

Fw: Rules and Open Government Committee Agenda item 2

Agendadesk <Agendadesk@sanjoseca.gov>

Tue 11/30/2021 9:49 PM

To: Rules and Open Government Committee Agendas <rulescommitteeagenda@sanjoseca.gov>

From: Michele Mashburn <[REDACTED]>

Sent: Tuesday, November 30, 2021 9:37 PM

To: The Office of Mayor Sam Liccardo <TheOfficeofMayorSamLiccardo@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>; City Clerk <city.clerk@sanjoseca.gov>

Subject: Rules and Open Government Committee Agenda item 2

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Dear Rules and Open Government Committee, Mayor Sam Liccardo, and San Jose City Council members:

I am writing about Agenda Item 2. ADA Compliance for Small Businesses introduced by Councilmembers Perez, Davis, and Esparza. I will be submitting another letter on Item 3. ADA Compliance introduced by Councilmembers Jones, Jimenez, and Foley.

The issues of the Americans with Disabilities Act are complex and nuanced and embedded in an ableist system that segregates disabled people in education, health, and day-to-day life. I support the small grants to businesses to improve ADA compliance. Sadly, the ADA left the responsibilities of enforcement on the people who are harmed by the lack of accessibility in all businesses and workplaces, and technically even in the code enforcement and urban planning documents. (The city plan for 2040, I think, is filled with many sections that clearly state disabled people are not welcome in this city.) Yet when disabled people ask for access we are made to be the villain and called a nuisance and a bother. We are blamed for businesses going out of business when all we want to do is be their customer and be welcomed into the communities. But what often happens is these owners are more aware of their ADA code violations and because of this their attitudes toward disabled people become problematic.

Fast forward to today, thanks to the pandemic, disabled people continue to be further marginalized and access barriers are even greater, including sidewalks and outdoor dining settings. These barriers are codified at times through State organization like the California Disability Access Commission with guides like their outdoor dining when they fail to include the concerns of the pandemic with disability access. Does an aisle really stay the same in both situations when there is (or was) as 6 foot distancing rule in place? So it is okay for there to be legal access but not pandemic safety. The Stores that strive to create more physical distancing among patrons fail to look into their barriers they are creating. Because of the

risks associated with COVID, many disabled people are still forced to shelter in place. So, these barriers when they happen are felt much more acutely with a greater life impact.

Today, I went to a restaurant to eat lunch and encountered barrier after barrier, that only led to further marginalization and risk because the restaurant had moved things around without any attention to ADA compliance to improve the functional flow of the restaurant. I also went into a UPS hub where employees failed to understand the rules around capacity and ADA accommodations that allow a disabled person to be assisted by a helper or family member. I will be filing a complaint with UPS but I will not file a complaint with the restaurant as I felt the worker was receptive and witnessed the barriers and will work to remedy them.... eventually. It has been 31 years since stores and businesses were told to shift toward compliance on access for disabled people. Yet, even today, policies and bills introduced want to push the compliance back and allow grace periods and waivers from the exclusion of people with disabilities.

Even the CASP program can fall into this category. In my experience with the CASP inspections and certifications, the stores and restaurants rely on them to give them more time to fix the issues and then they never actually get around to fixing them because they are protected. So a complaint is filed and the business then scurries around, blaming the "serial plaintiff" who was treated so poorly that they decided to seek legal action. I will be the first one to say I have encountered the attorneys who file these law suits and been put off by their attempts to make money off the cases they agree to file. That said, I encounter barriers multiple times daily. To have these barriers turned against me with phrases like "serial plaintiff" and "drive-by lawsuit" or "predatory plaintiff," especially when the ONLY tool of enforcement I have is to file such a lawsuit is very harmful and devaluing of my place in society, it continues to support the ableism that is inherent in our city. We are all at a very difficult point due to the pandemic and everyone is struggling.

Businesses like Crema Coffee and Time Deli failed to be complaint for years yet they are made to be martyrs because they went out of business because finally after talking and advising them, a disabled person asked, in the only effective way allowed under law, to be included and support their business. I attended both places but, of course, only ate at one of them. As a wheelchair user, I first went to the now closed Crema Coffee to meet with other graduate students for a study session on a class project. I was not able to meet with those students, delaying our project and adding extra work on everyone. I tried to call the number on the sign about accessibility and it was not answered. With the Deli, I attended, and the employees acted rude, and I barely received service. I did not feel like my money was spent in a positive way. There were so many items barring access inside the restaurant, including the bathrooms. These were 2 of the 3 times I have pondered filing a lawsuit to be honest. But because both of my parents were small business owners, I did not want to cause harm even though I had been harmed. So I never went back to either restaurant. That said, if I were to stop going to every location I found a barrier, I would never leave my home. So how so we both increase the wellbeing of our disabled residents while also supporting small businesses?

Businesses quickly rearrange things to meet their priorities and perceived needs after their final inspection which means bathrooms lose accessibility and hallways become difficult to pass through. Most tables in outdoor dining are not ADA compliant. Education and outreach are key components in improving access. But it is also essential that the burden of accessibility not rest solely on the disabled people in our community. We need to catch the violations before businesses open and each year reinforce and support the need for accessibility. At what point will society take on this task? This active engagement would better serve the disabled residents in this city, and it would also help reduce the ADA lawsuits because these elements would be monitored, and the businesses would benefit from the inspector's knowledge in understanding the changes in the laws to help ensure accessibility.

All of this is contingent on checking the attitudinal barriers that are present. During this pandemic, I have talked with people doing the outreach into small businesses paid by, I believe city and county grants, on pandemic compliance and asked if they were including items around ADA access and each person scratched their head, saying they were not aware of this. A multilingual ADA Compliance for Small Business brochure will do very little to address these attitudinal barriers.

