change is recommended.

The review should examine:

- Whether dividing the city into perhaps 12 districts would make it easier to group like communities.
- Whether community support for adding districts is strong enough to move forward.
- Whether other cities have found a correlation between increasing the number of districts and providing more effective government.
- Whether cities with smaller council districts have more or less conflict over issues of equity such as locating affordable housing.
- Whether there are other ways to improve representation or equity in delivering services without adding council districts. Today, some council offices are far better than others at reaching out to constituents and responding to their concerns. Is there a way to institutionalize that ability without adding council seats?

This recommendation was passed on October 18th, 2021 with 14 aye, 7 nay and 1 absent votes.

### **What problem(s) does this recommendation address?**

A 1978 initiative replaced San José's at-large council elections with district elections. The 10 districts grouped communities of interest so that neighborhoods throughout the city and members of different racial, ethnic and other interest groups had more access to and influence on City Hall. Each district originally held about 60,000 residents. Today, with city population exceeding one million, each district has more than 100,000 residents. At the same time, San José has experienced the national trend of increasing income disparities, amplifying concerns that policies and programs need to be in the interest of all parts of the city. Uneven patterns of development over the past decade are forcing the city's redistricting committee to look at very different district divisions to keep the population evenly divided. This begs the question: Should the city look at increasing the number of council districts to more effectively represent communities of interest?

The 10 council districts maintain a reasonable-size governing body that may be more effective and nimble than a larger group to implement policies and programs.

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But smaller districts might offer more focus on communities of greater need. They could help make democracy more real and credible to communities that doubt their interests are taken as seriously as others'. In turn, more trust could make collaborative democracy work better.

### **Why is this particular change being recommended?**

Residents would benefit from easier access to their council members, particularly in under-served communities. Disadvantaged racial, cultural and interest groups could gain a stronger voice. Candidates might find it less costly to run in a smaller district, opening the field to more residents.

A redistricting commission is already at work and extensive research and population data from the 2020 census have been done. It would be a waste of public time and expense to suggest a change in district numbers for this cycle. It is recommended that the question be studied before the next redistricting process begins, and early enough to schedule a public vote if a change is recommended.

This recommendation originally proposed expanding the Council from 10 to 14 districts. After discussion, Commissioners generally felt that, while the idea of adding more districts had merit, it would benefit from further study in light of the Redistricting Commission's work, and voted on a policy recommendation for Council to further study the issue.

### **What are the arguments against this proposal?**

An unintended consequence could be more "me-first" politics when narrower communities have a stronger grip on their council members. This could lead to a less functional council.

Other arguments against this recommendation include:

- Cost, depending on how the change is structured.
- Increased NIMBYism as council members represent narrower constituencies.
- The council can't expand infinitely as a city grows, and 10 is a reasonable size. Six of the 10 largest cities in the country have 11 or fewer council members.

## Voting & Elections

### Preface

This area of focus covers the following directives from Council:

3. **Evaluate whether the Mayor elected in 2022 should serve a two (2)-year or six (6)-year term** to transition the mayoral election to the presidential election in 2024 or 2028, respectively;
4. Evaluate transition of the election cycle for **odd-numbered districts to align with the presidential election cycle and the even-numbered districts with the gubernatorial election cycle**;

These directives informed the research and deliberations of the Voting & Elections ad hoc subcommittee, as well as the recommendations they put forth for consideration by the full Commission.

### Charter Recommendations

#### With Regards To Moving District Elections

The Charter Review Commission was tasked with studying the possibility of transitioning odd-numbered city council district elections (1,3, 5, 7, and 9) to the presidential cycle and aligning even-numbered districts (2, 4, 6, 8, 10) with the gubernatorial cycle. How might this change affect voter participation rates in city council districts? The ad hoc subcommittee on Voting and Elections collected data on voter participation rates in odd-numbered and even-numbered council districts between 2010-2020. After assessing the results, the ad hoc subcommittee decided not to make a recommendation that would alter the timing of city council elections.

The data showed that in primary city council elections, voter turnout rates in even-numbered districts was, on average, 10.8% higher than turnout in odd-numbered districts (41.9% vs 31.1%). In run-off or general election contests, the turnout rate in even-numbered districts was, on average, 24.6% higher than odd-numbered districts (71.9% to 47.3%). Because transitioning even and odd number districts to the alternative election cycle (e.g. even districts to the gubernatorial cycle and odd districts to the presidential) would knowingly decrease turnout in some districts while increasing it in others, the committee could not discern any clear benefits to the city as a

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whole. The ad hoc subcommittee moved to recommend a change to rank-choice-voting which should lessen turnout inequities currently found in primary and run-off contests in both even and odd numbered districts.

### **Move San José Mayoral Elections from Gubernatorial to Presidential Election Years**

#### **What is the recommendation?**

Change the timing of San Jose's mayoral elections from the gubernatorial cycle to the presidential cycle beginning in 2024. To initially sequence the city's mayoral elections to the presidential cycle, the candidate elected mayor in 2022 would serve a 2 year term with that term expiring in 2024. All candidates for mayor, including the then incumbent mayor, would be eligible to run for a regular 4 year mayoral term in 2024. Thereafter, a mayoral election would be held every four years during the presidential cycle. A mayoral candidate elected to office in 2022 would be eligible to serve the initial two year term plus two additional (regular) four year terms as currently allowed under Section 402 of the City Charter. A person's total time in the mayor's office could reach a total of 10 years if they win office in 2022 and are reelected in 2024 and 2028.

This recommendation was passed on October 4th, 2021 with 17 aye, 1 nay, and 4 absent votes.

#### **What problem(s) does this recommendation address?**

Elections are pillars of a representative democracy. They allow the people to choose representatives who make decisions on behalf of the public and help hold elected officials accountable. Low turnout in city elections weakens the bonds between people and their elected representatives. When turnout increases, local government becomes more representative and responsive to the broader public. A more responsive and representative government is particularly important in a racially and ethnically diverse city like San Jose.

Historically, voter turnout in city elections is lower than in races for elected office in higher levels of government. The low rate of participation is partly a product of the timing of many city elections.(Desilver, July 2021: see Appendix 1, Section 3) Political reformers more than a century ago advocated for "isolated" or "off-cycle" city elections which are scheduled in years separate from state (gubernatorial) and national (presidential) contests. Off-cycle elections, it was argued, allowed voters to concentrate on local issues and candidates. They were also seen as a tool to

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combat the power of 19<sup>th</sup> and early 20<sup>th</sup> century urban political machines who relied on the political support of racial and ethnic minorities and newly naturalized citizens. Middle and upper class, predominately white, voters were often seen as protectors of “good government.” (Christensen and Hogen-Esch, 2006: see Appendix 1, Section 3)

In elected contests for San Jose mayor—the only at-large elected position in the city—voter turnout rates are relatively low. Although mayoral contests are not isolated elections in the traditional use of the term, the placement of the mayor’s race in gubernatorial election years depresses turnout. Voter registration and turnout data covering the past four mayoral election cycles (2018, 2014, 2010, 2006) reveal that on average, less than half of city’s registered voters (43.4%) cast ballots in the mayor’s race. Research suggests moving the timing of San Jose’s mayoral elections to presidential years would increase voter turnout in a range of 28% to 33%. In San Jose, this would equate to 148,203 to 169,375 additional voters in any given mayoral election using current voter registration figures (529,299) in the city. (Percival, 2021: see Appendix 1, Section 3)

The city’s current mayoral election process, characterized by relatively low turnout, would be less problematic if members of the voting public shared the same policy preferences, or had the same experiences with government, as nonvoters do.

Political science research, however, shows this is not the case. White residents, and residents with higher incomes and greater financial resources are, on average, more likely to vote in city elections. On issues surrounding policing, housing, or the environment (among other issues), where the interests and experiences of racial and ethnic minorities and lower income residents diverge from White residents and those with greater incomes, low voter participation can restrict the scope of political and policy debates. Low participation can indirectly skew city policy by not only influencing who gets elected but also who the mayor feels accountable to.

### **Why is this particular change being recommended?**

The San Jose’s City Charter structures the timing of city elections. Moving the timing of the mayoral elections can thus only be done by a change to the City Charter.

Moving San Jose’s mayoral elections to presidential years would position the city as a leader behind statewide efforts designed to increase voter participation in our local elections. It would help signal that San Jose values a larger, more racially and ethnically inclusive electorate that reflects the city’s demographic and socio-economic characteristics. The change would give greater

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voice to people too often left out of our city's politics and political discourse. It would strengthen our democracy in ways that match the city's 21st century ideals.

Moving the mayoral elections to presidential years should increase the likelihood that the winner of the contest has competed for votes in an electorate that more closely resembles the racial, ethnic, and socioeconomic characteristics of the city.

### **What are the arguments against this proposal?**

Several arguments have been made against moving the time of mayoral elections to presidential years, and were expressed by a few members of the public and Commissioners during commission meetings.

First, it is argued city issues would get lost in the "noise" of presidential year contests. As a result, voters would not have enough information to make "good" choices about local candidates or local issues.

Second, it is argued that removing the mayor's race from the gubernatorial cycle will depress turnout in odd-numbered City Council district elections which are held at the same time.

### **Proposed Charter Language**

Amend "ARTICLE IV SECTION 402 Mayor and Council Member Term Limits" as follows:

The regular term of office of each member of the Council shall be four (4) years. The Mayor and Council members shall be subject to the following term limits:

(a) MAYOR. No person who has been elected to the office of Mayor for two (2) successive four-year terms shall be eligible to run for election to the office of Mayor, nor to serve as such, for any additional successive term; but the above shall not disqualify any person from running for election to the office of Mayor, nor from further service as Mayor, for any term or terms which are not successive; nor for any parts of terms which are not successive. **Notwithstanding any other provision of the Charter, to transition the election of the office of Mayor to the same year as the presidential election beginning in 2024, the term for the office of Mayor beginning on January 1, 2023 shall be for two (2) years. However, the person holding the office of Mayor as the incumbent for this two-year term may be eligible to run for election to the office of Mayor and serve as such for two (2) additional successive four-year terms.**

## San José Charter Review Commission Final Recommendations DRAFT

Amend "ARTICLE V SECTION 500 Mayor" as follows:

There shall be a Mayor of the City of San José, elected at large, who shall be the eleventh member of the Council. Except as otherwise provided elsewhere in the Charter, the Mayor shall be elected by a majority of the votes cast citywide at a Regular Municipal Election, for a term of four (4) years from and after the first day of January following the year of the election. **Notwithstanding any other provision of the Charter, to transition the election of the office of Mayor to the same year as the presidential election beginning in 2024, the term for the office of Mayor beginning on January 1, 2023 shall be for two (2) years. However, the person holding the office of Mayor as the incumbent for this two-year term may be eligible to run for election to the office of Mayor and serve as such for two (2) additional successive four-year terms.**

The office of each member of the Council, including the office of the member who is Mayor, is a separate office to be separately filled. Any incumbent member of the Council may run for the seat of Mayor, and the Mayor may run for the seat of Mayor or for any other seat on the Council for which the Mayor is otherwise eligible; however, no member of the Council shall hold more than one seat, and no person may be a candidate for more than one seat.

Amend "ARTICLE XVI SECTION 1600. Municipal Elections" as follows:

All municipal elections shall be held in accordance with the following:

(a) REGULAR MUNICIPAL ELECTIONS. A Regular Municipal Election is either a regularly scheduled Primary or Run-off Municipal Election. Such elections shall be held every two years, with the election for Mayor and for the odd numbered Council Districts being every four (4) years beginning with 1994, and the election for the even numbered Council Districts being every four (4) years beginning in 1996. **Beginning in 2024, the election for Mayor and for the even numbered Council Districts will be held every four (4) years, and the election for the odd numbered Council Districts will be held every four (4) years beginning in 2026.** Each member's term shall commence on the first day of January next following, and end on the last day of December in the fourth calendar year succeeding, the date of the member's election, **except the member elected to the office of Mayor whose term began January 1, 2023, as set forth in Section 402 of Article IV and 500 of Article.** A regularly scheduled Primary Election shall be held on the same date that the State of California holds its Direct Primary Election. A Run-off Municipal Election shall be held on the same date the State of California holds its Statewide General Election.



## **Implement Ranked Choice Voting**

### **What is the recommendation?**

Allow voters to rank multiple candidates in San José elections via Ranked Choice Voting, an election system in which voters rank the candidates for office in order of preference, and the ballots are counted in rounds that simulate a series of runoffs until one candidate receives a majority of votes.

This recommendation was passed on October 18th, 2021 with 18 aye, 13 nay and 1 absent votes.

### **What problem(s) does this recommendation address?**

Increasing the diverse representation of the communities in San José by reducing barriers to running for office and providing voters the option to vote for the candidates that best reflect their values. This recommendation does this by reducing the costs of running for office by consolidating the elections process, and by allowing voters to rank multiple candidates instead of choosing only one.

Ranked Choice Voting (RCV) is gaining in popularity around the nation, including four cities here in the Bay Area. RCV has two main benefits: (1) allows voters to select candidates who best reflect their values, and (2) reduces the costs running for office by consolidating the primary and general.

Allowing voters to rank candidates gives them the ability to choose the candidate that best reflects their values. Further, it does not limit voters to pick the candidates who have the best chance of winning (i.e. lesser of two evils). The most recent data shows that representation of women – women of color in particular – increased in the Bay Area cities where RCV was adopted. Data from the early 20th century also showed that representation of people of color increased in New York City and several Ohio cities where proportional RCV was used.

Additionally, one of the obstacles of running for San José city- wide office is the pure cost, in money and in time. The primary system means that candidates have to be ready to run in two separate elections, each taking months of commitment and campaign expenditures that can easily exceed \$100,000 for each election. This type of commitment is very unrealistic for those who have family and job commitments, but do reflect the more common experiences of the residents of San José. See Exhibit 1 with charts from Californians for Electoral Reform comparing funds raised from 2018 and 2020 city council races.

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Data also establishes that RCV improves on the civility of elections and promotes issue-oriented campaigns because candidates will work to become the second or third choice for voters. Improving the civility and promoting more issue-oriented campaigns provides more incentives for women and people of color to participate as candidates by allowing campaigns to focus on policy ideas rather than attacking people.

Lastly, turnout during primary elections is always lower than turnout during general elections. However, primary voters are the ones who cut the field to the top-two contenders, and in many cases elect local representatives outright. RCV will consolidate primary and general elections into one run in November, allowing more voters to participate in our local elections.

### **Why is this particular change being recommended?**

As stated above, current and historical data shows that representation of women and people of color increases under RCV systems.

Opponents have argued that RCV is confusing, and a new system that requires participants to understand the new mechanics of voting would have a negative impact on older and/or limited English proficiency speakers. However, a study from 2015 showed that at least 80% of voters in RCV jurisdictions rated RCV as easy to understand, regardless of age, race, education, or income-level. The only exception to this were 18-to-29-year old voters. In this group, 79% rated RCV as easy to understand. This was reinforced in 2020 where a study of 1000 2020 RCV Democratic voters showed that: (1) 80% had no difficulty ranking candidates; (2) though older voters were more concerned about voting incorrectly, they were more likely to vote correctly than younger voters, and (3) only 12% undervoted, and available data suggests that this was intentional rather than by mistake.

Additionally, transitioning to new systems will always require investments in education and outreach to minimize any of the challenges in switching to a new system. The ultimate question should be whether the change is worth the transition.

This change is feasible. It has been done in cities around the United States and the Bay Area, including Oakland, Berkeley, San Leandro, San Francisco, and most recently Albany. This change must be a Charter revision. The process defining the primary/general election system is currently outlined in the Charter under Section 1600, and must be amended to allow for RCV to occur.

The recommendation was changed early on to align with County voting technology and mirror Oakland based on public comment.

### **What are the arguments against this proposal?**

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1. *Opponents to RCV believe that it increases the chance that a non-monotonic winner may result.* Example: 2009 Burlington, Vermont mayoral race and 2010 Oakland California mayoral race. In these races, the candidate who ultimately won did not receive the most votes in the initial rounds of ballot allocation. Opponents argue that this is not a desirable result because voters in the initial rounds of counting preferred other candidates. However, each voter only voted once, and the final result is still an expression of the will of the voters. The ultimate winner received the most votes. Having a lower rank among voter preferences does not indicate that any other candidate was entitled to the seat.
2. *Opponents to RCV also argue that the system promotes collusion among candidates.* Example: This was one criticism of candidates Mark Leno and Jane Kim in the 2018 San Francisco Mayoral race. Leno and Kim issued ads urging their supporters to vote for each other in an effort to keep Ed Lee from winning. Leno and Kim gave this specific statement about why they were supporting each other while running against each other: "We're telling all of our supporters to vote for both of us," Sup. Kim told an assembled crowd Thursday. "Mark and I are opponents, as everyone knows, but we also agree that negative attacks don't serve us in an election cycle, and certainly don't educate our voters." Finding commonality among competitors is not collusion, and this aspect of RCV is a reason to adopt it rather than reject it.
3. *Opponents argue that RCV is not a true majority system.* It is true that the ultimate winner in RCV elections do not necessarily have to receive a majority of *all votes cast*. The ultimate winner in an RCV election receives the majority of continuing ballots. However, our current system is not a true majority system either. Example: In AD-25, Alex Lee came in second in the primary with 15.4% of the vote, which practically guaranteed that he would win the seat in November.

### Proposed Charter Language

Amend "ARTICLE XVI SECTION 1600 Municipal Elections" as follows:

All municipal elections shall be held in accordance with the following:

- (a) "REGULAR MUNICIPAL ELECTIONS. A Regular Municipal Election is ~~either a regularly scheduled Primary or Run-off Municipal Election~~, which shall be held on the same date the State of California holds its Statewide General Election. Such elections shall be held every two years, with the election for Mayor and for the odd numbered Council Districts being every four (4) years beginning with 1994, and the election for the even numbered Council Districts being every four (4) years

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beginning in 1996. Each member's term shall commence on the first day of January next following, and end on the last day of December in the fourth calendar year succeeding, the date of the member's election. ~~A regularly scheduled Primary Election shall be held on the same date that the State of California holds its Direct Primary Election. A Run-off Municipal Election shall be held on the same date the State of California holds its Statewide General Election."~~

- (d) ~~RUN-OFF QUALIFICATION. The two candidates who poll the greatest number of votes for office in the Primary Municipal Election shall be the only candidates whose names shall appear on the ballot as candidates for such office at the following Run-off Municipal Election.~~ **RANKED CHOICE**

**VOTING.** Elections for all elected city offices, including but not limited to Mayor and Councilmember, shall be conducted using ranked choice voting, known sometimes as "instant runoff voting."

(1) Definitions.

- (a) "Ranked choice voting" shall mean an election system in which voters rank the candidates for office in order of preference, and the ballots are counted in rounds that simulate a series of runoffs until one candidate receives a majority of votes. Ranked choice voting is also known as "instant runoff voting."
- (b) "Majority of votes" shall mean more than fifty percent (50%) of the votes cast on continuing ballots.
- (c) "Continuing ballot" shall mean a ballot that counts towards a continuing candidate.
- (d) "Continuing candidate" shall mean a candidate that has not been eliminated.
- (e) "Choice" means an indication on a ballot of a voter's assigned ranking of candidates (i.e., first choice, second choice, third choice, etc.) for any single office according to the voter's preference.
- (f) "Vote" means a ballot choice that is counted toward the election of a candidate. During each round of counting, each continuing ballot contains one vote. All first choices are votes and lower ranked choices are potential runoff votes that may, in accordance with the requirements of this section, become votes and subsequently credited for a continuing candidate.

