

**Fw: Rules and Open Government Committee Agenda item 3**

Agendadesk &lt;Agendadesk@sanjoseca.gov&gt;

Wed 12/1/2021 8:32 AM

To: Rules and Open Government Committee Agendas &lt;rulescommitteeagenda@sanjoseca.gov&gt;

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**From:** Michele Mashburn <[REDACTED]>**Sent:** Wednesday, December 1, 2021 12:03 AM**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 3

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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 3. ADA Compliance introduced by Councilmembers Jones, Jimenez, and Foley. I submitted another letter on Item 2. ADA Compliance for Small Businesses introduced by Councilmembers Peralez, Davis, and Esparza. Thank you all for your attention to the issues our disabled community members experience. Sadly, I feel your focus is a bit off mark.

To start with some segments from the [Santa Clara County Referral on the creation of an Office of Disability Affairs](#):

“People with disabilities experience exclusion as a result of physical, attitudinal, financial, and policy barriers.[4] ... people with disabilities are generally more likely to experience poverty, food insecurity, health problems, discrimination, use of force by police, exclusion from built environments, and inadequate social services...”

Statistics on disabled people can be hard to understand and find. But the findings are stark and at the root of the inequality, not to mention inequity are the structural and attitudinal barriers that are seen as predatory lawsuits and ADA complaints.

It is important that all residents have access to tools and resources to help keep the City of San Jose barrier free, inclusive, and accessible to all residents and visitors. But does this improve conditions for disabled people in our city? Or is this another way to protect our businesses from these evil lawsuits and complaints without truly learning from those most impacted? I believe it does very little to ensure accessibility and inclusion because most people still fail to understand the struggles around access and,

instead, see disabled people as a nuisance and a bother. The law requires less than 10% of housing be accessible when 25% of the population may be disabled. It requires 1 table be ADA compliant in a restaurant and that table can be used by anyone, making it unavailable more than not. Many vehicles will not accommodate more than 1 wheelchair or adaptive device yet there are families with multiple disabled members.

In 2019, I engaged with a staff member of the city about the San José Downtown Design Guidelines and Standards in 2019 to help create better access and inclusion in the plan. The staff person abruptly told me that the Americans with Disabilities Act are a separate document, and the plan does not need to include them. My experience with barriers within the plan, (e.g., the active frontage; small retail spaces, like those at San Pedro Square; and stoops and patios that are higher, requiring many steps) were disregarded and not considered. These plans fail to consider these realities and experiences of disabled people. The plans made this city unwelcoming to me and at some point, this must change.

Many elements of planning and the legal processes add more burdens onto disabled people. I recently purchased my first wheelchair accessible van, and I was quickly introduced into another arena of accessibility issues with parking. I cannot park on a lot of the street parking in the downtown core where I live and work. I cannot get out of my van when there is not a van-accessible parking spot available. In almost every errand I run, I encounter some barrier that I have to mitigate in order to do the essential tasks in my life. This adds time and drains my energy. Living with a disability is like another full-time job.

Suffice it to say that I encounter barriers of all sizes daily whether using my van or just rolling around San Jose. I have been known to tell a friend who is joining me for the first time at a conference or for a meal that I will be lucky if I encounter only 6 barriers in a full-day event or only 2 at a restaurant. Some barriers are minor and require moving a chair or table or asking a worker to clear a hallway. Others are major like the time I was unable to use a restroom at a new restaurant in the downtown area because my wheelchair did not fit through the door and there was not enough room to be in the bathroom with my chair. Another restaurant refused to seat me out of their ableism. These barriers are normal, so it takes a significant barrier with the additional attitudinal barrier to really get me upset.

To focus solely on the business side of things does not improve the experience for disabled people because there are so many barriers encountered regularly. The ADA is the basic requirement and does not clearly guide anyone, especially when the attitudinal barriers of ableism are as rampant as they are. I cannot even report ADA violations with street and sidewalk construction through the San Jose 311 app and sadly, with at least one other disabled advocate, the knowledge and awareness of the 311 workers was found to be sadly lacking around the ADA and disability issues.