I understand the fears of these businesses and I know the difficulty of ensuring access as a director of a small nonprofit. With the right attitude, the barriers melt away and collectively the community helps each other in ensuring access.

The City of San Jose really needs to learn how to check the ableist framing in memos and policies. You have improved over the last 6-10 months but there is still a long way to go. One way to address these elements is to create a task force of people with disabilities to help inform the practices and procedures around these issues, and especially within the small business communities. I think, a recommendation was put forward from the Human Services Commission awhile back with this idea. I know another disabled advocate who has been actively seeking this within the city structures for many years. This commission could also aid in the development of the Office of Disability Affairs in collaboration with staff, holding true the motto of "Nothing about us, without us."

I appreciate this proposal and support small businesses in increasing accessibility in already tight spaces. There are simple tools that can help improve access, including the CASP inspections. But without the intention of inclusion, these efforts will fail. To review some thoughts from the disability community on the 2017 attempted ADA reform, please go to: <https://abilitymagazine.com/oppose-hr-620-protect-ada/>.

Sincerely,
Michele Mashburn
Disabled activist and advocate

Michele Mashburn

Director

San Jose Peace and Justice Center,

a Project of Collins Foundation

[REDACTED]

[REDACTED]

[REDACTED] | <http://www.sanjosepeace.org>

The San Jose Peace and Justice Center is located on the unceded tribal land of the Ohlone, Tamien Ohlone, and Muwekma Ohlone peoples, past and present. We remember their connection to this region and honor with gratitude the land and the people who have stewarded it throughout the generations. This acknowledgment demonstrates a commitment to beginning the process of working to dismantle the ongoing legacies of settler colonialism.

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Fwd: Rules Committee meeting - please vote for ADA reform

Taber, Toni <toni.taber@sanjoseca.gov>

Sat 12/4/2021 2:35 PM

To: Rules and Open Government Committee Agendas <rulescommitteeagenda@sanjoseca.gov>

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From: Jeffrey Nott [REDACTED]
Sent: Saturday, December 4, 2021 7:17:22 AM
To: Taber, Toni <toni.taber@sanjoseca.gov>
Subject: Rules Committee meeting - please vote for ADA reform

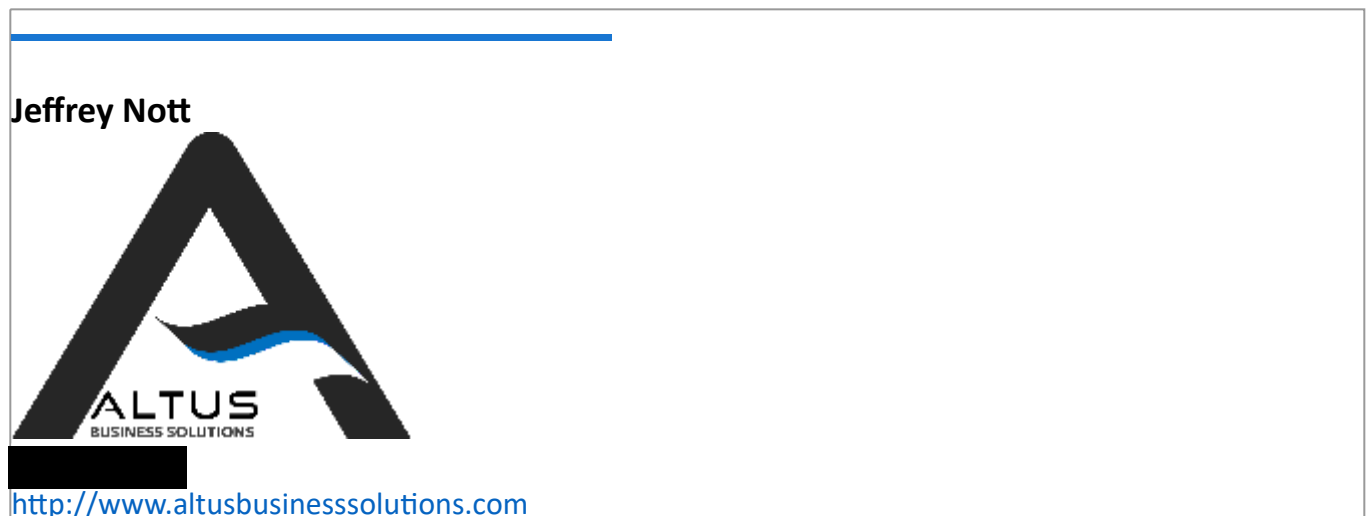
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As a former service business owner and as a current consultant to the same, the ADA lawsuits are the last nail in the coffin for many businesses.

The business community needs your support by voting on the memos being submitted to the committee next week.

Thank you for your support of small business in San Jose and sending a message to the greater business community in California.



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Fwd: Abusive ADA Lawsuits

Taber, Toni <toni.taber@sanjoseca.gov>

Sat 12/4/2021 2:35 PM

To: Rules and Open Government Committee Agendas <rulescommitteeagenda@sanjoseca.gov>

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From: SHAWN TAHERI [REDACTED]
Sent: Saturday, December 4, 2021 8:39:47 AM
To: Taber, Toni <toni.taber@sanjoseca.gov>
Subject: Re: Abusive ADA Lawsuits

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Toni,

We wholeheartedly support/ endorse both memos to expand on the city's successful Certified Action Specialist (CASp) program, educate business owners on ADA-compliance related matters, get needed funds in the hands of business owners – not those who are suing them – and call on the state to take action on this issue in the next session, amongst other key items.

Thank you

Regards

SHAWN A. TAHERI

[REDACTED]
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FOR OTHERS AND REST OF THE WORLD REMAINS IMMORTAL.**

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