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- (g) "Round of counting" or "round" means a step in the counting process during which votes for all continuing candidates are tabulated for the purpose of determining whether a candidate has achieved a majority of the votes cast for a particular office, and, absent a majority, which candidate or candidates must be eliminated.
  - (h) "Next ranked" means the highest ranked choice for a continuing candidate.
- (2) General Provisions. Ranked choice voting elections for the offices of Mayor and City Council member shall be conducted according to the procedures in this section. The City shall conduct a voter education campaign to familiarize voters with ranked choice voting. The use of ranked choice voting shall commence with the 2024 Regular Municipal Election.
- (3) Ballot. The ranked choice voting ballot shall allow voters to rank as many choices as there are candidates. The ballot shall not interfere with a voter's ability to rank a write-in candidate.
- (4) Tabulation. The ballots shall be counted in rounds.
  - (a) In the first round, every ballot shall count as a vote towards the first choice candidate.
  - (b) After every round, if any candidate receives a majority of votes from the continuing ballots, that candidate shall be declared the winner.
  - (c) If no candidate receives a majority, the candidate receiving the fewest number of votes shall be eliminated.
  - (d) Every ballot counting towards that candidate shall be advanced to the next-ranked continuing candidate. All the continuing ballots for all continuing candidates shall be counted again in a new round.
- (5) Ties. In the event that two or more candidates tie for the smallest number of votes, the candidate to eliminate shall be chosen by lot.
- (6) Elimination of more than one candidate. During the elimination stage of any round, in the event that any candidate has more votes than the combined vote total of all candidates with fewer votes, all the candidates

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with fewer votes shall be eliminated simultaneously, and those ballots advanced to the next ranked continuing candidate.

- (7) Skipped rankings. In the first or any round, in the event that any ballot reaches a ranking with no candidate indicated, that ballot shall immediately be advanced to the next ranking.
- (8) Undervotes, Overvotes, and Exhausted Ballots. After each round, any ballot that is not continuing is an undervote, overvote, or exhausted ballot, as follows: Any ballot that has no candidates indicated at any ranking shall be declared an "undervote." In the event that any ballot reaches a ranking with more than one candidate indicated, that ballot shall immediately be declared an "overvote." In the event that any ballot cannot be advanced because no further continuing candidates are ranked on that ballot, that ballot shall immediately be declared "exhausted". Any ballot that has been declared an undervote, overvote, or exhausted shall remain so and shall not count towards any candidate in that round or in subsequent rounds.
- (9) Reports. The following reports shall be produced for public review.
  - (a) The "summary report" for a contest shall mean a report that lists the candidate vote totals in each round, and the cumulative numbers of undervotes, overvotes, and exhausted ballots in each round.
  - (b) The "ballot image report" for a contest shall mean a report that lists, for each ballot, the candidate or candidates indicated at each ranking, the precinct of the ballot, and whether the ballot was cast by a vote-by-mail ballot. In the report, the ballots shall be listed in an order that does not permit the order in which they were cast in each precinct to be reconstructed.
  - (c) The "comprehensive report" for a contest shall mean a report that lists the vote totals in the summary report by precinct. The report shall list, for each round, the number of ballots cast in each precinct that:
    - i) were tallied as votes for each candidate in that round,
    - ii) have been declared undervotes,
    - iii) have been declared overvotes, cumulatively for all previous rounds and inclusive of the reported round of tabulation, and

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- iv) have been declared exhausted cumulatively for all previous rounds and inclusive of the reported round of tabulation.
  - (d) Mode and manner of release. Preliminary versions of the summary report and ballot image report shall be made available as soon as possible after the commencement of the canvass of votes cast. The summary report, ballot image report, comprehensive report, and preliminary versions of the summary report and ballot image report shall be made available to the public during the canvass via the Internet and by other means. The ballot image report and preliminary versions of the ballot image report shall be made available in a plain text electronic format. In any case, preliminary versions of these reports shall be made available to the public prior to the commencement of the manual tally.
- (10) Continuing the tally to two candidates. If a winner is declared when there are three or more continuing candidates (including the winner), and if the vote tabulating system allows for it, additional rounds of tallying shall occur until there are only two candidates left.
  - (a) A preliminary version of the comprehensive report shall be made available to the public prior to the selection of precincts for the public one percent manual tally, as provided by state law.
  - (b) After each round of the manual tally, the next choice votes shall be assigned based on the candidate totals in the summary round-by-round report for the entire contest.
- (11) Changes to Procedures. For the purposes of this subsection: "voting equipment" shall mean all ballots and/or voting devices, vote tabulating systems and/or similar or related systems to be used in the conduct of the City's election, including but not limited to paper ballot systems, optical scan systems, and touchscreen systems.
  - (a) Number of rankings. In the event that the voting equipment cannot feasibly accommodate a number of rankings on the ballot equal to the number of candidates, the City Clerk may limit the number of choices a voter may rank to the maximum number allowed by the equipment. This limit shall never be less than three.
  - (b) Voting Equipment. If the voting equipment cannot feasibly accommodate all of the procedures in subsections (5)-(10) above,

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the City Clerk may make changes to those procedures provided that ranked choice voting shall still be used and the smallest feasible number of changes made until such time as the voting equipment can accommodate those procedures in their entirety.

- (c) State Guidelines. If the State of California adopts guidelines for the conduct of ranked choice voting elections and the voting equipment used to conduct the City's election can accommodate the State's guidelines, the City Clerk shall have the option of adopting those guidelines, in whole or in part, in lieu of the ranked choice voting procedures in this section.

- (12) Exception from Using Ranked Choice Voting. Notwithstanding any other provision of this Charter, the City shall use ranked choice voting once the Santa Clara County Registrar of Voters is able to conduct the election on behalf of the City in accordance with the requirements and procedures of this section, including any changes to such procedures made pursuant to subsection (11).

- (13) Election Procedures if Ranked Choice Voting is Not Used:

- (a) In the event that the City is unable to use ranked choice voting, the City shall hold Municipal Primary Elections for the nomination of officers and for such other purposes as the Council may prescribe, which shall be held on the same date the State of California holds its Statewide Primary Election. Any candidate receiving a majority of the vote cast for all candidates for that office at the Municipal Primary Election shall be declared elected.
- (b) If at any Municipal Primary Election there is any office to which no person was elected, then the two candidates for such office receiving the highest number of votes for such office shall be the candidates, and the only candidates, for such office whose names shall be printed upon ballots to be issued at the Regular Municipal Election; provided that, in any event, all persons receiving a number of votes equal to the highest number of votes received by any candidate shall also be candidates at such second election. The candidate receiving the highest number of votes cast for all candidates for that office at the Regular Municipal Election shall be



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declared

elected.

- (g) MAJORITY OF VOTES. No person shall be declared elected to the office of the Mayor or Council member at any municipal election unless the person receives a majority of the votes cast for such office as defined by Section 1600(d)(1)b.

### Elevate The Board Of Fair Campaigns And Political Practices To The City Charter

#### What is the recommendation?

Elevate the San José Board of Fair Campaign and Political Practices from the Municipal Code to the City Charter.

This recommendation was passed on October 18th, 2021 with 20 aye, 1 nay and 1 absent votes.

#### What problem(s) does this recommendation address?

The San José Board of Fair Campaign and Political Practices (formerly called Ethics Commission) is currently charged with monitoring compliance, investigating violation allegations, and making recommendations on ethics policies. As of November 2020, the City Charter highlights in detail three commissions: Planning Commission, Civil Service Commission, and Salary Setting Commission. Election integrity is crucial towards ensuring a fair election cycle for candidates, volunteers, and voters. This responsibility is one which should not be taken lightly. While details of the San José Board of Fair Campaign and Political Practices are listed in the Municipal Code, it is currently omitted from the City Charter.

#### Why is this particular change being recommended?

Elevating the San José Board of Fair Campaign and Political Practices from the Municipal Code to the City Charter is intended to signify the importance that the Board has in ensuring political candidates are following election rules.

It is feasible to elevate this Board to a standing Board under the Charter, as the Board for Fair Campaign and Political Practices already exists in the Municipal Code.

#### What are the arguments against this proposal?

There is no identifiable burden to elevating this Board to a Standing one under the Charter.

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### Proposed Charter Language

This amendment would occur in Article X of the City Charter.

### Policy Recommendations

No policy recommendations in the area of Voting & Elections were approved by the Commission.

## Policing, Municipal Law, Accountability & Inclusion

### Preface

This area of focus covers the following directives from Council:

5. Consider **additional measures and potential charter amendments, as needed, that will improve accountability, representation, and inclusion** at San José City Hall.

These directives informed the research and deliberations of the Policing, Municipal Law, Accountability & Inclusion ad hoc subcommittee, as well as the recommendations they put forth for consideration by the full Commission. The ad hoc subcommittee provided the following summaries.

#### ~~Reform Boards and Commissions Article X~~

This proposal seeks to improve accountability, representation, and inclusion under a racial equity lens within Boards and Commissions at the City of San José. ~~Per Council, the Charter Review Commission has been tasked with the following directives; specifically, the following directives pertain to the Commission's work:~~

~~"(5) Consider additional measures and potential charter amendments, as needed, that will improve accountability, representation, and inclusion at San José City Hall."~~

~~I.~~  
Additionally, this proposal aligns with the City of San José's newly created Office of Racial Equity in advancing systems change through a citywide racial equity framework that will examine and improve San José's internal policies, programs, and practices to eradicate any structural and/or

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institutional racism in the City of San José. "This includes a focus on enabling the organization, at all levels and in all departments, to identify ways to improve outcomes for Black, Indigenous, LatinX, and People of Color." Lastly, these proposals also align with our Commissioner Agreement(s): We Value Diversity: "We believe that bringing together a broad range of ideas, experiences, and backgrounds will result in the best outcomes for San Jose. We keep an open mind and seek to learn from others."

### **Add A Native Land Acknowledgement To The Charter**

~~The secularization of the Bay Area has caused harm to Indigenous People including, but not limited to, taking and not returning land occupied by tribes, instating government policies that exterminated Native language, cultural practices and religious rights, and causing trauma to generations of Native People. The loss of their Native land and lack of acknowledgement continues to cause harm.~~

~~The atrocities leveled against Native People has resulted in mislabeling members with no member input. The Muwekma Ohlone Tribe, without any input from the tribe and without consultation, were mislabeled the Verona Band after a nearby railroad station. Additionally, the Muwekma Ohlone Tribe was slated to receive land in 1914 and again in 1927 but without a site visit or consultation with the tribe they were removed from the list of Tribes to receive land. This adversely affected their ability to have homes, community spaces for gatherings, religious ceremonies, and other important cultural events. The mislabeling and denial of land to them, were and are very harmful to Muwekma Ohlone members. These events led to the start of the intentional extermination of their language, cultural practices and religious rights.~~

~~Including this in our Charter is of the utmost importance to our Native community. It is the first step to healing the community by acknowledging its importance to the Muwekma Ohlone Tribe and other Indigenous People.~~  
**Add A Native Land Acknowledgement To The San Jose City Charter**

The Muwekma Ohlone people have sustained harm as a result of government policies that exterminated their native language, cultural practices, and religious rights. The lack of acknowledgment for these atrocities continues to cause damage. Including a native land acknowledgment in the San Jose City Charter is of the utmost importance to our indigenous community as it is the first step to healing.

There are many organizations locally and nationally that have adopted native land acknowledgments in an effort to rectify and take accountability for the past heinousness and

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## San José Charter Review Commission Final Recommendations DRAFT

attempt to reconcile with the native community. The acknowledgment will show that the city of San Jose is aware of its history and honors the Muwekma Ohlone tribe's contributions.

### **Use Gender-Inclusive Language In The City Charter And City Documents**

Violence and discrimination born of intolerance and marginalization continue to take lives and create barriers to equity and opportunity for LGBTQ+ people and their families.

Language is also gendered and plays a central role in human cognition and behavior as one of the most common mechanisms by which gender is constructed and reinforced. Some languages do not mark gender distinctions systematically, some use pronouns to distinguish between male and female, and some go even further, extending the gender distinction to inanimate nouns through a system of grammatical gender. Gendered language is essential as it frames the understanding of equality.

Language is a reflection of the attitudes and norms within a society. It also shapes our worldview and, over time, people's attitudes as to what is "normal" and acceptable. The way language is used not only reflects social structures and biases. However, it may also reinforce preconceptions and inequalities related to gendered roles in everyday life and the work environment.

The proposed amendment seeks to promote and improve accountability, representation, and inclusion at the City of San José, by promoting and supporting gender-inclusive language in all city documents, policies, and ordinances.

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### **Create A Police Commission, An Independent Investigation Department, And An Office oef The Inspector General**

There is a history of policing practices which has resulted in excessive and unnecessary force towards residents of San Jose, ultimately causing our citizens to distrust the police. This distrust has caused concerns regarding police hiring, training, accountability, mental health awareness, and lack of basic care for the people they are sworn to protect.

San Jose lacks a robust police oversight structure that, in turn, lacks credibility and legitimacy among impacted communities. San Jose has an outdated, weak, and ineffectual oversight model that only audits the police departments own internal investigations, and does not investigate. The internal police investigators tend to be more inexperienced officers than senior police employees,

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and after a while of functioning as an investigator, they are assigned back onto the street and work with those whom they have investigated. This creates a conflict of interest for the police investigators. Additionally, the independent police auditor has never been able to get documents she was supposed to get under Measure G, both because of the unprecedented hurdles the City agreed to under its collective bargaining letter with the police union, and because the office is understaffed. No other police auditor or investigator in a major city in California has the barriers to records that the San Jose Independent Police Auditor has via the collective bargaining that the City agreed to before it put Measure G on the ballot. The City's agreement that the IPA can only get redacted documents is without precedent. San Jose is both an outlier and is years behind best practices for modern police oversight.

The Commission would like the Mayor and City Council to add the following to the City Charter:

1. Create and add a community **Police Commission**. The Police Commission shall be comprised of community members and shall oversee the newly created offices of the IID, and the IG. The Police Commission shall participate in the hiring and firing of the Police Chief, in collaboration with the Mayor and City Council, as describe below. The Police Chief shall report to the Police Commission;
2. Converting the Office of the Independent Police Auditor to the **Independent Investigations Department**, with powers of subpoena, and full and unredacted access to all documents in the possession of any city department or employee relating to the San Jose Police Department. The IDD shall primarily review individual complaints against police officers;
3. Creating an **Office of the Inspector General** to assist the Police Oversight Commission in conducting reviews of patterns, practices, trends, systems, and policies of the San Jose Police Department. The Inspector General shall not look at individual cases, but department-wide practices, and shall have- subpoena authority and full unfettered and unredacted access to the documents contained by any city department or employee relating to SJPD. This includes full access to anything and everything that the police department's Internal Affairs has, as well as all body-worn camera footage, recordings, transcripts, data, police reports, use of force reports, stop data, police communications, disciplinary histories, force reviews, training, etc. All documents shall be unredacted to the extent permitted by current State and Federal laws.

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The cities and/or counties that have one or both of these entities include San Francisco (both), Oakland (both), Davis (commission), San Diego (commission), Orange County (IG) and Los Angeles (both), BART (both), among many others in California and the United States;

**4. Independent counsel.** The IID, the IG, and the Police Commission shall have their own attorneys which they may share, and not just the City Attorney. The City Attorney also represents the police department, and the City as a whole, and only describes what the law is and whether a proposed action is legal or not. One or two City Attorneys shall physically work at the office of Inspector General and no longer do other work for other departments.

The Commission would like the Mayor and City Council to create the following policy changes:

All investigators in the SJPD Internal Affairs shall have at least 10 years of experience as a police officer or an investigator and shall only work as investigators. Lessor experienced officers shall no longer investigate complaints against officers, because they then are assigned as officers in the street with those whom they have investigated. This is problematic for substantiating a complaint against a coworker and then having to work with the officers they have substantiated the complaint against.

### **Equity Values, Equity Standards, Equity Assessment**

San Jose has a long history of failing to achieve equity, inclusion, and racial justice, particularly in regard to Black Indigenous and People of Color (BIPOC) constituencies and low-income people. This failing is evident in a host of areas of life: affordable housing, transportation, health care, access to parks and green space, employment opportunities, law enforcement, assets and income, and many others. During recent decades, some serious efforts have been made to address these issues, yet it is widely recognized that disparities exist on a major scale. The experience of the COVID pandemic further demonstrates the depth of, and consequences of, these inequities.

One reason for the persistence of inequities is the inability of City government to sufficiently commit its resources and energies to their reduction. Part of this problem is a weakness in the existing City Charter. It states its opposition to discrimination but does not affirm the objective of reducing inequity or provide standards or procedures to move towards that goal.

The proposed equity values, equity standards, and equity assessment is drafted to demonstrate that pure equality is not the city's objective when equity requires a recognition of the effects of past and present discrimination or unfair treatment.

*Rick L. Callender, Esq*

### **Create A Climate Action Commission**

Residents are asking for greater inclusion in the creation of climate change mitigation strategies on a city level. Climate change is expected to impact people of all ages, for generations, but underserved communities first and most. Climate change poses immediate and long-term threats to the City's economy, public health sustainability, security, and quality of life, especially those of low-income with the least resources. The potential adverse effects of global warming include a rise in sea levels resulting in the displacement of businesses and residences, especially those living in the Alviso Community in District 1. Increased extreme heat events and wildfire smoke exposure will persist as seasonal events indefinitely. Too many homes do not have air conditioning and their residents will not survive 125+ degree Fahrenheit days as Lytton, British Columbia, saw this past June, killing 719 people in just 7 days. The average temperature in Lytton, B.C. is 38.2 degrees Fahrenheit and it gets 37.8 inches of rain per year. San Jose's average temperature is 68.9 degrees Fahrenheit, and we get about 17 inches of rain per year. We are much hotter and dryer than Lytton.

The Charter Review Commission asks the Mayor and the City Council to create a Climate Action Commission on a policy level as described below.

Create a "**Climate Action Commission**" (CAC) composed of a combination of 17 community members and Special Eligibility Seats to study, create reports, and recommend policy and programs that help to address and mitigate the impacts of Climate Change:

a. MEMBERSHIP:

- i. Ten (10) District Representatives (1 per council district) and 1 Citywide appointed by ~~Council and~~ the Mayor,
- ii. ~~Up to~~ two (2) individuals nominated by and representing the interests of ~~the~~ Muwekma Ohlone Tribe (county residency requirement only),
- iii. ~~Up to~~ Three (3) individuals representing fields of Science, Ecology, Biology, Food Systems, or from Community Based Non-profits (county residency requirement only),
- iv. One (1) Attorney-at-Law (county residency requirement only).

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This commission aligns with the [Chicago Climate Charter](#), signed by current Mayor Sam Liccardo, alongside mayors of 40 major U.S. Cities. That prioritized the following directives:

- a. Reduce greenhouse gas emissions by a percentage equal to or exceeding their home nation's commitment;
- b. Track, measure, and report the data;
- c. Empower cities through collective action;
- d. Engage all communities, especially nontraditional voices, in policy formation;
- e. Integrate climate risks into infrastructure and emergency planning;
- f. Support policies and actions that incorporate the cost of carbon and support those most affected;
- g. Partner broadly for robust solutions.

This Climate Action Commission does not duplicate and is not redundant with San Jose's Clean Energy Community Advisory Commission because that commission **does not address the effects of climate change and global heating specifically**. It provides feedback and input on the development of strategy and operating principles or models, informs the prioritization and development of energy programs, particularly electrification. Furthermore, clean energy is a highly important and very technical subject that requires commissioners to have a particular interest in energy, so we think this commission is more useful as a stand-alone commission with its somewhat narrow focus.

This Climate Action Commission does not duplicate and is not redundant with the Climate Smart Program. We have other problems that Climate Smart does not address, such as impact our local resilience like food insecurity, water insecurity, energy cost and availability (especially during heatwaves), fire, additional cooling centers needed, etc. We need a separate **resident-led commission** set up to address the broad and unanticipated threats that will result from global heating and regional climate change. For example, greater **accountability** in reporting fossil fuel use and in mitigating the effects of climate change in San Jose is needed, among many other suggestions shared by residents. The Climate Smart program reflects specific city programs. It has low public participation in its public facing programs. It does not take regular public input through hearing and testimony. The public would like the city to solicit ideas from the residents of the City of San Jose, with their lived experience, professional education, intellectual resources, and powerful desire to not suffer in natural and man-made disasters. We think **the lack of community engagement and empowerment to participate in finding solutions** and presenting those solutions to city council, city manager, and the mayor **is what is causing the apathy in participating in the public facing Climate Smart programs**.



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This proposal works to support the Mayor's Chicago Climate Charter goals, and resolve the problem with Climate Smart, and thus would support and enhance Climate Smart by providing it with public feedback and additional proposed solutions, as well as outreach.

### **Establish Equity Values, Equity Standards, and Equity Assessments**

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### **Establish Regular Department-Level Audits**

This recommendation is to enhance the existing auditing function and ensure a higher quality of oversight and accountability for the City of San Jose. The department-level performance audits are conducted to assess key performances against each department's mission, goals and objectives in order to ensure accountability and fiscal responsibility. It allows the City to have a bigger picture of each department's performance and to make sure that no part of any city department goes unaudited for more than a 12-year period. It is essential to detect fraud, embezzlement and any other crime as well as it improves financial accountability. To make this a charter amendment is necessary to minimize any political influences and to ensure an unbiased approach. To date, some San Jose departments have never had a full audit, so no one knows if fraud, embezzlement, or other crimes are happening there.

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### **Address Equity And Inclusion In City Programming and Budgeting**

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The purpose of this recommendation is to guarantee San Jose residents are equitably included in the benefits of City services and have the benefit of equal access to City services. The Mayor, City Council and the City Manager need to promote equity and inclusion among all residents especially in the budget for the City of San Jose. The absence of this requirement in the Charter has and may continue to cause inequities.

Therefore, it is recommended the City Charter be amended with recommended language for Article IV The Council, Article V The Mayor and Article VII City Manager. This recommendation is specific adherences to the Commission recommendation on Equity Values, Equity Standards, Equity Assessments. Article IV the Council would require adherence to the Statement of Values; Article V The Mayor would require specific adherence to Equity Assessment; Article VII City Manager would require specific adherence to Equity Standards.

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### Support A Community Opportunity To Purchase Act (COPA)

Wealth building is connected to asset ownership and BIPOC communities, and the value of assets owned is also impacted by racism. Housing displacement significantly affects black and Latinx residents related to affordability, home stability, and overcrowded homes, which impacted families considerably during the covid pandemic and caused health harm. Unemployment and other economic barriers tied to housing lead to the Overrepresentation of Black and Latinx families in the homeless count.

We see neighborhoods rapidly changing before our eyes over the last few years with increases in home sales and evictions of dozens of families. Many of our neighbors have been displaced; we see the destabilization of our once culturally rich communities, culture, and heritage erased from spaces, and our local family-owned businesses closed.

This Policy Recommendation seeks to promote and improve accountability, representation, and inclusion under a ~~racial~~ equity lens within the housing department and anti-displacement efforts at the City of San José. By promoting and supporting the Community to Purchase Act (COPA). That promotes the prevention of tenant displacement and the creation and preservation of community-owned affordable housing to build a more just and equitable city. Preservation strategies are needed to PREVENT further displacement, segregation, negative quality of life, and generational poverty. Preservation strategies often struggle for funding sources and commitment from cities which ultimately impacts BIPOC (Black, Indigenous, People of Color) and low-income families. Preservation strategies are necessary to address long-term affordability and complement our housing production goals and no net loss ratios. Preservation strategies are critical to ensure BIPOC families do not experience homelessness and a cycle of institutional violence. Protecting tenant rights, producing affordable housing, and investment should be seen as a long-term priority as part of our vision to cement our cities commitment to ending displacement and materializing housing as a human right.

~~Article XX. Promote – The Promotion of Home Ownership Opportunities for Low Income Residents of San José~~

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San Jose is the largest and fastest growing housing center within Santa Clara County, yet low-income residents do not find homes for purchase affordable on their otherwise adequate income. Furthermore, many individuals and families must live in crowded shared homes and apartments, with fears of displacement or becoming unhoused.

The City of San Jose has policies which protect the environment by preserving surrounding rural lands, preserve commercial property which may present future business and employment opportunities, and control the cost for the City of San Jose as new homes are constructed. Many of these requirements are contained in the San Jose City Charter Article XIX. An Act to Limit Urban Sprawl and the Fiscal and Environmental Effects of Specified Development in Outlying Areas. However, the City Charter does not address the serious housing crisis faced by residents of San Jose.

It is recommended that San Jose establish new policies to support the home purchase by low-income San Jose residents while not impacting Article XIX and existing policies or resources available to support affordable rental housing for its residents. As one step to begin this process Article XX, The Promotion of Home Ownership Opportunities for Low Income Residents of San Jose, as a vital step to the long-term sustainability of San Jose as home to its residents was recommended.

### **Strengthen Community Input To The Smart City Advisory and Innovation and Technology Advisory Boards**

No summary included. See recommendation below.

## Charter Recommendations

### **Reconcile form Boards and Commissions (Article X) With Senate Bill 225**

#### **What is the recommendation?**

- A. Remove citizenship requirement for all applicable Boards and Commissions as permitted by [Senate Bill 225](#), which revised membership requirements to all government boards and commissions;
- B. Ensure all Board and Commissions

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- a. receive training in ethics, civics, and diversity, equity and inclusion;
- b. elect their chairs and vice-chairs democratically, and;
- c. incorporate racial and social equity analysis to promote the use of an “equity lens” for decision-making;

C. Provide a stipend to members of all Boards and Commissions.

This recommendation was passed on Thursday, November 18th, 2021 with 22 ayes, 0 nays and 0 absent votes.

### **What problem(s) does this recommendation address?**

This recommendation seeks to improve accountability, representation, and inclusion under a racial equity lens within Boards and Commissions at the City of San José.

Additionally, this recommendation aligns with the City of San José’s newly created Office of Racial Equity in advancing systems change through a citywide racial equity framework that will examine and improve San José’s internal policies, programs, and practices to eradicate any structural and/or institutional racism in the City of San José. From the Office of Racial Equity’s website

*“This includes a focus on enabling the organization, at all levels and in all departments, to identify ways to improve outcomes for Black, Indigenous, LatinX, and People of Color.”*

Lastly, this recommendation also aligns with our Commissioner Agreement of “We Value Diversity”:

*“We believe that bringing together a broad range of ideas, experience and backgrounds will result in the best outcomes for San José. We keep an open mind and seek to learn from others.”*

According to data from the last three years gathered by the City Clerk’s Office, the representation across Boards & Commissions is not representative of the population demographic of the City of San José. This data clearly indicates the racial disparities in representation (see Pg 8 Data/Sources) on City Boards and Commissions. The impacts of these disparities on BIPOC, low-income, undocumented, and those experiencing houselessness can be seen in the Planning Commission which, up until recently, did not have diverse representation for communities of color. The Planning Commission is a powerful commission whose decisions impact historically redlined communities, such as the Flea Market Redevelopment and Rezoning in the early 2000s (Resolution No. 73956, 71362), that is felt very vividly today by many vendors and their families.

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“Today plans for the proposed urban village would shut out two-thirds of vendors because of the market’s reduced size. Without plans to protect or relocate the flea market, vendors who depend on it as a main source of income would be displaced and left without employment.” - San José Spotlight

What would this have looked like if there was more representation on Boards and Commission from our historically marginalized communities such as our immigrant and/or undocumented community members?

### **Why is this particular change being recommended?**

Representation by those with the lived experience of hardships such as displacement or gentrification means that those individuals would be able to identify potential unintended or negative impacts of policy decisions that could otherwise go unnoticed or addressed by those without those same lived experiences. While we cannot undo the past, now is the time to prevent further community harm to our historically underrepresented communities.

“Equity is defined as, just and fair inclusion into a society in which all can participate, prosper, and reach their full potential. Unlocking the promise of the nation by unleashing the promise in us all.” - The American Planning Association

These changes will benefit all of the people of San José, not right away or all at once but over time.

1. *On membership requirements for Boards and Commissions.* There are examples of these changes across the Country and the State of California. Recently the City of Santa Ana and Costa Mesa have updated their Board and Commission membership requirements as permitted by California Senate Bill 225, signed on October 12, 2019, which granted non-citizen residents, regardless of immigration statutes, access to service in appointment to civil office, including state and local boards and commissions. From SB225:

“The California Legislature finds and declares all of the following:

(a) The State of California is the largest and most diverse state in the nation, with a total population of almost 40 million people, and a total immigrant population of about 10 million people from over 60 different countries.

(b) California prides itself on its great racial, ethnic, and cultural diversity, and acknowledges that diverse backgrounds benefit the state through providing a diversity of

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experiences and expertise, and this diversity is especially beneficial in creating public policy that supports and protects all people.” - Senate Bill 225 Text

### 2. *On process for Boards and Commissions:*

- a. *On training and education.* This one would be a one time curriculum development that could be watched via video. Content can be adapted from presentations given to the Charter Commission on May 3rd by the San José Office of Racial Equity and Sept 9th presentation by the Santa Clara County Office of LGBTQ Affairs part of the Division of Equity & Social Justice, for Rosenberg’s or Robert’s Rules of Order that one-time content can be developed by the City Attorney or City Clerk’s Office.
- b. *On Chair and Vice Chair selection.* Most commissions, unless otherwise stipulated, democratically nominate and select a Chair and Vice Chair through a majority vote of members on said Boards, Commissions, and Committees. This is a procedural amendment with no fiscal or staff impact.
- c. *On incorporating an equity lens into decision-making.* In partnership with a phased approach with appropriate departments such as but not limited to the Office of Racial Equity. There are examples of this change from across the county. Following GARE, the American Planning Association which has 40,000 members from 90 countries released a Planning for Equity Guide in 2019 supporting these practices. The City of Baltimore practices incorporating a racial equity lens into their entire planning department.

### 3. *On a stipend for Board Members and Commissioners.* Currently, approximately 39 Board Members and Commissioners receive a stipend or reimbursement, which is roughly 11% of all Board Members and Commissioners:

- Appeals Hearing Board - \$100/Per Mtg
- Planning Commission - \$250/Mo
- Civil Service Commission - \$450-250/Mo
- Federated City Employees’ Retirement System - \$250/Mo
- *Deferred Compensation Advisory Committee, Voluntary Employees Beneficiary Association Advisory Committee are reimbursed only.*
- Police and Fire Retirement Plan Board - \$250/Mo

Through a continued phased approach, some members of Boards and Commissions could be moved to reimbursement and eventually stipend as appropriately determined via budget considerations.

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The burden of change weighs on EVERYONE, all participants, both those on the city staff and residents stepping into unfamiliar environments and roles to create sustainable and long lasting change for our City and Communities that improves social and racial equity, accountability, and inclusion. We are all human and deserving of life, joy, safety, shelter and sustenance. As a member of this community we are all responsible for the care that goes into building community and meaningful connection now and for future generations. Some people are more privileged than others, so while the less privileged are overburdened with surviving unfair and inequitable systems, those that are privileged, like every person here that has made it "enough" to volunteer over 100 hours for free. It is our civic duty and responsibility to relieve every burden possible that is within our ability to do so.

### **What are the arguments against this proposal?**

1. *There is no budget available to support this work, it will cost taxpayers too much money.* Improving social and racial equity will require some equity to be invested into our community. This investment is also supported by the most recent Mayor's Budget Message, on Spending Proposals Section A Equity and Racial Justice

*On items 1:* Removing item (a) and (b) There is no fiscal impact as it is a change in membership requirement and does not impact staff or resources.

*On items 2-3:* The City of San José already allocates time and budget to support the work of Boards, Commissions, and Committees, through a phased approach it is fiscally feasible to create these incremental changes over time in partnership with other City Departments

2. *The City of San José does not have a diversity and/or racial equity problem.* As the data gathered and collected by the City Clerk's Office on Boards and Commission, there is clear evidence of lack of diversity and representation, and direct impact to BIPOC, low-income, undocumented, and those experiencing houselessness as a result.
3. *There is not enough data available that can ensure equitable outcomes.* While there is *not as much* data documenting long term impacts that ensure more equitable outcomes, there is plenty of data such as gathered and collected by the City Clerk's Office on Boards and Commission, that there is clear evidence of lack of diversity and representation, and direct impact to BIPOC, low-income, undocumented, and those experiencing houselessness as a result. Additionally, equitable data collection is not widely practiced at the City of San José yet.

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However, the formation of the Office of Racial Equity is a step towards better practices. Our first most significant step that we can take is “Equitable Inclusion” through removing barriers to participation.

### Proposed Charter Language

Replace “ARTICLE X SECTION 1000 Planning Commission” items (a) and (c) as follows:

- (a) ~~He or she must have been a citizen of the United States for at least one year immediately preceding the commencement of the four-year term or lesser period of time for which he or she is appointed, and he or she must be a citizen of the United States during his or her incumbency.~~ A person shall not be eligible to take or hold office as a member of the Planning Commission unless the person is at least 18 years of age and has been a resident of the City of San José for at least one year immediately preceding the commencement of the four-year term or lesser period of time for which the person is appointed. Members of the Planning Commission must be residents of the City of San José during incumbency.
- (c) ~~He or she must have been a resident of the City of San José for at least one year immediately preceding the commencement of the four-year term or lesser period of time for which he or she is appointed, and he or she must be a resident of the City of San José during his or her incumbency;~~
- (d) ~~He or she must have been a registered elector of the City of San José at th time of his or her appointment and thereafter to and including the date of commencement of the four-year term or lesser period of time for which he or she is appointed.~~

Amend “ARTICLE X SECTION 1000 Planning Commission” as follows:

- (a) MEMBERSHIP. The Civil Service Commission shall consist of five (5) members appointed by the Council for terms of four (4) years. Members must be ~~qualified electors of the City at all times during their terms of office~~ at least 18 years of age and be residents of the City at all times during their term of office; ~~Not more than four (4) shall be of the same sex; and one (1) shall be an attorney-at-law, licensed to practice law in the State of California, who shall have practiced law in said State for at least five (5) years.~~

Amend “ARTICLE X 1001.1 Salary Setting Commission” as follows:

- (a) MEMBERSHIP. The Salary Setting Commission shall consist of five (5) members appointed by the Civil Service Commission. Members must be ~~qualified electors of the City at all times~~



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~~during their term of office~~ at least 18 years of age and be residents of the City at all times during their term of office.

Create new section "ARTICLE X 1004 Guidelines for Boards and Commissions" as follows:

All Boards and Commissions shall follow these guidelines:

- (a) Training and Education. All Board and Commission members are subject to training that address gender, racial and social equity, conflicts of interests, and code of ethics and related civic education as required such as the Brown Act, Rosenberg/Robert's Rules of Order, etc.
- (b) Chair and Vice Chair Selection. All Board, Commission, and Committee(s) shall have a Chair and Vice Chair, democratically selected through a vote of the majority of members of said Board, Commission, or Committee.
- (c) Incorporate racial and social equity analysis to promote the use of an "equity lens" for decision-making. An equity lens is a tool used to improve planning, decision-making, and resource allocation leading to more racially equitable policies and programs. For any policy or project, decision makers could consider:
  - (i) Structural Equity: What historic advantages or disadvantages have affected residents in the given community?
  - (ii) Procedural Equity: How are residents who have been historically excluded from planning processes being authentically included in the planning, implementation, and evaluation of the proposed policy or project?
  - (iii) Distributional Equity: Does the distribution of civic resources and investment explicitly account for potential racially disparate outcomes?
  - (iv) Transgenerational Equity: Does the policy or project result in unfair burdens on future generations?

Amend "ARTICLE X SECTION 1003 Reimbursement for Expenses" as follows:

All members of boards, commissions and committees shall receive reimbursement a stipend, to the extent such is authorized by the Council for expenses incurred in the performance of their duties or functions of office and does not conflict with rules and regulations for city employees that serve on a commission.

## Add A Native Land Acknowledgement To The City Charter

### What is the recommendation?

Add the Native Land Acknowledgment approved by this commission to the City Charter, recognizing that San Jose is on the sacred, ancestral native land of the Muwekma Ohlone Tribe, in San José's Charter.

This recommendation was passed on Thursday, November 18th, 2021 with 22 aye, 0 nay and 0 absent votes.

### What problem(s) does this recommendation address?

The secularization of the Bay Area has caused harm to Indigenous People including, but not limited to, taking and not returning land occupied by tribes, instating government policies that exterminated Native language, cultural practices and religious rights, and causing trauma to generations of Native People. Secularization of the Missions in 1834 was the process of converting mission-controlled lands from religious to secular possession. Under the terms of the 1834-1836 secularization of the California Franciscan Missions by Spain and Mexico, including Missions Santa Clara, San Francisco, and San Jose within the Bay Area, half of the mission-controlled lands were to go to the emancipated mission Indians, but that never happened. The loss of their Native land and lack of acknowledgement of this history continues to cause harm.

The atrocities leveled against Native People has resulted in mislabeling members with no member input. The Muwekma Ohlone Tribe, without any input from the tribe and without consultation, were mislabeled the Verona Band after a nearby railroad station. Additionally, the Muwekma Ohlone Tribe was slated to receive land in 1914 and again in 1927 but, without a site visit or consultation with the tribe, they were removed from the list of tribes scheduled to receive land. This adversely affected their ability to have homes, community spaces for gatherings, religious ceremonies, and other important cultural events. The mislabeling and denial of land to them, were and are very harmful to Muwekma Ohlone members. These events led to the start of the intentional extermination of their language, cultural practices and religious rights.

### Why is this particular change being recommended?

A Native land acknowledgment will support the healing of generations of trauma and promote them in finding their voice in the conversation of where and how they fit into the diverse

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community of the Bay Area in general, and San Jose in particular. Land acknowledgements are very important for the healing process. They recognize the existence of Native People, not only that they were here in some distant past, but rather they are alive and thriving. The Muwekma Ohlone pPeople are stewards of their ancestral land, preserving their connections from past to future generations. This acknowledgement will also recognize and show appreciation for the contributions their ancestors have made to our shared history.

Including this in our Charter is of the utmost importance to our Native community. It is the first step to healing the community by acknowledging its importance to the Muwekma Ohlone tTribe and other indigenous pPeople. This is, to our knowledge, becoming a common practice in many places in California and the rest of the country.

We are not aware of any law prohibiting such an acknowledgement.

### What are the arguments against this proposal?

The Commission sees no arguments against this proposal at this time. There is no monetary impact to the community, and no contradiction to the fact that our land was previously occupied by Native People.

### Proposed Charter Language

Include the following land rights acknowledgement as a preamble to the Charter.

#### **Horše túuxi! (Hor-sheh troo-hee)**

The City of San José would like to recognize that it is located on the ethnohistoric territory of the ancestral and unceded land of the **Thámien** (*thah-me-in*) **Ohlone** (*oh-loh-knee*) - speaking tribal groups of the greater Santa Clara Valley, which includes the lands of the **Alsons, Matalans**, and the **Paleños** - whose tribal region was named after their powerful chief **Capitan Pala**, and the two Mexican land grants located in the East Hills above San José - and who were intermarried with the direct ancestors of some of the lineages enrolled in the Muwekma Ohlone Tribe of the San Francisco Bay Area, whom were missionized into Missions Santa Clara, San José, and San Francisco. The Muwekma Ohlone Tribe of the San Francisco Bay Area is the legal successor of all of the surviving Native American lineages, including the **Thámien Ohlone-speaking** tribes, who comprised the historic sovereign and previously federally recognized Verona Band of Alameda County. This land was and continues to be of great spiritual and historic importance to the Muwekma Ohlone Tribe and other familial descendants of the Verona Band.

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We recognize that every member of the greater San José community has, and continues to benefit from, the use and occupation of this land, since The City of San José's establishment in 1777. Consistent with our values of community, inclusion, and diversity, we have a responsibility to acknowledge and make known through various enterprises The City of San José's relationship to Native Peoples. As members of the San José community, it is vitally important that we not only acknowledge and commemorate the history of the land on which we live, work, and learn, but also, we recognize that the Muwekma Ohlone People are alive and flourishing members of the San José and broader Bay Area communities today. Aho!

### Use Gender-Inclusive Language In The Charter And City Documents

#### What is the recommendation?

Update gendered language in the Charter and official City documents (e.g., ordinances, resolutions, and City policies) to be gender inclusive or gender neutral.

This recommendation was passed on Thursday, November 18th, 2021 with 22 aye, 0 nays and 0 absent votes.

#### What problem(s) does this recommendation address?

Violence and discrimination born of intolerance and marginalization continue to take lives and create barriers to equity and opportunity for LGBTQ+ people and their families.

Language is also gendered and plays a central role in human cognition and behavior as one of the most common mechanisms by which gender is constructed and reinforced. Some languages do not mark gender distinctions systematically, some use pronouns to distinguish between male and female, and some go even further, extending the gender distinction to inanimate nouns through a system of grammatical gender. Gendered language is essential as it frames the understanding of equality.

Language is a reflection of the attitudes and norms within a society. It also shapes our worldview and, over time, people's attitudes as to what is "normal" and acceptable. The way language is used not only reflects social structures and biases. However, it may also reinforce preconceptions and inequalities related to gendered roles in everyday life and the work environment.

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Appearances of Gendered Language in Charter		Exclusive terms	Inclusive/neutral terms
4	His	Chairman Chairmanship	Chair (or Chairperson) Chairpersonship
79	His or Her	Businessman	Businessperson
48	He or She	Policeman	Police officer
9	Him or Her	Cleaning lady	Cleaner
<b>140</b>	<b>Total</b>	Spokesman	Spokesperson
		Fireman	Firefighter
		Statesman	Political leader/Head of State/Diplomat/Political figure
		Handyman	Technician/Repairer
		Cameraman	Videographer
		Removal man	Mover
		Waiter/Waitress	Server

### Why is this particular change being recommended?

This proposed amendment seeks to promote and improve accountability, representation, and inclusion under a racial equity lens at the City of San José by using gender inclusive language in official City documents.

Additionally, this recommendation aligns with the City of San José's newly created Office of Racial Equity in advancing systems change through a citywide racial equity framework that will examine and improve San José's internal policies, programs, and practices to eradicate any structural and/or institutional racism in the City of San José. From the Office of Racial Equity's website:

"This includes a focus on enabling the organization, at all levels and in all departments, to identify ways to improve outcomes for Black, Indigenous, LatinX, and People of Color."

Using gender-inclusive language in the Charter and the City's official documents of the City would support writing and speaking in a way that does not discriminate or marginalize based on gender and does not promote or perpetuate gender stereotypes. This shift is imperative for furthering gender equality in the workplace and creating an inclusive working environment for all staff

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members. Using plural forms (They, Them, Theirs) can be an easy gender-neutral alternative to gendered pronouns. This technique is preferred as it is inclusive and avoids complicated sentence structures.

There are local examples of this change. Santa Clara County has started the process of using inclusive language in all of their documents through a recent policy change.

This recommendation must be a Charter revision to both address issues with current Charter language, as well as support language inclusivity to reflect on all of San José City's documents.

### **What are the arguments against this proposal?**

The Commission sees no arguments against this proposal at this time.

### **Proposed Charter Language**

Amend "ARTICLE XVII SECTION 1704 Definitions of the Charter" as follows:

(h) ~~The masculine gender includes the feminine and neuter.~~

(i) Gender. The gender neutral pronoun includes the feminine, masculine, and non-binary genders.

(ii) Pronoun Singularity. "They/them" shall indicate a singular individual, unless the context indicates the contrary. In most cases, the singular number includes the plural and the plural includes the singular.

(iii) Gender. Whenever a personal pronoun is used in the neutral gender, it shall be deemed to include the feminine and masculine also. "They/them", shall indicate a singular individual, unless the context indicates the contrary.

(iv) Update pronouns when appropriate and also includes the updating of future documents, applying only to official documents like ordinances, resolutions, and City policies by making changes such as the following:

Gendered subject (he, she, etc.), object (him, her, etc.) and possessive (his, hers, etc.) pronouns shall be replaced by a gender-neutral description of the pronoun referent's title of office, employment or descriptor.

Do not make gender visible when it is not relevant for documents and communications.

Update gendered language to be gender inclusive or gender neutral.

## Create A Police Commission, Independent Investigation Department, And Office of The Inspector General

### What is the recommendation?

This recommendation consists of three primary elements, the details of which follow:

- A. Create and add a Police Commission to the City Charter with subpoena authority and full unfettered and unredacted access to the documents contained by any city department or employee relating to SJPd, including internal affairs, and it's own attorney;
- B. Convert the Independent Police Auditor's Office to the Independent Investigations Department, with subpoena authority and full unfettered and unredacted access to the documents contained by any city department or employee relating to SJPd, including internal affairs~~with powers of subpoena, and full and unredacted access to all documents in the possession of the San Jose Police Department;~~
- C. Create an Office of the Inspector General to assist the Police Oversight Commission in conducting reviews of patterns, practice, trends, systems, and policies at the Police Department, with subpoena authority and full unfettered and unredacted access to the documents contained by any city department or employee relating to SJPd, including internal affairs.

### A. Police Commission.

1. Review, with expertise and assistance from an Inspector General's Office, and through the use of its access authority:

- a. Training;
- b. Patterns or Practice;
- c. Use of Force, stops/detentions, other practices;
- d. Policies and procedures;
- e. Supervision and management;

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- f. Hire ~~and Fire~~ Chief Of Police alongside City Council and Mayor as described below/  
Appraise Chief of Police: Hire/fire/appraise the ~~Inspector General (IG) and the~~  
Independent Investigations ~~ve~~ Department Head (IID);
- g. Recommend SJPD Budgeting to City Council.

2. Conduct regular (e.g. monthly) public hearings on Department policies, rules, practices, customs, and General Orders. The Commission shall determine which Police Department policies, rules, practices, customs, or General Orders shall be the subject of the hearing. The Commission shall be authorized to convene subcommittees to study specific topics or policies and shall ensure broad community participation in those subcommittees.

3. It shall have an investigative/monitoring function: It shall have the same level of access to San Jose records as the Inspector General (discussed below) and authority to issue subpoenas to compel the production of books, papers and documents and take testimony on any matter pending before it except that the Commission shall not have any authority to issue subpoenas for the purpose of investigating any City employee, including an Agency employee, who is not a police officer. If any person subpoenaed fails or refuses to appear or to produce required documents or to testify, the majority of the members of the Commission may find him in contempt, and shall have power to take proceedings on that behalf provided by the general law of the State.

4. Propose changes at its discretion or upon direction, by adoption of a resolution, of the City Council, including modifications to the Department's proposed changes, to any policy, procedure, custom, or General Order of the Department which governs use of force, use of force review boards, profiling/discrimination based on any of the protected characteristics identified by federal, state, or local law, other constitutional issues (e.g., stops, detentions, searches) or First Amendment assemblies, or which contains elements expressly listed in federal court orders or federal court settlements which pertain to the Department and are such federal court orders and settlements remain in effect. All such proposed changes and modifications shall be submitted by the Commission Chair or designee to the City Council for review, approval or rejection. If the City Council does not approve, modify and approve, or reject the Commission's proposed changes or modifications within one hundred and twenty (120) days of the Commission's vote on the proposed changes, then the Commission's proposed changes or modifications will become final.

5. Approve or reject the Department's proposed changes to all policies, procedures, customs, and General Orders of the Department which govern the topics/issues identified above.

If the Commission does not approve or reject the Department's proposed changes within one hundred and twenty (120) days of the Department's submission of the proposed changes to the



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Commission, the Department's proposed changes will become final. If the Commission rejects the Department's proposed changes, notice of the Commission's rejection, together with the Department's proposed changes, shall be submitted by the Commission Chair or designee to the City Council for review.

The City Council shall consider the Commission's decision within one hundred and twenty (120) days of the Commission's vote on the Department's proposed changes, and may approve or reject the decision. If the Council does not approve or reject the Commission's decision, the Commission's decision will become final.

6. Review and comment on, at its discretion, other policies, procedures, customs, and General Orders of the Department. All such comments shall be submitted to the Chief of Police. The Chief of Police shall provide a written response to the Commission upon the Commission's request.

7. Review the City of San Jose's proposed budget to determine whether budgetary allocations for the Department are aligned with the Department's policies, procedures, and customs. The Commission shall conduct at least one public hearing on the Department budget per budget cycle and shall forward to the City Council any recommendations for change.

8. Require the Chief of Police or designee, to attend Commission meetings and require the Chief of Police to submit an annual report to the Commission regarding such matters as the Commission shall require, including, but not limited to a description of Department expenditures on community priorities as identified by the Commission. The Chief of Police, or designee, shall also respond to requests made by the Commission, through the Chairperson, by a majority vote of those present. The Chief of Police, or designee, shall provide to the Commission Chair an estimate of the time required to respond to the Commission's requests.

9. Report at least once a year to the Mayor, the City Council, and to the public to the extent permissible by law, the information contained in the Chiefs report in addition to such other matters as are relevant to the functions and duties of the Commission.

10. The Police Commission has the role of recommending candidates to the City Council for the hiring of a police chief. Hiring the police chief shall involve interviews with community panels and selecting finalists to send to the City. A representative from the Police Commission shall be on the community panel, as the Commission is expected to engage with the public during the selection process. Individual Councilmembers may add candidate names for a vote so long as the community panel has had an opportunity to weigh in on the candidate. Further, the Commission has the role of appraising the police chief's performance in the form of regular performance

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evaluations. The police chief reports to the Police Commission. City Council may hire a police chief by a vote of their choice, majority or supermajority.

The City Council may fire the police chief without cause by a 2/3 vote, and with cause by a majority vote. The Commission may fire the police chief by a majority vote for cause, and what counts as cause shall be defined by ordinance. The Commission may not fire the police chief without cause. The City Council may block the firing of the police chief by the Commission with a 2/3 vote, within 15 days of the Commission's vote, or it becomes law. Commission shall appoint an acting chief who already works for the SJPd during the 15 days and until a new chief is hired through the hiring process.

The City Manager no longer has the role of hiring, appraising, and firing the police chief.

### 11. Composition of Police Commission and How They Are Selected and Removed:

Each councilmember, and the mayor, shall select one applicant for a four-year term, for a maximum of 2 terms if the applicant so desires once selected by a councilperson. Half of the initial applicant pool shall serve a two-year term so that at any given time only half the commission needs to be replaced. Former or current law enforcement, and those affiliated with law enforcement or police unions shall not be eligible to serve on the Commission. Disclosures shall be made regarding any immediate family members who are or have served as law enforcement, and immediate family members who are or were affiliated with a police union. Additionally, no city staff is eligible for this Commission. Each commissioner may create any number of subcommittees of which members of the public will be eligible to be appointed to by the commissioner who is a subcommittee lead. The Brown Act may not apply to these subcommittees if only one (or fewer than a majority) of commissioners will serve on them, particularly if their time and scope are limited.

Commissioners may be removed for cause, as defined by ordinance, by the City Council by a majority vote. Commissioners may not be removed for political reasons, and the elements of "cause" shall exclude politics to the extent it can.

12. Oversee and review the investigations department (discussed below) and the Office of the Inspector General (discussed below). This includes hiring and termination (with cause) of the IID and OIG agency heads. Selection shall involve interview panels with community members and organizations.

**B. Create an office of the Inspector General, with subpoena authority** and full unfettered and unredacted access to the documents contained by any city department or employee relating to

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SJPD. This includes full access to anything and everything that the police department's Internal Affairs has, as well as all bodyworn camera footage, recordings, transcripts, data, police reports, use of force reports, stop data, police communications, disciplinary histories, force reviews, training, etc. All documents shall be unredacted to the extent permitted by current State and Federal laws.

The IG shall have the existing powers of the IPA, but with additional access and authority. Its IPA authorities should also include a role in whether a case should be sustained and in the disciplinary decisions (currently, it only provides input into whether a case should be more thoroughly investigated).

The IG shall also have access to IID (see below) materials. The IG will report directly to the police commission, outside the police department's chain of command. The office can initiate an investigation into any area. The IG is authorized to compel any SJPD employee, including the Police Chief, to submit to an IG investigation. An IG investigation can only be stopped by a majority vote of the commissioners in a public session. The IG shall have the authority to access all of SJPD's facilities, as well as its documents, audio, and video evidence.

The Commission would direct the IG's reviews and receive reports and recommendations from the IG. The Commission would utilize these reports and recommendations, as well as its own access, to craft policy changes and review the performance of police management.

The Inspector General shall review patterns of practice, use of force, and other department wide practices, rather than individual cases.

**C. Convert the IPA Office to an Independent Investigations Department (IID), with subpoena power.** The IID reports directly to and can be hired/fired/appraised by the Commission. Rather than audit Internal Affairs' investigations of complaints as the IPA currently does, IID would conduct the investigations itself. The Commission, through a subcommittee on discipline, would play a limited role in adjudicating disagreements between the Chief and IID as to whether to sustain an allegation and as to the level of discipline issued in a particular case. The Commission would also have access to all IID cases (both directly and through the Office of Inspector General). IID shall issue annual reports. IID shall have sufficient staffing based on a formula relating to caseloads/number of complaints. The IID shall have full unfettered and unredacted access to the documents contained by any city department or employee relating to SJPD. This includes full access to anything and everything that the police department's Internal Affairs has, as well as all body-worn camera footage, recordings, transcripts, data, police reports, use of force reports, stop data, police communications, disciplinary histories, force reviews, training, etc. All documents shall be unredacted to the extent permitted by current State and Federal laws.

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**D. Independent counsel.** The IID, the IG, and the Police Commission shall have their own attorneys (in addition to other staffing), not just the City Attorney because the City Attorney also represents the police department, and the City as a whole, and only describes what the law is and whether a proposed action is legal or not. One or two City Attorneys shall physically work at the office of Inspector General and no longer do other work for other departments.

**E. Policy Recommendation:** All investigators in the SJPD Internal Affairs shall have at least 10 years of experience as a police officer or an investigator. Lessor experienced officers shall no longer investigate complaints against officers, because they then have to work as officers in the street with those whom they have investigated. This is problematic for substantiating a complaint and then having to work with the officers they have substantiated the complaint against.

These recommendations were passed on Thursday, November 18th, 2021 with 20 aye, 1 nay and 1 absent votes.

### What problem(s) does this recommendation address?

There is a history of policing practices, which has resulted in excessive and unnecessary force towards residents of San Jose ultimately causing our citizens to distrust the police. This distrust has caused concerns regarding police hiring, training, accountability, mental health awareness, and lack of basic care for the people they are sworn to protect.

San Jose lacks a robust police oversight structure that, in turn, lacks credibility and legitimacy among impacted communities. The oversight structure does not promote community empowerment and engagement and does not promote prevention of systemic issues or accountability of police management. It is largely reactive, focused on individual officer accountability, not fully independent, and depends upon the IPA Office itself to affirmatively engage community input.

Specifically, San Jose does not have a police inspector general with broad access to records, nor an oversight commission made up of community members interested in participating in police oversight. The cities and/or counties that have one or both of these entities include San Francisco (both), Oakland (both), Davis (commission), San Diego (commission), Orange County (IG) and Los Angeles (both), BART (both), among many others in California and the United States.

San Jose only has an outdated Independent Police Auditor model, which audits records from the San Jose police department's internal affairs, and our Independent Police Auditor has no authority to independently investigate complaints. Nor does the IPA have authority to review issues in the police department outside of specific complaints filed by members of the community. For

**Commented [M57]:** Lawrence, we find this omitted section (from our Recommendation Memo) of upmost importance.

Removing this also removes the context of why police oversight is needed in San Jose specifically and why in this format. Removing this substantial section from our Recommendation Memo severely detracts this recommendation because it loses it's local context, the history, and it's potential place within San Jose's boards and commissions.

We hope you do not remove it again, so that we can truly hang up our hats, so to speak, after our last meeting and not have follow this recommendation to City Hall due to a belief that it was not properly explained in the final report. Thank you.

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example, the IPA cannot review patterns or trends relating to stops, responses to certain types of crimes, officer discipline, etc. (Measure G provided some limited additional access related to use of force, but those records are redacted and IPA requests must be accompanied by justification – such limits are without precedent in other jurisdictions).

Citizen groups in San Jose are interested in seeing stronger community safety oversight and would like to participate in that oversight process by being on a Commission, or one of its subcommittees, that reviews police conduct, policies, practices, training, and other aspects they deem important to modern community safety. Excluding the public in decision-making about the largest department in the City, and about the department that exercises force and control over residents, is inconsistent with procedural justice, democratic norms, and good governance. San Jose is a local outlier, different from all our neighboring big cities, and many small ones, in this regard, as other large cities involve the community in policy making and decisions over who leads the police department.

Finally, boards and commissions proliferate in San Jose, including boards and commissions with actual authority. For example, San Jose has a library commission, but not a police commission.

Policing is an exception to this widely used mechanism for public engagement and input. When the City has allowed public participation, it has fumbled in its approach, e.g., when the first iteration of the Reimagining Public Safety committee collapsed because members of the committee felt disempowered and censored by the City's attempts to control the process and thus control the potential final recommendations.

The public should have formal input into policing in light of the current state of distrust and the enormous power that police have. This power has manifested in significant uses of force, including causing serious injury, during the protests following the murder of George Floyd, but there have also been documented disparities in stops and treatment during stops in the last 5-10 years and at least one federal jury finding of an unjustified officer-involved shooting. The IPA routinely makes policy recommendations in light of deficiencies that the office identifies, and it is critical that a body oversees adoption and implementation of such changes. A supplementary IG could also utilize its access to monitor improved policies and practices.

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Our black and brown, ~~communities~~ BIPOC, low-income, and immigrant communities have been severely impacted by over policing and excessive use of force. ~~Because of P~~ police officers' lack of understanding and approachability ~~has caused~~ these communities, who are already underserved, ~~to~~ believe that police are more prone to causing the problem than solving it. This leads to residents exhibiting fear and restlessness when interacting with the police, and this also leads to hesitancy when in situations ~~that~~ they should call the police. Moreover, this disconnect creates an

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environment where there are two entities (police and residents) who have distrust for one another, instead of acting as one whole community.

There are complaints of under policing in some neighborhoods, over policing in some neighborhoods, complaints of excessive use of force, racial profiling, different use of force depending on race, and **no independent investigatory body** of the policing in San Jose. People complain that police do not come to respond to drug houses, abandoned cars, reports of theft, reports of trespassing, and other complaints. [The District Attorney does investigate alleged criminal behavior on the part of San Jose police officers. This includes if an officer is accused of murder, sexual assault, sex with a minor, theft, domestic violence, and other crimes. This is not considered to be independent, investigatory oversight of San Jose policing.] There are complaints of officers smiling and laughing with each other after pulling residents over during traffic stops (appearing to be laughing at the person they have pulled over).

Injuries caused by the San Jose Police Department have cost over 26 million dollars in lawsuits since 2010. This money could have been used to fund our schools instead of being diverted to pay for police misconduct.

In prior recent years, there have been documented disparities (include citation [name](#), See Appendix 3).

The lack of a permanent [police](#) commission also has a disproportionate impact on marginalized communities. While other commissions exist, the exclusion of a police commission affects BIPOC and other marginalized communities because of the disproportionate impact of policing on those communities.

### Why is this particular change being recommended?

Expanded oversight will benefit all San Joséans but will have a disproportionate benefit for BIPOC community members and community members who belong to other marginalized communities, including those with disabilities, the unhoused, and the LGBTQ+ community. This is because of the historical realities of policing affecting those communities most, and the historical distrust between these communities and police.

1. Oversight can help hold the police department accountable for officers' actions.
2. Oversight bodies can help improve the quality of the department's internal investigations of alleged misconduct. **A commission can provide a community voice into that process and evaluate broader policies and systemic issues.**

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3. The community at large can be reassured that discipline is being imposed when appropriate, while also increasing the transparency of the disciplinary process. Greater access than the IPA currently has is required.
4. When the oversight agency confirms a complainant's allegation(s), the complainants may feel validated.
5. Similarly, when the oversight agency exonerates the officer, the officer may feel vindicated.
6. Oversight agencies can help improve community relations by fostering **communication** between the community and police agencies. This is particularly the case where a public body provides a regular venue and has a diverse representation of the communities most impacted by policing.
7. Oversight agencies can help reduce public concern about high profile incidents.
8. Oversight agencies can help increase the public's understanding of law enforcement policies and procedures, and why they are a particular way.
9. Oversight agencies can improve department policies and procedures. Policy recommendations based on data and review of records can prevent issues by identifying areas of concern and subsequently offering options to improve policing. IG-type access is essential.
10. Oversight agencies can assist a jurisdiction in **liability management and reduce the likelihood of costly litigation by identifying problems and proposing corrective measures before a lawsuit is filed**. Access to unredacted records and data (IG model) is essential.
11. Mediation has multiple benefits to both citizens and police officers. If the oversight agency provides mediated solutions, it can help complainants feel satisfied through being able to express their concerns to the specific police officer in a neutral environment. Mediation can also help police officers better understand how their words, behaviors and attitudes can unknowingly affect public perceptions.
12. By establishing a strong, modern oversight system that reflects best practices. Public officials are provided the opportunity to demonstrate their desire for increased police accountability and the need to eliminate misconduct.

All of these potential benefits help to support the goals of **community-oriented policing, which seeks to utilize problem solving techniques to work in a cooperative effort with the community to proactively address concerns**.

This is the direction the entire nation is moving in, and most large cities on the West Coast have moved in. San Francisco, Oakland, Davis, Los Angeles, Orange County, San Diego County are all examples of oversight agencies that this Commission has studied and has had the actual oversight agencies present during study sessions. San Francisco, Oakland, and Los Angeles all have a Police

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Commission. San Jose is an outlier with an outdated oversight model. We have had 11 police oversight speakers in total.

Police oversight currently sits in Section 809 of the City Charter, so any change or additional oversight requires a Charter amendment.

### What are the arguments against this proposal?

The argument against this recommendation is that some people affiliated with the police union and otherwise may say that the San José Police Department should police itself and no one in the community should interfere in police policies and practices.

### Proposed Charter Language

The City Attorney shall review the City Charter and recommend the removal of all portions inconsistent with this recommendation (such as Section 809), and recommend language that is consistent with this recommendation.

There are only two ways that San Jose may get its police commission: through a charter change, like San Francisco did, or through a Federal consent decree and continued monitoring as Oakland and Los Angeles did. This Charter Review Commission prefers that we get our police commission through a charter change. if this recommendation is moved forward by the Council.

**Commented [MS9]:** It is obvious that the City Attorney would not recommend removal of 809 if this rec is not moved forward by the council.

## Establish Equity Values, Equity Standards, and Equity Assessments

### What is the recommendation?

- A. Add a statement of values to the Charter that defines social equity, inclusion, and racial and social justice as guiding principles for the decisions, policies, budgets, programs, and practices of the City;
- B. Outline objectives intended to advanced the aforementioned values through the areas of safety, environmental health, water and sanitation, parks and recreation, mobility and transportation, economic development, housing standards, workforce protection and housing amenities;

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- C. Conduct an equity assessment for the annual operating and capital budgets as contained in the Recommended Budgets generated by the City Manager each fiscal year and for major policies and programs to be decided upon by the City Council.

This recommendation was passed on Thursday, November 18th, 2021 with 21 aye, 0 nay and 1 absent vote<sup>5</sup>.

### **What problem(s) does this recommendation address?**

San José has a long history of failing to achieve equity, inclusion, and racial justice, particularly in regard to BIPOC constituencies and low-income people. This failing is evident in a host of areas of life: affordable housing, transportation, health care, access to parks and green space, employment opportunities, law enforcement, assets and income, and many others. During recent decades, some serious efforts have been made to address these issues, yet it is widely recognized that disparities exist on a major scale. The experience of the COVID pandemic further demonstrates the depth of, and consequences of, these inequities. One reason for the persistence of inequities is the inability of City government to sufficiently commit its resources and energies to their reduction. Part of this problem is a weakness in the existing City Charter. It states its opposition to discrimination but does not affirm the objective of reducing inequity or provide standards or procedures to move towards that goal.

By definition, the lack of equity for BIPOC and low-income people burdens those constituencies. Data demonstrating these inequities is widespread and essentially undisputed.

### **Why is this particular change being recommended?**

The proposed language regarding equity standards has been revised to indicate that pure equality is not the city's objective when equity requires a recognition of the effects of past and present discrimination or unfair treatment.

Those who suffer from inequities, particularly BIPOC and low-income people, will benefit. Since the Charter language does not impose mandates, the city and the community retain the flexibility to make changes and respond to unintended consequences.

The changes are certainly feasible. In fact, they have been specifically designed to employ the power of the City Charter in a realistic way. Note that the proposed language does not mandate the end of inequity, nor does it require specific conditions of life, such as the Detroit Bill of Rights claim that every resident is entitled to affordable housing. For the Charter to prescribe those outcomes would risk the adoption of Charter language that the city lacks the capacity to accomplish. Instead, the proposed language includes three reasonable sections. The first is a

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statement of values, a type of Charter provision already present in the existing document (SECTION 607 Code of Ethics). The second is equity standards. This section focuses on activities in which the city is already involved, such as economic development and housing code enforcement, and articulates that the city will endeavor to achieve similar outcomes for every resident. The third requires a process, not an outcome. It imposes the responsibility of assessing the impact on equity when the city adopts major policies and its annual budget. The decision to conduct an assessment can be made by a majority of the City Council or by the direct petition of residents, the number required being challenging but not insurmountable.

This recommendation does not need to be a Charter revision. The same goals might eventually be achieved through city council action or cultural change. But those other strategies have thus far proven inadequate. Waiting for them to generate substantially better and faster results condemns those who suffer from inequities to another period of long, indefinite delay. To demonstrate a full commitment to equity, we must employ every major mechanism that is available – including the City Charter

### **What are the arguments against this proposal?**

Some people may argue that equity, inclusion, and racial justice should not be city objectives or priorities. Often proponents of this view believe that people have to take personal responsibility for improving their condition regardless of the disproportionate challenges they must confront.

### **Proposed Charter Language**

Add a new section to the Charter, “ARTICLE VI SECTION 610 Statement of Values” as follows:

To the extent permitted by law, the people of the City of San José affirm that the decisions, policies, budgets, programs, and practices of the City of San José shall be guided by the principles of racial and social equity, inclusion, and racial and social justice. Section 611 Definitions For the purposes of this Article, the following definitions shall apply:

(a) “Racial and social equity” shall mean the condition that would be achieved if one’s group identity – based on categorizations that have experienced discrimination including race, aspects of neurodiversity, and sexual orientation - no longer predicted, in a statistical sense, how one fared.

(b) “Inclusion” shall mean bringing traditionally excluded individuals and/or groups into processes, activities, and decision/policy making in a way that shares power. “Racial and

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social justice” shall mean the systematic and proactive fair treatment of, and allocation of resources for, people of all races and all group categorizations that have experienced discrimination resulting in equitable opportunities and outcomes for all.

Add a new section to the Charter, “ARTICLE VI SECTION 612 Equity Standards” as follows:

To advance the values in Section 610 and to the extent permitted by law, the City will endeavor to meet all of the following objectives for the residents of the City of San José. When endeavoring to meet these objectives, the City shall recognize that diverse communities may require diverse approaches and programs and that factors such as unresponsive or exclusionary political systems, low wage employment or other economic factors, environmental or occupational health hazards, inadequate access to health services, discrimination or abuse, or other conditions of exclusion or hardship impose greater burdens on some residents than others, and, therefore, as necessary the City shall adopt policies and service levels different from those specified in Section 612 (a) through (i) primarily to achieve equity across individuals and groups as a countermeasure to inequitable levels of burden.

- (a) Safety: Every resident shall be as entitled to live free from harm or threat of harm from other persons, private institutions, or city agencies as every other resident.
- (b) Environmental Health: Every resident is as entitled to live in an environment with clean air, soil, and water as every other resident.
- (c) Water and Sanitation: Every resident is as entitled to have access to clean water supplies for personal and domestic use and adequate sanitation services as every other resident.
- (d) Parks and Recreation: Every resident shall be as entitled to access to parks, recreational opportunities, community centers, and urban green spaces as every other resident.
- (e) Mobility and Transportation: Every resident is as entitled to well-maintained and lighted streets and roadways, signage, and other mechanisms to assure pedestrian and vehicle safety, and the opportunity for walking and biking as every other resident.
- (f) Economic Development: Residents of every part of the city are as entitled to the benefits of public economic development investments as residents of every other part of the city.
- (g) Housing Standards: Every resident is as entitled to the protections provided by city enforcement of housing codes as every other resident.

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(h) Workforce Protection: Every person who is employed within the city is as entitled to protection against injury, discrimination, and wage theft as every other employee.

(i) Neighborhood Amenities: Residents of every neighborhood are as entitled to amenities provided by the city such as cultural presentations or library services as residents of every other neighborhood.

Nothing in this Section is intended to nor shall be construed to create a binding funding obligation for the City or cause of action against the City.

Add a new section to the Charter, "ARTICLE VI SECTION 613 Equity Assessment" as follows:

(a) An equity assessment shall be conducted for the annual operating and capital budgets as contained in the Recommended Budgets generated by the City Manager each fiscal year and for major policies and programs to be decided upon by the City Council. The determination as to whether a policy or program is "major" and will require an assessment shall be made by a majority vote of the City Council or by the submission of petitions with at least 2,500 signatures from residents of the city. The process for determining when a policy or program is major, including the process for the submission of petitions, will be established by the City Council.

(b) The Assessment shall include the following elements:

- i. Does the proposed change have any disproportionate impact on racial or ethnic minorities and/or people of low-income and/or other group categorizations that have experienced discrimination?
- ii. Does the proposed change increase or decrease the level of representation of racial or ethnic minorities and/or people of low-income and/or other group categorizations that have experienced discrimination in city decision-making?
- iii. Does the proposed change increase or decrease the extent to which city officials and staff are accountable to racial or ethnic minorities and/or low-income people and/or other group categorizations that have experienced discrimination?
- iv. Does the proposed change increase or decrease the access of ethnic or racial minorities and/or low-income people and/or other group categorizations that have experienced discrimination to city decision-making?
- v. Does the proposed change increase or decrease the extent to which ethnic or racial minorities and/or low-income people and/or other group categorizations that have experienced discrimination receive a fair share of city services and benefits?

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vi. Does the proposed change increase or decrease the safety and security of ethnic or racial minorities and/or low-income people and/or other group categorizations that have experienced discrimination?

vii. Does the proposed change increase or decrease the ability of the city to meet significant needs of ethnic or racial minorities and/or low-income people and/or other group categorizations that have experienced discrimination?

(c) Equity Assessments shall be presented at a public hearing. The final draft of the Assessment must be published a minimum of two weeks before the date of that hearing.

(d) For the purposes of this Section:

i. "Access" shall mean the ability to secure information about decision-making and participate in the decision-making process to the extent permitted or authorized by law.

ii. "Accountability" shall mean the ability to lawfully impose positive or negative consequences on decision-makers.

iii. "Preparation of Equity Assessments" must include outreach to, and communication with, constituencies likely to be affected by the proposal being assessed.

iv. "Representation" shall mean the ability to affect who will be making decisions that impact a constituency and what the outcome of a decision-making process will be.

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### ~~Address Equity And Inclusion In City Programming and Budgeting~~

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#### What is the recommendation?

~~Align Department Statements of Policy and City budgeting processes with proposed Equity Values, Equity Standards, and Equity Assessments.~~

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The purpose of this recommendation is to guarantee San Jose residents are equitably included in the benefits of City services and have the benefit of equal access to City services. The Mayor, City Council and the City Manager need to promote equity and inclusion among all residents especially promote equity and inclusion among all residents especially in the budget for the City of San Jose. The absence of this requirement in the Charter has and may continue to cause inequities.

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Therefore, it is recommended the City Charter be amended with recommended language for Article IV The Council, Article V The Mayor and Article VII City Manager. This recommendation is specific adherences to the Commission recommendation on Equity Values, Equity Standards, Equity Assessments. Article IV the Council would require adherence to the Statement of Values; Article V The Mayor would require specific adherence to Equity Assessment; Article VII City Manager would require specific adherence to Equity Standards.

This recommendation was passed on Thursday, November 18th with 20 aye, 1 nay and 0 absent votes.

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### What problem(s) does this recommendation address?

In San Jose disparities among its residents impact their economic and emotional lives. The 2021 Silicon Valley Poll, produced by Joint Ventures Silicon Valley (JVSV) studied this. Russell Hancock, JVSV President and Chief Executive Officer states:

"The 2021 Silicon Valley poll—our first—finds us in a darker mood. We've long been a high-stress region. Staggering housing prices, rising homelessness, a stark income divide and a host of sustainability challenges have had us on edge for some time. But when you toss a highly infectious disease into the mix you get a smothering amount of anxiety: 60 percent of respondents say their lives have become more stressful since the pandemic set in; 52 percent feel more isolated and alone, and 66 percent are genuinely worried about the future.....Altogether, the impact on work and employment appear to have hit hardest among those who were already in precarious positons: renters, non-white respondents, low-income families, and service-sector workers who are struck hardest by high cost of living and housing."

In order to study if inequities exist within the City of San Jose Budget, the Commission Consultant was asked to study the questions: "How can a city measure equitable financial distribution of public services across the city? With these metrics in mind, how equitable is the distribution of public services across the City of San Jose's? And how do they compare to two other cities?"

The Consultant interviewed staff from the City of San José Office of Racial Equity (ORE) and reported the following:

"Since its creation in 2020, ORE has begun the process of collecting data on questions of equitable policies and distribution of resources. They are working with departments to collect equity data and assess existing policies. Currently, ORE is developing training for

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city departments to better collect and report on equity data. While ORE is working towards building a shared understanding across departments, there is no set definition of what equity means within the City. ORE is in start-up mode and ramping up capacity to take on this work in the coming years. ORE is eager to learn from the Commission's research and inquiries and has provided information, guidance, and resources to support the effort."

The Commission Consultant recommend the following process for evaluating how equitably the City's financial resources are distributed:

"Based on the limitations around equity data for service areas, it is recommended that a geographic analysis be conducted based on community indicators (ie: race, income, language, education, etc.) and allocation of city funds (capital projects, such as new facilities, street improvements, park development, or resource allocations to police and fire stations, schools, parks, etc.). Through a geospatial analysis, we would identify the districts that receive the most amount of funding (given budget allocation data that is available geographically) and cross reference these findings with the districts with a high density of people with specific socioeconomic characteristics. This analysis would shed some initial light on whether certain funding allocation is evenly distributed across the city and how a district's socioeconomic makeup correlates with the amount of funding received. This type of analysis would also provide insight into the distribution of certain funds across districts and how that distribution correlates to the population of San Jose.

Next steps would be to collect census data on these three indicators and map capital and operational financial data (for expenditures that are geographic by nature, ie: physical projects, location of services and resources)."

We recognize historical patterns of redlining, and what today appear to be overt and covert practices which disfavor the poor, persons of color who are often geographically segregated in certain neighborhoods, although home communities have been aggressively gentrified and taken away over the years.

Residents of all ages who live in crowded homes due to the high cost of housing need equitable access to City parks, libraries and community centers, as do other residents. For poorer San Joséans, these City resources represent significant health, wellbeing and educational opportunities and are vital to the lives of children, teens, adults and older adults. These individuals may have a greater need for City resources that are engaging, easily available and completely accessible to all persons regardless of physical or mental ability.

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The Mayor, City Council and the City Manager need to promote equity and inclusion among all residents and further to determine if there are violations of the Civil Rights Act of 1964 that occur and must be remedied. The data that documents the historical impact of City policies and practice on the most disadvantaged neighborhoods is long overdue and would provide the data that the community's life experience already knows, and the eye can tell what is undeniable injustice.

### **Why is this particular change being recommended?**

The purpose of this recommendation is to guarantee San José residents are included in the benefits of City services and have the benefit of equal access to City services.

The distribution of City of San José resources equitably among all residents, throughout all areas of San Jose is not required per the City Charter. Policies that guarantee residents of San José shall receive equal access to City Resources do not exist. The absence of this requirement in the Charter has and may continue to cause inequities. Thus the Charter does not prevent inequities by ensuring equity for ALL City residents. The goal of this recommendation is to create Equity and Inclusion.

This recommendation needs to be a Charter revision because the Charter gives the Mayor, City Manager certain duties and responsibilities with respect to the City finances. However, equity is not addressed. This will require the Mayor, City Manager and City Council to address equity within the context of their existing responsibilities.

Research to determine if other cities have adopted similar charter amendments is necessary, but we believe this change is feasible per these conditions:

- It appears not to contradict existing Charter language or policies.
- It will require extra work on the part of the Mayor, City Council and the City Manager, however this work may be in conjunction with the work of the Office of Equity and Inclusion.
- Legal research will be required to ensure there are no legal barriers to implementing this.

All residents of San José will benefit from this change. Living in a city that respects and treats all of its residents equitably creates a safer and more prosperous community. This helps business and creates more opportunities for those in need. The consequences may be that those who have received unfair advantages may need to receive less City services.

### **What are the arguments against this proposal?**



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The status quo is the current process of budgeting and expenditures which does not have a formal way of addressing equity and inclusion. The current and recent Mayors, City Council Members and City Managers appear to collaborate well in their service, so equity and inclusion are considered and promoted in preparing the City's budget and allocating resources. For this reason, some will argue that this good work occurs without the recommended City Charter language. However, continued improvement in this area of equity and inclusion is the very reason to add this language. The goal should be to maintain equity and to guarantee it will always be the way the City of San Jose conducts its business.

### Proposed Charter Language

*NOTE: The following amendments reference the proposed new ARTICLE VI sections in the preceding "Establish Equity Values, Equity Standards, and Equity Assessments" recommendation, "SECTION 610 Statement of Values", "SECTION 611 Definitions", "SECTION 612 Equity Standards," and "SECTION 613 Equity Assessment."*

Amend "ARTICLE IV THE COUNCIL, SECTION 411.1 Department Heads; Policy Objectives; Consent to Hire" as follows:

The Council shall adopt a written Statement of Policy for each City Department which is under the administration of the City Manager. Said Statement of Policy shall set forth the board goals, objectives and aspirations to be accomplished by that Department. **The Statement of Policy shall adhere and follow specific criteria as set forth in [the CRC proposed] "ARTICLE VI SECTION 610 Statement of Values".**

Amend "ARTICLE V THE MAYOR, SECTION 502 The Mayor; Powers and Duties" as follows:

The Mayor shall have the following duties:

(d) If the Mayor recommends any increases in the City budget The Mayor shall recommend the method of financing such expenditures **and ensure that both of these methods for financing and these recommendations for increases adhere to [the CRC proposed] Article VI Sections 610, 611, 612, and in particular 613 Equity Assessment.** If the Mayor proposed the curtailment of any services, the Mayor shall provide specific recommendations and the reasons for the proposal. **If the Mayor, upon receiving an Equity Assessment, as set forth in Article VI Section 613 Equity Assessment, which results in portions of the budget that do not adhere to Article VI Sections 610, 611, 612, and 613, shall recommend remedial action.**

Amend "ARTICLE VII CITY MANAGER, SECTION 701 City Manager; Power and Duties" as follows:

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(e) The City Manager shall prepare and submit the annual budget to the Council in accordance with the provisions in Section 1204. **Each section of the budget will be evaluated in accordance with Article VI Section 613 Equity Assessment and adjusted to adhere with Article VI Section 612 Equity Standards.**

(f) The City Manager shall submit a complete report on the finances and administrative activities of the City as of the end of the preceding fiscal year.... **The annual report will address in detail to the provisions in Article VI Sections 610, 611, 612, 613 .**

### Establish Regular Department-Level Audits

#### What is the recommendation?

Ensure that department-wide performance audits are conducted for all city departments, to assess key performance against their mission, goals and objectives in order to ensure accountability and fiscal responsibility. Constituent-facing departments shall get a department-wide performance audit at least every 6 years, while remaining departments shall get a department-wide performance audit at least every 12 years.

This recommendation was passed on Thursday, November 18th with 18 aye, 3 nay and 1 absent votes.

#### What problem(s) does this recommendation address?

This recommendation is intended to remove political pressure from the decision-making process and to bring greater financial accountability for San José.

The City Auditor function as currently enshrined in the Charter has two shortcomings:

1. Auditing topics are entirely determined by the city council;
2. The lack of department-wide auditing.

The San José City Charter Section 805 prescribes the powers and duties of the City Auditor's office. The Charter also grants the Auditor's Office access and authority to examine all records of a City department, office or agency. The performance audit function that the Auditor's Office conducts is an essential element to hold the City's operations and services accountable, efficiency and effectiveness.

Under the current process, the Auditor's Office prepares an "Annual Audit Work Plan". The methodology for determining the work plan contains multiple factors and the results are outlined

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in a “Risk Matrix.” The potential “audit subjects” on the “Annual Audit Work Plan” could be from staff, City Council or members of the public. The City Auditor submits the “Annual Audit Work Plan” to the Rules and Open Government Committee (i.e., The Rules Committee) for review and approval.

The Rules Committee makes the determination of the annual auditing tasks that the Auditor’s Office will conduct in the next fiscal year. The Rules Committee can accept or partially accept the City Auditor’s recommendation, or choose to completely ignore the City Auditor’s recommendation.

The current determination process of “audit subjects” could potentially result in some departments or budget units to be consistently left out of audits and never get audited.

Additionally, the Auditor’s Office has primarily focused on specific areas of a city department and conducts in-depth auditing on that area. While smaller scale auditing is important, department-wide performance auditing is critical and essential to track key performance goals for the city’s services, and currently the department-wide performance auditing were barely conducted. The absence of such auditing on a regular basis could result in the misuse of city resources, lack of accountability and even corruption. Larger-scale departmental audits are necessary to ensure taxpayer resources are being spent in a fiscally responsible manner to ensure the highest quality of service to our community.

Increased accountability of all city services benefits every San José resident by ensuring fiscal responsibility and maximum quality of service, especially for underserved communities who rely heavily on city services, resources and support.

### **Why is this particular change being recommended?**

We believe this change is feasible and necessary to ensure and increase accountability. San José has an audit function in place already. This simply adds a larger scope to the current audit process to ensure a higher quality of oversight and accountability for taxpayers.

Every San José resident benefits from this change by providing an increased level of accountability and oversight for our communities. This recommendation would ensure that no part of any City department goes unaudited for more than a 12-year period. It helps detect fraud, embezzlement, and any other crimes as well as it identifies potential ways to decrease spending and increase efficiency. This improves financial accountability in the City of San José.

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This recommendation needs to be a Charter revision in order to ensure this is an unbiased approach that will not be influenced by elected officials or impacted department staff, it must be a Charter revision.

### **What are the arguments against this proposal?**

It may require increasing the budget and capability of the Auditor's Office.

Workload and budget for the Auditor's office are likely to increase.

This change may take away resources from areas where auditing is more important.

### **Proposed Charter Language**

Add a new section to the Charter "ARTICLE VI SECTION 805.3 Department-Wide Performance Audit" as follows:

A department-wide performance audit must be conducted to all city departments, to assess key performance against its mission, goals and objectives in order to ensure accountability and fiscal responsibility.

The constituent-facing departments shall get a department-wide performance audit at least every 6 years, while the remaining department shall get a department-wide performance audit at least every 12 years.

The auditor report shall be presented at public meetings, with trackable correction action items and follow ups.

## Policy Recommendations

### **Create A Climate Action Commission**

#### **What is the recommendation?**

Create a "Climate Action Commission" (CAC) in the municipal code, composed of a combination of 17 community members and Special Eligibility Seats to study, create reports, and recommend policy and programs that help to address and mitigate the impacts of Climate Change.

#### **1. MEMBERSHIP:**

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- a. Ten (10) District Representatives (1 per district) and 1 Citywide appointed by Council and the Mayor,
- b. Up to two (2) individuals nominated by and representing the interests of Muwekma Ohlone Tribe (county residency requirement only),
- c. Up to Three (3) individuals representing fields of Science, Ecology, Biology, Food Systems, or from Community Based Non-profits (county residency requirement only),
- d. One (1) Attorney-at-Law (county residency requirement only).

Similar to the Housing and Community Development Commission collaboration with the City Staff of the Housing Department, the CAC may be supported by, or receive reports from any of the following departments/other commissions but not limited to the Youth Commission, Senior Citizens Commission, Environment Service Department, Climate Smart Program, Department of Transportation, as necessary to ensure informed decisions on policy or program recommendations to Council. Current employees of the City of San Jose are not eligible to serve on this Commission, as they already have a path for giving input to the City of San Jose and we do not want an echo chamber, but rather fresh ideas flowing to City Council and the Mayor.

Before making a policy or program recommendation, the CAC should conduct public hearings on their recommendations to solicit community feedback.

CAC ~~shall~~~~ould~~ develop a work plan that aligns with the Chicago Climate Charter, signed by current Mayor Sam Liccardo in 2017, and prioritizes the following directives:

- e. 1. Reduce greenhouse gas emissions by a percentage equal to or exceeding their home nation's commitment;
- f. 2. Track, measure, and report the data;
- g. 3. Empower cities through collective action;
- h. 4. Engage all communities, especially nontraditional voices, in policy formation;
- i. 5. Integrate climate risks into infrastructure and emergency planning;
- j. 6. Support policies and actions that incorporate the cost of carbon and support those most affected;
- k. 7. Partner broadly for robust solutions.

This recommendation was passed on Thursday, November 18th with 16 ayes, 5 nays and 1 absent votes.

**What problem(s) does this recommendation address?**

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Climate change is expected to impact people of all ages, for generations, but underserved communities first and most. Climate change poses immediate and long-term threats to the City's economy, public health sustainability, security, and quality of life, especially those of low-income with the least resources. The potential adverse effects of global warming include a rise in sea levels resulting in the displacement of businesses and residences, especially those living in the Alviso Community in District 1. As such, the Commission has heard that residents have been asking for greater inclusion in the creation of climate change mitigation strategies on a city level.

Furthermore,

"The largest impact of climate change is that it could wipe off up to 18% of GDP off the worldwide economy by 2050 if global temperatures rise by 3.2°C, the Swiss Re Institute warns." - World Economic Forum

"Climate change is going to amplify the already existing divide between those who have resources and those who do not, Eliot Levine, Director of the Environment Technical Support Unit at Mercy Corps." - Global Citizen

"Boulder climate action could save millions of lives each year by 2040" - Reuters

The facts and data on San Joseans, especially BIPOC, low-income, immigrants, and those experiencing houselessness will be impacted by climate change as follows include:

1. According to U.S. Census Data, approximately 88,152 (8.7%) San Jose residents are considered to be living in poverty.
2. Data from the U.S. Census Bureau's American Housing Survey, which tracks whether households have heating and cooling, shows that just over 47% of the Bay Area's 1.7 million households had air conditioning in 2019, the last year of published data.
3. In the second half of the 2010s, the share of Bay Area households with air conditioning increased more than 10 percentage points, from 36% in 2015 to 47% in 2019.
4. "Higher temperatures will increase annual electricity demand for homes, driven mainly by the increased use of air conditioning units," a statewide climate change assessment report said.
5. The effects of climate change can be expected to shave 11 percent to 14 percent off global economic output by 2050 compared with growth levels without climate change, according to a report from Swiss Re, one of the world's largest providers of insurance to other insurance companies. That amounts to as much as \$23 trillion in reduced annual global economic output worldwide as a result of climate change.

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6. "There is no doubt that global demand for space cooling and the energy needed to provide it will continue to grow for decades to come," according to a 2018 report by the International Energy Agency, a global consortium of countries that advocates for clean energy and energy security. "If left unchecked, energy demand from air conditioners will more than triple (globally) by 2050."

### Examples of how climate changes has impacts on San Jose residents include:

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1. 2017 Coyote Creek Floods "...heavy rain caused a deluge that put hundreds of San Jose households underwater, displaced 14,000 people in three neighborhoods and left behind \$100 million in damages" - San Jose Spotlight
2. "Red-flag warning called or much of Bay Area as dry-lightening threat approached." - San Jose Mercury News, 09/09/21
3. "As climate change makes heatwaves increasingly common, poor neighborhoods in the Bay Area and across the country are experiencing hotter ..." - San Jose Mercury News, 07/09/21
4. "2nd heat wave heading to Bay Area could bring record-high temps" - ABC 7 News, 06/22/21
5. "Here's why the Bay Area has yet to see terrible air quality this fire season..." - San Francisco Chronicle 09/16/21
6. Hazardous Air: San Jose Closes Parks; 'We Have Smoke Coming At Us From Virtually All Directions'" - CBS SF Bay Area
7. "Wildfires made California air quality among worst in the world ..." - San Jose Mercury News, 03/17/21

Impacts of extreme and unpredictable weather events have already been felt locally and with increasing occurrence. ~~I, while the City of San José programs Climate Smart Program only address subjects likeses electrification, and future building standards, buying potentially cleaner energy for increased fees, and locating electric cars for purchase, for example. There is a gap to address the current and very immediate impacts of the climate crisis, especially fiscally for the least resourced communities.~~

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In 2017, Mayor Sam Liccardo signed the Chicago Climate Charter alongside mayors of 40 major U.S. cities. In doing so, Mayor Liccardo, prioritized the following directives:

1. Reduce greenhouse gas emissions by a percentage equal to or exceeding their home nation's commitment
2. Track, measure, and report the data
3. Empower cities through collective action

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4. ~~Engage all communities, especially nontraditional voices, in policy formation~~
5. ~~Integrate climate risks into infrastructure and emergency planning~~
6. ~~Support policies and actions that incorporate the cost of carbon and support those most affected~~
7. ~~Partner broadly for robust solutions for climate resiliency~~

~~The Commission has heard that residents are asking for greater inclusion in the creation of climate change mitigation strategies on a city level.~~

### Why is this particular change being recommended?

The ~~PMLAI Ad Hoc Subcommittee~~Commission believes the City of San Jose should collaborate more with its very intelligent and climate conscious ~~and caring~~ residents to take coordinated actions to prepare City services and residents for the ongoing impacts from climate change. Residents of all ages, but especially our youth, deserve to have an organized, City-supported platform to independently study, create, and recommend policy and programs to the City Manager and to the Council that address the impacts of global warming and climate change.

This recommendation will benefit the people of San José for generations to come, as there are ~~no shortages of climate impact headlines in the news at the moment, including the most recent Intergovernmental Panel on Climate Change Report and the 2021 United Nations Climate Change Conference (COP26).~~

An example of the dire urgency for this commission to study climate mitigation is that in June of this year (2021), an extreme heat event in Western Canada actually cooked to death over 1 billion clams, mussels, and other marine animals that lived on a beach. An FLIR thermal imaging camera found surface temperatures topping 125 degrees Fahrenheit, hotter than reported by weather stations. Lytton, British Columbia, broke Canada's all-time record reported by weather stations on June 30 when the temperature topped 121 degrees. The town was all but destroyed in a deadly wildfire. As a result, there were 719 deaths reported to the province's coroners between June 25 and July 1, 2021. The average temperature in Lytton, B.C. is 38.2 degrees Fahrenheit and it gets 37.8 inches of rain per year. San Jose's average temperature is 68.9 degrees Fahrenheit, and we get about 17 inches of rain per year. We are much hotter and dryer than Lytton. We must prepare residents for summers that reach 125 degrees Fahrenheit, or hotter, drought, and continuous seasonal wildfire smoke. Mass cooling centers will be needed soon.

City Staff time from associated Departments, such as but not limited to Offices of the City Clerk, City Attorney, Environmental Services Department, etc. would need to be allocated for support, reporting, and implementation should Council accept any of the policy or program

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recommendations from the CAC. The San Jose Office of Emergency Management might be the department that should staff this commission. It is feasible to create a Climate Action Commission since the City already supports over 29 boards and commissions that have various powers and duties to study, create, and recommend policy and/or programs to Mayor and Council. The CAC would follow a similar form and structure.

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### What are the arguments against this proposal?

1. Duplication and redundancy with San Jose's Clean Energy Community Advisory Commission.

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Response: The San Jose's Clean Energy Advisory Commission, **does not address climate change**. It provides feedback and input on the development of strategy and operating principles or models to inform the prioritization and development of energy programs, particularly electrification.

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Furthermore, clean energy is a highly important and very technical subject that requires commissioners to have a particular interest in energy, so we think this commission is more useful as a stand-alone commission with its somewhat narrow focus.

2. Duplication and redundancy with Climate Smart Program.

Response: We have other problems that impact our local resilience like food insecurity, water insecurity, energy cost and availability (especially during heatwaves), fire, additional cooling centers needed, etc. We need a **separate resident-led commission** set up to address the broad and unanticipated threats that will result from global heating and regional climate change. For example, greater accountability in reporting fossil fuel use and in mitigating the effects of climate change in San Jose is needed, among many other suggestions shared by residents.

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The Climate Smart program sits at a policy level and reflects specific city programs. It has low public participation in its public facing programs. It does not take regular public input through hearing and testimony. The gold standard would be to solicit ideas from the residents of the City of San Jose, with their lived experiences, professional education, intellectual resources, and powerful desire to not suffer in natural and man-made disasters. We think the lack of community engagement and empowerment to participate in finding solutions and presenting those solutions to Ceity Ceouncil, Ceity Mmanager, and the Mmayor is what is causing the apathy in participating in the public facing Climate Smart programs.

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This proposal works to support the Mayor's Chicago Climate Charter goals, and resolve the problem with Climate Smart, and thus would support and enhance Climate Smart by providing it with public feedback and additional proposed solutions, as well as outreach.

### Other Examples of commissions similar to the Climate Action Commission:

1. The City and County of Honolulu has voter-approved Charter language that created a **Climate Change Commission which sits in their City Charter.**
2. Citizen-oriented climate change commissions are now operating in many cities across the state of California, the country, and the world. Such as Vermont, Virginia, Los Angeles, San Francisco, Oakland, Alameda, Berkeley, Chico, Solano Beach, Petaluma and San Anselmo. Many nations in Europe have climate action commissions, particularly those who are part of the EU.
3. Chicago Climate Charter. It's report contextualizes the North American Climate Summit in the broader arc of climate action, outlines the commitments made by signatories to the Chicago Climate Charter, and provides recommendations for cities seeking to accelerate their sustainability efforts.

The creation of this commission would help coordinate a mutual government-resident response to climate disasters specifically. While City government may not be able to protect the numbers of people that may suddenly need protection, it can give an official platform for residents to develop and create family and neighborhood response ahead of an impending crisis, with more expanded information about neighborhood-specific climate threats.

## Support A Community Opportunity to Purchase Act

### What is the recommendation?

Support policies that will prioritize establishing and continuing to support a Community Opportunity to Purchase Program (COPA) and creating new sources of funding for affordable housing community ownership models and anti-displacement and the continuation of tenant protections. Following the example of San Francisco and Washington D.C.

This recommendation was passed on Thursday, November 18th with 16 ayes, 5 nays and 1 absent votes.

### What problem(s) does this recommendation address?

Over the last few years, neighborhoods have rapidly changed before our eyes, with increases in home sales and evictions of dozens of families. Many of our neighbors have been displaced; we

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## San José Charter Review Commission Final Recommendations DRAFT

are seeing the destabilization of our once culturally rich communities; culture and heritage are being erased from spaces; and local, family-owned businesses have closed. The City's "Community Strategy to End Displacement in San José Report (2019)" provides data on the urgent need to create preventative measures to staff displacement and its impact on communities of color.

According to a staff memorandum:

"A 2016 report from Urban Habitat found a significant regional out-migration of Black and Latinx households to outlying areas of the Bay Area or to neighboring counties like San Joaquin and Stanislaus. Further, a 2018 study from the California Housing Partnership and the Urban Displacement Project found that rising housing costs have led to large increases in Black and Latinx households living in high poverty, segregated areas. Between 2000 and 2015, the study found a 15% increase in the number of Black households and 100% increase in the number of Latinx households living in segregated and high poverty neighborhoods in the Bay Area."

Furthermore, locally:

"According to UDP research (memo pg 18), 43% of all census tracts in San José are either at-risk of or are experiencing ongoing displacement. While all City Council districts are experiencing some level of displacement, Council Districts 3 and 5 have the highest number of census tracts with either ongoing displacement or being at-risk of displacement. Latinx households are overrepresented in these areas. In San José, 47% of all Latinx households and 45% of all Black households live in areas categorized as experiencing ongoing displacement or at-risk of displacement."

### **Why is this particular change being recommended?**

This recommendation seeks to promote and improve accountability, representation, and inclusion under a racial equity lens within the housing department and anti-displacement efforts at the City of San José by promoting and supporting a Community to Purchase Act (COPA) that promotes the prevention of tenant displacement, and creation and preservation of community-owned affordable housing to build a more just and equitable city. Preservation strategies are needed in order PREVENT further displacement, segregation, a negative quality of life, and generational poverty. Preservation strategies often struggle for funding sources and commitment from cities, which ultimately impacts BIPOC (Black, Indigenous, People of Color) and low income families. Preservation strategies are necessary to address long term affordability and to complement our housing production goals and no net loss ratios. Preservation strategies are key to ensure BIPOC families do not experience homelessness and a cycle of institutional violence.

## San José Charter Review Commission Final Recommendations DRAFT

Protecting tenant rights, producing affordable housing and investment should be seen as a long term priority as part of our vision to cement our cities commitment to ending displacement and materializing housing as a human right.

Additionally, this recommendation aligns with the City's newly created Office of Racial Equity in advancing systems change through a citywide racial equity framework that will examine and improve San José's internal policies, programs, and practices to eradicate any structural and/or institutional racism in the City of San José.

"This includes a focus on enabling the organization, at all levels and in all departments, to identify ways to improve outcomes for Black, Indigenous, LatinX, and People of Color."

This recommendation also aligns with the overall San José Anti-Displacement goals and strategies set for with community input, housing department direction, and City Council Board approval. The 10 recommendations in this multi-year Strategy are designed to complement each other and are listed below. The recommendations are prioritized by timing, from near-term to medium-term.

1. Support Equitable COVID-19 Recovery and Impact Mitigation Measures for Renters and Homeowners
2. Establish a Neighborhood Tenant Preference for Affordable Housing
- 3. Explore a Community Opportunity to Purchase Program/Ordinance (COPA)**
4. Increase Equitable Representation of Historically Underrepresented Communities on City Commissions
5. Create a Role for Local Government in State Tenant Protections
6. Increase Housing Quality and Prevent Code Enforcement-related Displacement
7. Create a Preservation Report and Policy
8. Develop YIGBY Land Use - Yes in God's Backyard
9. Optimize Urban Villages for Affordable Housing Development and Anti-Displacement
10. Establish New Sources of Funding for Affordable Housing and Anti-Displacement

Lastly, this recommendation also aligns with our Commissioner Agreement of "We Value Diversity":

*"We believe that bringing together a broad range of ideas, experience and backgrounds will result in the best outcomes for San José. We keep an open mind and seek to learn from others."*

## San José Charter Review Commission Final Recommendations DRAFT

As COPA attempts to address historical and current discrimination based on home ownership and opportunities to build wealth, the aforementioned staff memo highlights the racial impacts of home ownership:

“In San José, Black households have a homeownership rate of 33%. The homeownership rate for Latinxs is 41%. In comparison, White households have the highest homeownership rate in the City at 66%.

Furthermore, COPA attempts to address the racial impact of the 2008 foreclosure on BIPOC Communities. From 2007 to 2010 East San Jose was named “Ground Zero” of the foreclosure crisis and nationwide black and latinx communities were 2 to 2.5 times more likely to experience foreclosure than their white peers. Wealth building is connected to asset ownership, and value of assets owned by BIPOC communities is also impacted by racism. Housing displacement greatly impacts black and latinx residents as it relates to affordability, home stability and overcrowded homes, as well, which greatly impacted families during the covid pandemic and caused health harms. Unemployment and other economic barriers tied to housing leads to overrepresentation of black and latinx families in the homeless count.

Cities throughout the country, such as San Francisco and Washington D.C., have implemented COPA and TOPA in efforts to support anti-displacement and build ownership possibilities for tenants. San José can do the same. Displacement is happening now! The need to continue supporting and establishing a neighborhood tenant community own housing needs to be prioritized as a long term solution.

We can no longer wait, nor be scared of housing co-op’s or community land trusts, because we have seen these policies make changes in cities like San Francisco and Washington D.C. This recommendation will benefit communities that have historically been impacted by redlining, housing segregation and historical disinvestment in communities that majorly have affected Black, African American Descent, Indigenous, LatinX, and People of Color.

Co-op and community ownership models have already been discussed by city council as a method to address the impact of displacement. In the future this policy could be a Charter amendment as the city continues to work to implement this policy to combat anti-displacement and promote the prevention of tenant displacement.

### **What are the arguments against this proposal?**

The following frequently asked questions from [ORGANIZATION] address some of the arguments against this proposal.

## San José Charter Review Commission Final Recommendations DRAFT

### Frequently Asked Questions - Landlords

1. *Does COPA force me to sell my rental property before I want to sell it?* No. COPA does not force an owner to sell before they are ready. When you choose to sell, COPA provides a process for existing tenants to remain in the property by purchasing it themselves, or assigning their purchase rights to a qualified organization. If tenants/qualified organizations do not respond or waive their purchase rights, the owner can proceed to sell the property on the market.
2. *Does COPA control the price owners can sell their property for?* No. Owners receive fair market value for the sale of their property under COPA. The owner has the right to accept or reject the initial offer they receive from tenants or qualified organization. If an owner rejects the initial offer and subsequently receives an offer, from another buyer, they want to accept then tenants/qualified organizations have a certain amount of time to match the offer and purchase the property.
3. *Will COPA prevent me from transferring my property to my family?* No. COPA exempts transfers even when money is offered between immediate family members including the spouse, domestic partners, parents and child siblings, grandparents and grandchild.
4. *Can I market my rental property for sale before complying with COPA?* No. COPA requires sellers of rental properties to give existing tenants and qualified organizations the exclusive opportunity to make an offer before marketing it to other buyers.
5. *Who would I have to notify that I intend to sell my rental property and how long would they have to respond?* You would notify existing tenants and a list of qualified organizations vetted by the city. You would also file copies of the notices with the city. Tenants and qualified organizations would have time to submit a statement of interest.
6. *If I accept the offer from tenants or a qualified organization, what happens?* You enter into contract. Your contract should include a financing contingency that complies with COPA timelines for securing financing, giving the tenant/qualified organization sufficient time to secure financing and close the deal.
7. *If I reject the initial offer from tenants, or qualified organization, what happens?* You're then free to solicit offers on the market. If you receive an offer you would like to accept or make an offer that another buyer would like to accept, you would need to notify the tenants or qualified organizations (whoever submitted the initial offer) and give them an opportunity to exercise their right of first refusal to match the offer.

### Frequently Asked Questions - Tenants

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1. *If my landlord decides to sell the property, what are my options?* You can decide to make the first offer on the property. Choose a qualified organization to assign your rights to or waive your rights altogether by choosing not to respond.
2. *What does the COPA process look like?*
  - a. Landlord decides to sell their property,
  - b. Landlord notifies tenants and qualified organizations of intent to sell.
  - c. If tenants are interested in purchasing or assigning their rights to a qualified organization, majority must submit a collective statement of interest to the owner.
  - d. If tenants do not submit a statement of interest qualified organizations may submit a statement of interest to the landlord and go through a similar process.
  - e. If no qualified organizations submit a statement of interest, then the landlord can proceed to sell on the open market.
3. *If my only option is my only option to purchase the property?* No. If you wish to stay in your home but do not wish to purchase or find that it is financially infeasible for you to purchase, you can choose to assign your COPA rights to a qualified organization who may be ready and willing to purchase. The city of San Jose will maintain a list of qualified organizations Non-Profit Housing, Community Land Trust's and cooperatives that are committed to permanent affordability, partnering with tenants and keeping you in your home.
4. *If I choose to remain a renter and a qualified organization purchases the building will I still have tenant protections?* Yes. Tenants would continue to be able to live there, either as owners or as tenants with tenant protections, and the enforcement of tenants rights under existing local, state and federal laws. The policy is designed to not lead to any internal displacement as a result of COPA sales. As a tenant COPA ensures tenant protections post purchase, including Just Cause Eviction and rent control.

### Frequently Asked Questions - Racial Equity

1. *What are some of the racial equity policy goals of COPA?* The most important racial equity goal of COPA is to reduce displacement which disproportionately impacts the Black and Latinx communities in San Jose. By opening up pathways to ownership for tenants COPA also represents an opportunity to reduce barriers to homeownership. Historic barriers to homeownership, like redlining, have led to the racial wealth gap. And this wealth gap is clear in home ownership numbers broken down by ethnicity. COPA represents one part of a strategy to confront this racial wealth gap.
2. *Given that many of San Jose's black and Latinx residents have already been displaced, how can we ensure that this policy still benefits black and Latin X people with ties to San Jose?* While COPA is initially going to benefit those who are already in a building to help them stay there would be opportunities with vacancies in COPA buildings to rehouse people

## San José Charter Review Commission Final Recommendations DRAFT

displaced in the past. COPA is about preventing displacement of current residents and through the creation of permanently affordable housing creating a more accessible and less exclusionary San Jose in the long run.

3. *What are the impacts of COPA on integrational wealth building in communities of color?* COPA exempts transfers even when money is offered between immediate family members including spouses domestic, parent and child partners, siblings, grandparent and grandchild, COPA also does not interfere with transfers of property to one's heirs upon the death of the owner. This applies to properties bought by tenants as a result of the COPA program as well.
4. *How will this impact property owners for whom their rental property is one of their only assets?* Property owners selling under COPA will still get fair market value when selling their property.
5. *Why should property owners of color who have had to come up against systemic discrimination have to comply with a process for how they sell their property?* The impacts of property owners from the COPA policy are minimal. Property owners can still sell to family and COPA does not interfere with estate. For those property owners who do participate. The COPA process adds time, but does not control the sales price. At the same time, the potential positive impacts of marginalized renters and for making San Jose a less exclusive place into the future our large. People of color benefit disproportionately when displacement is reduced, and tenants have the opportunity to become homeowners.

### ~~Promote The Promotion of Home Ownership Opportunities for Low Income Residents of San José~~

#### What problem does this recommendation address?

Today, all San Jose residents experience dramatic rising costs for home ownership. Within Santa Clara County, San Jose is the largest and fastest growing housing center, yet low income residents do not find homes for purchase affordable on their otherwise adequate income. Today, San Jose is experiencing a housing crisis. The cost of mortgage or rental payments are out of reach for many low income residents. Many individuals and families must live in crowded shared homes and apartments.

The City of San Jose has policies which protect the environment by preserving surrounding rural lands, preserve commercial property which may present future business and employment opportunities, and control the cost for the City of San Jose caused by the growth in the city. Many of these requirements are contained in the San Jose City Charter Article XIX An Act to Limit Urban Sprawl and the Fiscal and Environmental Effects of Specified Development in Outlying Areas.

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## San José Charter Review Commission Final Recommendations DRAFT

However, the City Charter does not address the serious housing crisis faced by City Residents.

The key findings of a new report issued by Joint Venture Silicon Valley titled “2021 Silicon Valley Poll” sought to identify how residents of Silicon Valley are feeling especially now as they are impacted by the pandemic in addition to pre-pandemic stressors:

- “56% of respondents say they are likely to leave the region in “the next few years.” This is a nine-point uptick from 2020 when the same question was posed by a pre-pandemic survey.”
- “The general cost of living (84%) and high housing costs (77%) are the top two reasons cited for wanting to move.”
- “76% of the respondents identify the cost of housing as the most serious problem in the Bay Area, followed by the cost of living, homelessness, the increasing frequency of wildfires and drought.”
- “40% of overall respondents feel financially insecure. Higher percentages of Hispanic or Latino/a and Black or African Americans self-identify as insecure.”

### **How has this problem possibly benefitted or burdened people, especially Black Indigenous People of Color, low-income, undocumented and immigrant, those experiencing houselessness?**

The low income sector of San Jose has been most severely impacted by the high increases in the cost of housing in Silicon Valley. This has led to severe crowded living conditions where more than one family must share a small house or apartment, and the numbers of unhoused individuals in our community illustrate injustice and wearing hopelessness. Individuals identified as middle class such as younger generation teachers, law enforcements, manager in the service areas face the burden of high rental costs and mortgages that are outside their income levels.

This proposal seeks to start addressing the needs of those with the highest burden, the low income population.

### **What is the recommendation?**

The following policy is recommended to City Council:

San Jose residents experience dramatic rising costs for home ownership. Within Santa Clara County, San Jose is the largest and fastest growing housing center, yet low income residents do not find homes for purchase affordable on their otherwise adequate income.

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San Jose already made policies which protect the environment by preserving surrounding rural land, preserve commercial property which may present future business and employment opportunities, and control the cost of City of San Jose services by centralizing housing growth.

The following policy recommendation to the San Jose City Council to explore establish new policies and practices to support the purchase of Affordable Housing by low income San Jose residents while not impacting existing policies or resources available to support affordable rental housing for its residents.

The Promotion of Home Ownership Opportunities for Low Income Residents of San Jose policy recommendation has the goal to meet this need which is vital to the long-term sustainability of San Jose as home to its residents.

The following definitions are proposed for consideration for this policy recommendation:

- (a) Low Income Residents: Defined by 60% AMI or some other widely acceptable measure in the future
- (b) Affordable Housing: Somebody should pay no more than 30% of their income for a mortgage
- (c) House for Purchase: includes detached houses, condominiums, town houses, duplexes etc.

City Council should explore the following policy intended to directly assist San Jose residents who otherwise are not able to purchase a home in San Jose because their salary will not qualify them to purchase available homes for sale. This policy shall not impact already existing or future land that provides rental housing. Policy elements should include:

1. At least every other year, the Mayor and City Council shall conduct a comprehensive study which identifies opportunities that will assist San Jose residents to purchase a home. Examples of potential opportunities are City, County, State or Federal legislative acts, efforts by the business or philanthropic sectors seeking to improve the quality of life in the city of San Jose by supporting the expansion of home ownership by low income San Jose residents. This analysis shall be considered a major policy requiring an Equity Assessment.
2. Upon identifying opportunities per the study, the Mayor and City Council will delegate the responsibility to pursue, promote and participate in these opportunities for home purchase for its residents starting with low income residents.

## San José Charter Review Commission Final Recommendations DRAFT

3. On a regular basis the City of San Jose shall identify land not currently zoned for housing which is highly suitable to convert to land to be used for affordable housing for purchase. This section shall not apply to land covered by City Charter Article XIX.
4. As the City of San Jose negotiates new business developments, Community Benefit programs to assist low income residents, as defined by the City Housing Department, to achieve home ownership, shall be included.
5. Additional policies and programs to promote homeownership by low income residents which are subsidy, incentive and educational based, including those that are voluntarily rather than regulatory based, shall be explored.
6. This policy recommendation shall incorporate racial and social equity analysis to promote the use of an “equity lens” during its implementation. An equity lens is a tool used to improve planning, decision-making, and resource allocation leading to more racially equitable policies and programs. For any policy or project included in this recommendation decision makers could consider:
  - a. Structural Equity: What historic advantages or disadvantages have affected residents in the given community?
  - b. Procedural Equity: How are residents who have been historically excluded from planning processes being authentically included in the planning, implementation, and evaluation of the proposed policy or project?
  - c. Distributional Equity: Does the distribution of civic resources and investment explicitly account for potential racially disparate outcomes?
  - d. Transgenerational Equity: Does the policy or project result in unfair burdens on future generations?
  - e.

*This is a policy recommendation that was initially presented to the Commission as a Charter recommendation. The Commission voted to not approve as a Charter recommendation. This policy recommendation was passed on November 18<sup>th</sup> with 12 aye, 9 nay and one absent vote.*

### **Who might benefit or be burdened by this change?**

The direct beneficiaries of this proposal are Low Income Residents defined above as “60% AMI or some other widely acceptable measure in the future.” There is no identified burden from this policy recommendation.

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### **What are the arguments against this proposal?**

Arguments against this proposal are not expected. No such data has been identified.

### **Why is this a policy recommendation to City Council?**

The housing crisis in San Jose includes the burden faced by low income working residents who most likely will never be able to buy a home in their city. This reality appears to be cemented into the local economy. This policy recommendation contains proactive, result orientated support toward the possibilities of home ownership for these residents which City of San Jose leaders shall implement if approved by the San Jose City Council.

### **Are there other example of this policy recommendation?**

Research to determine if other cities have adopted similar charter amendments will be necessary.

### **Relevant links:**

2021 Silicon Valley Poll

2021 Silicon Valley Index

Joint Venture Silicon Valley

84 W. Santa Clara St.

San Jose, CA 95113

[www.jointventure.org](http://www.jointventure.org)

### **What is the recommendation?**

The Commission recommends that Council explore new policies to support the purchase of affordable housing by low income San José residents while not impacting existing policies or resources available to support affordable rental housing for its residents.

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## San José Charter Review Commission Final Recommendations DRAFT

The following definitions are proposed:

- ~~1. Low Income Residents: Defined by 60% AMI or some other widely acceptable measured in the future~~
- ~~2. Affordable Housing: Somebody should pay no more than 30% of their income for a mortgage~~
- ~~3. House for Purchase: includes detached houses, condominiums, town houses, duplexes etc.~~

Council should explore the following policy to directly assist San José residents who otherwise are not able to purchase a home in San José because their salary will not qualify them to purchase available homes for sale. This policy shall not impact already existing or future land that provides rental housing. Policy elements could include:

- ~~1. At least every other year, the Mayor and City Council shall conduct a comprehensive study which identifies opportunities that will assist San José residents to purchase a home. Examples of potential opportunities are City, County, State or Federal legislative acts, efforts by the business or philanthropic sectors seeking to improve the quality of life in the city of San José by supporting the expansion of home ownership by low income San José residents. This analysis shall be considered a major policy requiring an Equity Assessment.~~
- ~~2. Upon identifying opportunities per the study, the Mayor and City Council will delegate the responsibility to pursue, promote and participate in these opportunities for home purchase for its residents starting with low income residents who have continuously resided in San José for a minimum of ten years.~~
- ~~3. On a regular basis the City of San José shall identify land not currently zoned for housing which is highly suitable to convert to land to be used for affordable housing for purchase. This section shall not apply to land covered by Article XIX.~~
- ~~4. As the City of San José negotiates new business developments, community benefit programs to assist low income residents as defined by the City Housing Department to achieve home ownership, shall be included.~~

~~Additional policies and programs to promote homeownership by low income residents which are subsidy, incentive and educational based, including those that are voluntarily rather than regulatory based shall be explored.~~

~~Any policies adopted shall incorporate racial and social equity analysis to promote the use of an "equity lens" during its implementation. An equity lens is a tool used to improve planning, decision-making, and resource allocation leading to more racially equitable policies and programs. For any policy or project adopted, decision makers could consider:~~

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1. ~~Structural Equity: What historic advantages or disadvantages have affected residents in the given community?~~
2. ~~Procedural Equity: How are residents who have been historically excluded from planning processes being authentically included in the planning, implementation, and evaluation of the proposed policy or project?~~
3. ~~Distributional Equity: Does the distribution of civic resources and investment explicitly account for potential racially disparate outcomes?~~
4. ~~Transgenerational Equity: Does the policy or project result in unfair burdens on future generations?~~

~~This recommendation was passed on Thursday, November 18th with 12 aye, 9 nay and 1 absent votes.~~

### **What problem does this recommendation address?**

~~Today, all San Jose residents experience dramatic rising costs for home ownership. Within Santa Clara County, San Jose is the largest and fastest growing housing center, yet low income residents do not find homes for purchase affordable on their otherwise adequate income. Today, San Jose is experiencing a housing crisis. The cost of mortgage or rental payments are out of reach for many low income residents. Many individuals and families must live in crowded shared homes and apartments.~~

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- ~~"40% of overall respondents feel financially insecure. Higher percentages of Hispanic or Latino/a and Black or African Americans self-identify as insecure."~~

### **~~How has this problem possibly benefitted or burdened people, especially Black Indigenous People of Color, low income, undocumented and immigrant, those experiencing houselessness?~~**

~~▲ The low income sector of San Jose has been most severely impacted by the high increases in the cost of housing in Silicon Valley. This has led to severe crowded living conditions where more than one family must share a small house or apartment, and the numbers of unhoused individuals in our community illustrate injustice and wearing hopelessness. Individuals identified as middle class such as younger generation teachers, law enforcements, manager in the service areas face the burden of high rental costs and mortgages that are outside their income levels.~~

~~This proposal seeks to start addressing the needs of those with the highest burden, the low income population.~~

### **~~What is the recommendation?~~**

~~San Jose residents experience dramatic rising costs for home ownership. Within Santa Clara County, San Jose is the largest and fastest growing housing center, yet low income residents do not find homes for purchase affordable on their otherwise adequate income.~~

~~San Jose already made policies which protect the environment by preserving surrounding rural land, preserve commercial property which may present future business and employment opportunities, and control the cost of City of San Jose services by centralizing housing growth.~~

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## San José Charter Review Commission Final Recommendations DRAFT

~~a. \_\_\_\_\_ Structural Equity: What historic advantages or disadvantages have affected residents in the given community?~~

~~b. \_\_\_\_\_ Procedural Equity: How are residents who have been historically excluded from planning processes being authentically included in the planning, implementation, and evaluation of the proposed policy or project?~~

~~c. \_\_\_\_\_ Distributional Equity: Does the distribution of civic resources and investment explicitly account for potential racially disparate outcomes?~~

~~d. \_\_\_\_\_ Transgenerational Equity: Does the policy or project result in unfair burdens on future generations?~~

~~*This is a policy recommendation that was initially presented to the Commission as a Charter recommendation. The Commission voted to not approve as a Charter recommendation. This policy recommendation was passed on November 18<sup>th</sup> with 12 aye, 9 nay and one absent vote.*~~

### **Who might benefit or be burdened by this change?**

~~The direct beneficiaries of this proposal are Low Income Residents defined above as "60% AMI or some other widely acceptable measure in the future."~~

~~There is no identified burden from this policy recommendation.~~

### **What are the arguments against this proposal?**

~~Arguments against this proposal are not expected. No such data has been identified.~~

### **Why is this a policy recommendation to City Council?**

~~The housing crisis in San Jose includes the burden faced by low income working residents who most likely will never be able to buy a home in their city. This reality appears to be cemented into the local economy. This policy recommendation contains proactive, result orientated support toward the possibilities of home ownership for these residents which City of San Jose leaders shall implement if approved by the San Jose City Council.~~

### **Are there other example of this policy recommendation?**

~~Research to determine if other cities have adopted similar charter amendments will be necessary.~~

### **Relevant links:**

~~[2021 Silicon Valley Poll](#)~~

~~[2021 Silicon Valley Index](#)~~

~~[Joint Venture Silicon Valley](#)~~

## San José Charter Review Commission Final Recommendations DRAFT

84 W. Santa Clara St.  
San Jose, CA 95113  
[www.jointventure.org](http://www.jointventure.org)

### **What problem(s) does this recommendation address?**

Today, all San José residents experience dramatic rising costs for home ownership. Within Santa Clara County, San José is the largest and fastest growing housing center, yet low income residents do not find homes for purchase affordable on their otherwise adequate income. Today, San José is experiencing a housing crisis. The cost of mortgage or rental payments are out of reach for many low income residents. Many individuals and families must live in crowded shared homes and apartments.

The City of San José has policies which protect the environment by preserving surrounding rural lands, preserve commercial property which may present future business and employment opportunities, and control the cost of City of San José growth. Many of these requirements are contained in Charter "Article XIX An Act to Limit Urban Sprawl and the Fiscal and Environmental Effects of Specified Development in Outlying Areas". However, the City Charter does not address the serious housing crisis faced by City Residents.

The key findings of a new report issued by Joint Venture Silicon Valley titled "2021 Silicon Valley Poll" sought to identify how residents of Silicon Valley are feeling especially now as they are impacted by the pandemic in addition to pre-pandemic stressors:

- "56% of respondents say they are likely to leave the region in "the next few years." This is a nine-point uptick from 2020 when the same question was posed by a pre-pandemic survey."
- "The general cost of living (84%) and high housing costs (77%) are the top two reasons cited for wanting to move."
- "76% of the respondents identify the cost of housing as the most serious problem in the Bay Area, followed by the cost of living, homelessness, the increasing frequency of wildfires and drought."

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- “40% of overall respondents feel financially insecure. Higher percentages of Hispanic or Latino/a and Black or African Americans self-identify as insecure.”

The low income sector of San José has been most severely impacted by the high increases in the cost of housing in Silicon Valley. This has led to severe crowded living conditions where more than one family must share a small house or apartment, and the numbers of unhoused individuals in our community illustrate injustice and wearing hopelessness. Individuals identified as middle class such as younger generation teachers, law enforcements, manager in the service areas face the burden of high rental costs and mortgages that are outside their income levels.

San José residents experience dramatic rising costs for home ownership. Within Santa Clara County, San José is the largest and fastest growing housing center, yet low income residents do not find homes for purchase affordable on their otherwise adequate income. San José has already adopted policies which protect the environment by preserving surrounding rural land, preserve commercial property which may present future business and employment opportunities, and control the cost of City of San José services by centralizing housing growth.

### **Why is this particular change being recommended?**

This proposal seeks to start addressing the needs of those with the highest burden, the low income population. The direct beneficiaries of this proposal are Low Income Residents defined in the recommended Article XX as “60% AMI or some other widely acceptable measured in the future.” There is no identified burden from this change to the San José City Charter

The housing crisis in San José includes the burden faced by low income working residents who most likely will never be able to buy a home in their city. This reality appears to be cemented into the local economy. Article XX contains proactive, result orientated support toward the possibilities of home ownership for these residents which City of San José leaders shall implement if Article XX is approved by the voters of San José.

### **What are the arguments against this proposal?**

Arguments against this proposal are not expected. No such data has been identified.

Strengthen Community Input To The Smart City Advisory and Innovation and Technology Advisory Boards

### **What is the recommendation?**

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Alter appointments to San Jose's Smart City Advisory Board and the Innovation and Technology Advisory Board with the goal of strengthening community input on the effects and consequences of technological change.

The Commission encourages Council to expand the size and breadth of membership on the Smart City Advisory Board and the Innovation and Technology Advisory Board. Membership on the Smart City Advisory Board should consider expanding beyond its current 7 members. Similarly, the Innovation and Technology Advisory Board should expand beyond its current "5-8 members." The exact number of appointed members should be determined by the city council after consultation with San Jose's Office of Racial Equity and community, academic experts, and industry stakeholders. Board membership should be focused on expanding the range of perspectives, backgrounds, and experiences of the appointees.

New members might include representatives from the city's different council districts, neighborhood associations, academic experts, and/or representatives of nonprofit organizations and civic organizations with extensive experience working with San Jose's diverse population and communities.

This recommendation was passed on Thursday, November 18th with 21 aye, 0 nay and 1 absent votes.

### **Why is this particular change being recommended?**

As part of its "Smart City Vision" San Jose has created two advisory boards: the Smart City Advisory Board and the Innovation and Technology Advisory Board. The Smart City Advisory Board "aims to obtain expert input from industry thought-leaders experienced at creating and deploying innovative technology solutions to solve 21st problems." The Innovation and Technology Advisory Board is designed to "tap the rich expertise of our community in shaping the strategic technology direction of the city."

While technological advancement, including advancements in Artificial Intelligence and Machine Learning, carry the promise of bringing innovation and efficiency to city governance, they also stand to intersect with longstanding economic and social issues and challenges. For example, new software and internet-based technologies are likely to reshape the future of work. This includes both the type of work available to city residents but also where future work is done. What this means for the future job growth and opportunities, city tax revenues, economic opportunity, service delivery, individual privacy, and social and economic inequality are important considerations (Goldin & Katz, 2008; Walch, 2019). Technological innovation, including Artificial Intelligence, is likely to affect core city functions including policing and public safety, record

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keeping, and transportation, among others. Technological change is also likely to alter how residents interact with political leaders and their representatives in the democratic process (Rigano, ND).

Technological change synonymous with the Smart City Vision is likely to affect San Jose's diverse population in very different and unpredictable ways. This is recognized by city leaders. San Jose has already developed a digital inclusion and broadband strategy (see link below). Yet currently, the Smart City and Innovation and Technology Advisory board members are almost universally drawn from technology industries. There is no requirement that the composition of board membership includes community representatives from the city's different council districts, neighborhood associations, academics, representatives from social service providers or civic organizations who may bring different (overlooked) perspectives regarding the benefits and costs of technological change and what it means for San Jose city governance and community life.

Racial and ethnic minorities, residents with lower socioeconomic status, and traditionally underserved neighborhoods are less likely to experience the full benefits of technological advancement. This has been seen most recently with the inequitable expansion of broadband technologies within urban spaces (Fishbane & Tomer, 2020). These same groups are more likely to experience negative consequences from technological change. This has been particularly true in the labor market (Autor, Dorn, and Hanson, 2015; Katz & Murphy, 1992;). Increasing both the number and diversity of perspectives on these advisory boards will strengthen community representation and elevate the concerns among people and groups who benefit the least or who are harmed the most by technological change. It will improve the chances that new technologies are deployed by the city in a manner consistent with the goals and values of the entire community.

In the regional area, the cities of San Ramon and Petaluma have an Innovation and Technology Advisory committees that include members of the community who are independent of the technology industry. The City of Oakland has developed a Privacy Advisory Commission to provide advice on the city's purchase of surveillance equipment and data storage.

All San Jose residents who are directly or indirectly affected by technological change would benefit from this change. Minimal costs would be imposed on the City Council; councilmembers would need to spend time researching and consulting on this issue.

### **What are the arguments against this proposal?**

Issues surrounding technology and technological change can be technical and complex. A significant degree of expertise is needed to knowledgeably engage on technology-related issues. Discussion and policy recommendations should be reserved for people - representatives from the

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technology sector - with a deep familiarity of the industry and how new technologies are developed and deployed.

## Minority Report

The following recommendations were not approved by the Commission by majority vote, and consist of suggested changes to San José's Charter, as well as additional policy recommendations for Council's consideration. This section is organized into the Commission's three areas of focus, and the verbiage for each recommendation is taken directly from the Recommendation Memos developed by each ad hoc subcommittee with minor editing for clarity and uniformity.

### Governance Structure

#### Charter Recommendations

##### **Grant Mayoral Emergency Powers**

###### **What is the recommendation?**

Empower the Mayor (or Vice Mayor in his or her absences) instead of the City Manager as the person authorized to declare a local emergency. Said declaration would expire if not ratified by Council within 72 hours.

This recommendation failed to pass on October 18th, 2021 with 6 aye, 15 nay and 1 absent votes.

###### **What problem(s) does this recommendation address?**

San José Municipal Code Sec. 8.08.200 vests in the City Manager, or her or his designee, as Director of the Office of Emergency Services emergency power to enact rules and regulation subject to later ratification by the City Council. Over the years, the Director, because the Council was not in session, issued proclamations declaring the existence of a local emergency. During both instances the Mayor was available but did not have the power to declare the local emergency and implement the powers delineated in Sec. 8.08.250. For 7 days thereafter, the powers of the City Manager to wit: "to make and issue rules and regulations on matters reasonably related to the protection of life and property", were not ratified by the City Council. This proposal substitutes the Mayor (or Vice Mayor in his or her absences) for the City Manager as the person authorized to declare a local emergency. Furthermore, said declaration expires if it is not ratified by the City Council within 72 hours.

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The Mayor is the very visible leader of the City. During a crisis or emergency the public looks to the Mayor for leadership and resolutions.

During the flooding in 2017 many individuals and businesses were unaware of the imminent flooding. The disconnect and lack of timely information between the OES, the Mayor and other outside agencies contributed to the neighborhood impacts.

### **Why is this particular change being recommended?**

This recommendation benefits the people of San José as well as the City Administration. A potential burden could be because training would be required for the Mayor, Vice Mayor and/or staff in line with that required of the Office of Emergency Services Director/Head. And/or, there could be the potential need for additional staff for the Mayor to have persons trained or familiar with Emergency Services and assets available throughout the City.

### **What are the arguments against this proposal?**

One possible argument against this proposal is the fact that the Mayor, Vice Mayor and/or staff could be required to obtain training commensurate with the training provided to the City Manager (or her/his designee) as Director/Head of Emergency Services. On-going training could be required by the Director/Head of the Emergency Services.

A number of Commissioners also voiced concerns that this recommendation could allow for the political use of Mayoral emergency powers, and that "civil emergency" is an overly broad criteria for instigated emergency powers and should be restricted only to natural disasters. Ultimately, this recommendation failed to pass.

### **Proposed Charter Language**

Add a new item to "ARTICLE V SECTION 502 The Mayor; Powers and Duties" as follows:

1. Proclamation of civil emergency. Whenever a civil emergency, or the imminent threat thereof, occurs, in the city and results in, or threatens to result in, the death or injury of persons or the destruction of or damage to property to such extent as to reautiew, in the judgment of the mayor, after consultation with the City Manager and appropriate staff, extraordinary measure to protect the public peace, safety and welfare, the Mayor shall forthwith proclaim in writing the existence of a civil emergency. In the absence or inability of the Mayor, such a civil emergency may be declared by the following in line of succession: Vice-Mayor, City Manager.



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- A. During the existence of a local emergency the Mayor shall serve as the director of emergency services and head of the office of emergency services. All powers and duties otherwise conferred upon the city manager or department head related to a local emergency declaration shall be exercised subject to the direction and approval of the Mayor.
- B. Whenever a local emergency is proclaimed by the Mayor, the city council shall take action to ratify the proclamation within 72 hours, or the proclamation shall have no further force or effect.
- C. The Mayor shall cause any proclamation issued pursuant to the authority of this Section, to be delivered to all news media within the city and shall utilize such other available means, including social media, and public postings on the City website.
- D. The mayor shall have those powers enumerated in Municipal Code Section 8.08.250 (A-D).
- E. Nothing herein shall expand the powers and duties of the Mayor beyond those set forth above. Said exercise of powers set forth above shall be deemed to not violate Charter Section 411 - Interference with Administrative Matters.

Amend "ARTICLE IV SECTION 411 The Council: Interference with Administrative Matters" to include an exception to the prohibition against interference with Administrative Matters, with suggested changes, as follows:

**Except as provided in Section 502 I,** neither the Council nor any of its members nor the Mayor shall interfere with the execution by the City Manager of his or her powers and duties, nor in any manner dictate the appointment or removal of any City officers or employees whom the City Manager is empowered to appoint except as expressly provided in Section 411.1. However, the Council may express its views and fully and freely discuss with the City Manager anything pertaining to the appointment and removal of such officers and employees.

## Policy Recommendations

There were no proposed Governance Structure policy recommendations not approved by the Commission.

## Voting and Elections

### Charter Recommendations

There were no proposed Voting and Elections Charter recommendations not approved by the Commission.

### Policy Recommendations

#### **Additional Policy Recommendations Not Approved For The Board Of Fair Campaigns And Political Practices**

##### **What is the recommendation?**

- 1) Direct City Clerk's Office (or appropriate entity once finalized) to revamp the City webpage pertaining to Council and Mayoral elections, including a spreadsheet or document highlighting independent expenditures supporting respective candidates, of which is to be maintained frequently. The finished product is intended to resemble sites currently maintained by the City of San Francisco<sup>16</sup> and City of San Diego.
- 2) Implement a Small-Donor Matching Funds system, where the City of San José will match individual contributions for both Mayoral and City Council elections, at a ratio to be determined by the Council and approved by the voters in San José.<sup>1</sup>
- 3) Expand the charge for the Board for Fair Campaigns and Political Practices to study and assess recommendations that address historical disenfranchisement, including, but not limited to:
  - a) Creating a budget for and support outreach organizations like Somos Mayfair or Latina Coalition in all districts throughout the City;
  - b) Set policy for voting centers and drop-off boxes in equal proportions and distances in each district and throughout the City;
  - c) Set policy for reaching out to incarcerated teens in an effort to educate and guide them in the personal power of their voice.

This recommendation failed to pass on November 1st, 2021 with 5 aye, 14 nay and 3 absent votes.

**What problem(s) does this recommendation address?**

- 1) *On disclosure of independent expenditures.* While a campaign can be won based on values and proposals, it also can unfortunately be clinched with effectively used monetary resources. In recent years, Mayoral and City Council elections in San José have witnessed a gradual rise in total campaign spending through political organizations. Over \$1.8 million was spent on the District 4 and District 6 San José City Council races in 2020 (Wipf, 2021: see Appendix 1, Section 3). While political organizations are currently required to disclose their independent expenditures on their 496 Forms, more can be done for the everyday San Joséan to ensure that the information is quickly accessible and easily transparent through an interface design fit for a city located in Silicon Valley.
- 2) *On a small donor matching program.* In San José, there is currently a \$700.00 contribution limit per person for a City Council candidate, and a \$1,400 for Mayoral candidates (City of San José, 2009, see Appendix 1, Section 3). These rules are intended to prevent corruption and level the playing field, but they have lagged as a result of political organizations turning to independent expenditures. This has contributed to an increasing tug-of-war between business and labor groups in the city (Wipf, 2021: see Appendix 1, Section 3). We must look into evening the playing field by having contributions from individuals within the City matter more than they currently do. Nearly two-thirds of the American public believes “there should be limits on the amount of money individuals and organizations” can spend on political campaigns (Jones, 2018: see Appendix 1, Section 3). Much of the debate on increased disclosure centers on the Political Reform Act, which allows for payments expressly advocating support of or opposition to a candidate or ballot measure, known as “independent expenditures” (Federal Political Practices Commission, 2020: see Appendix 1, Section 3). Recent Supreme Court rulings have squashed methods in limiting independent expenditures (Citizens United vs. Federal Election Commission, 2010: see Appendix 1, Section 3).

A handful of attempts have been made to lessen the impact made on monetary influence from special interests. Three examples are listed below.

City of Seattle: Mails residents four \$25 “Democracy vouchers” to Seattle residents, who then can assign it to any candidate participating in the program (Seattle Ethics & Elections Commission, 2019: see Appendix 1, Section 3). The program is funded through a property tax costing Seattle voters \$3 million per year, roughly \$8 per year for the average homeowner (Young, 2015: see Appendix 1, Section 3). Charged with administering the vouchers is the Seattle Ethics & Elections Commission, who

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ultimately have three Full-Time employees managing the election infrastructure (Seattle Ethics & Elections Commission, 2019: see Appendix 1, Section 3).

New York City: Currently has a 6:1 match program for mayoral and city council races (i.e. for every dollar a candidate receives, New York matches it with six public dollars) (New York City Campaign Finance Board, 2021: see Appendix 1, Section 3).

City of Los Angeles: Currently has a dual-tiered match rate dependent on qualifications met by candidates. 1:1 for general and primary for candidates that met the minimum criteria, and 2:1 for the primary. There is a 4:1 match for candidates in the general who meet additional criteria (Los Angeles City Ethics Commission, 2015: see Appendix 1, Section 3).

- 3) *On historical disenfranchisement.* While San José has one of the most aggressive voter participation programs in the state, there are still those who feel disenfranchised for many reasons. This proposal aims to suggest solutions for those who are left out of the election process, whether by design or by neglect.

### Why is this particular change being recommended?

- 1) *On disclosure of independent expenditures.* Providing accessible disclosure of major independent expenditures on the main City of San José website should provide voters with additional information on which organizations align with respective candidates, and help create a more user-friendly site for folks to scour through material.
- 2) *On a small donor matching program.* This proposal intends to decrease monetary influence from local political organizations/action committees, and increase participation from San Joséans in campaign contributions. Each venture towards amending Campaign Finance rules in San José would not be the first of its kind, for other cities in California --- as well as others in the United States --- have already led the charge. It is legally possible, but would require some overhauling in structural mechanisms currently in place, or even those potentially lacking. Creating a system which elevates the weight and meaning of campaign contributions from San Joséans can help ensure that the voices of community members are elevated in as close to equal standing as efforts by political organizations. It can also contribute to more voter engagement and participation in Council and Mayoral elections due to increased awareness.

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- 3) *On historical disenfranchisement.* Expanding the charge of the Board for Fair Campaign and Political Practices to examine this issue and provide recommendations such as outreach strategies and expenditures, studying racism and bias in campaign literature, promoting voting among younger residents, and more can help to better understand the issue and address it. The benefit of strengthening and expanding the scope of the Board for Fair Campaigns and Political Practices reaches all people and businesses in San José by creating a resident agency that can focus on campaign finance and historical disenfranchisement, two issues that directly impact the quality of representation that residents have in our city.

### What are the arguments against this proposal?

These policy recommendations were originally bundled with the Charter recommendation proposing to elevate the Board of Fair Campaigns and Political Practices to the Charter. After discussion, while Commissioners strongly supported addressing historical disenfranchisement, there were concerns that there had not been adequate study to determine if the Board of Fair Campaigns and Political Practices was the right body to lead this work, especially given the unique requirements of Board membership potentially being at odds with the experience necessary to address historical disenfranchisement.

## Policing, Municipal Law, Accountability & Inclusion

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### Charter Recommendations

#### Establish A Climate Action Commission In The City Charter

The original Charter recommendation proposing to establish a climate action commission in the Charter was not approved by the Commission.

A number of Commissioners felt that, while they were supportive of a CAC, adding to the Charter was unnecessary and, further, might hinder future changes to a CAC's objectives by requiring a vote by residents to amend the Charter. This proposed Charter recommendation was instead approved as a policy recommendation.

Some Commissioners, and members of the public, believe that if the Board of Fair Campaign and Political Practices is being elevated to the City Charter, then so too should the Climate Action Commission sit in the City Charter, because we are facing an existential crisis in global heating

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and climate change. Many items that sit in the Charter are there because of political will and priorities, and not because they describe how our City government functions. The survival of our species, and many others depends on our ability to prioritize eliminating fossil fuels all together, and this ought to be reflected in the political will to establish this CAC as more than mere policy. Had the CAC been established in the City Charter, it would have more protection from the carbon producing industries' ability to influence local politics.

### **Promote Home Ownership Opportunities for Low Income Residents of San José (Article XX)**

The original Charter recommendation on promoting home ownership opportunities for low income residents was not approved by the Commission.

A majority of Commissioners felt this was an important topic but not an appropriate issue at this time for a Charter revision. This proposed Charter recommendation was instead approved as a policy recommendation.

### **Policy Recommendations**

There were no proposed ~~Voting and Elections~~ policy recommendations not approved by the Commission.