A note of caution with the state guidelines for outdoor dining. When a focus is on the ADA, oftentimes without knowing it, barriers are codified at times through State organizations 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. All laws must be interpreted for application locally. In a city with victorian houses and restaurants, the ADA will be applied differently than in a city without those structures or say a city that has Visitability in place to ensure all homes are build with barrier free entries.

Phrases like “predatory ADA lawsuits” and how can we protect our businesses from these [horrible] disabled people, fails to protect my right to accessible spaces and actually dissuades it. It does not ensure disabled people can find employment and maintain access to healthcare and more. It does not ensure people with disabilities can socialize and play like every human being needs. Parks are often

inaccessible or barely accessible as the ADA guidelines are not as easily applied in those spaces. The most recent space that a local garden group opened, I believe in the downtown core, is not a place I can attend and enjoy. They are likely ADA compliant but that does not ensure a person's ability to access and enjoy it.

The 237 complaints in San Jose are only those reported and almost all of them come with multiple attempts by disabled people to find remedies with the businesses in violation. I filed one complaint with the Federal government in this pandemic when the location I receive healthcare at blocked the ADA pathway to create a testing site. It was an egregious violation of the ADA and it was AVOIDABLE. I did not file any other complaints. To be honest complaints tend to put me more at risk than improving my safety because we live in an ableist world where difference and disability are judged and condemned.

Your brief does not serve the disabled community adequately!

While I understand that the report found many ADA lawsuits (based on accessibility barriers mind you that affect and impact a disabled persons life also) were against small business, I do not believe that is completely accurate as the lawsuits are nuanced. Most lawsuits are based in the resources of the businesses. Small businesses have fewer resources (capital) than larger ones so they tend to be resolved more quickly. The larger ones have the resources to battle these complaints through ongoing lawsuits that harm our disabled residents even more. And they can continue to fight for their inaccessible venues and stores. Yes, there are some ADA law firms that are unscrupulous and will only take on easier cases to ensure pay out. The practices of these lawyers who violate ethical standards need to be caught and corrected but this does not and should not involve watering down the ADA.

The mention in the Memo about web content and mobile phone applications is way off mark. Disabled people should not 31 years after the ADA have to remind people to create accessible platforms and such. To frame the lawsuits about lack of accessibility to web content and apps on mobile phones as a problem is the same as saying these elements are unimportant to disabled people. It is like saying, I can play here but you cannot. Yes, there are laws and standards that impact how websites are done and how apps and computer games are created. These laws are rarely met consistently and people who advocate for access to these elements are vilified and judged. Please tell the staff members who wrote this memo that they need to be educated BY DISABLED people on how they are failing to understand our experience. Is it okay that someone can access and view a website but someone else with low vision or who is deaf has no rights to an accessible site?

Please check the ableism. I would like to see a Fund established for disabled residents too to learn how to advocate and advance change either with lawsuits or, ideally, without them. But no, you are proposing a fund to protect the businesses. I am disappointed to say the least. You see, to not have access to public facilities and websites and programs and parking, negatively impacts my health and wellbeing. It also makes me more dependent on programs and services because I can not find gainful employment that covers the added expenses of being disabled in US society. There is a disability tax on EVERYTHING and added complications with those elements. Yet, society wants to support and protect businesses and briefly mention disabled people, casting them aside as less-than and a burden.

I hope that together we can create a world where there are not signs that say "Disabled entry in the back," segregating disabled people and giving them less than equal treatment. I hope that together we can create a truly welcoming and inclusive San Jose that fosters equity and inclusion of all its residents. I know we have made progress and I appreciate that progress. Yet, it is not enough when people continually encounter barriers that businesses don't see as profitable to fix and address. Ableism is at the heart of all of this and I hope that this email provides more context on the flaws in the proposal with the positive business-focused elements to support their needs.

As always, I am available to discuss these items more.

Sincerely,  
Michele Mashburn

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**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 &lt;toni.taber@sanjoseca.gov&gt;

Sat 12/4/2021 2:35 PM

To: Rules and Open Government Committee Agendas &lt;rulescommitteeagenda@sanjoseca.gov&gt;

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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

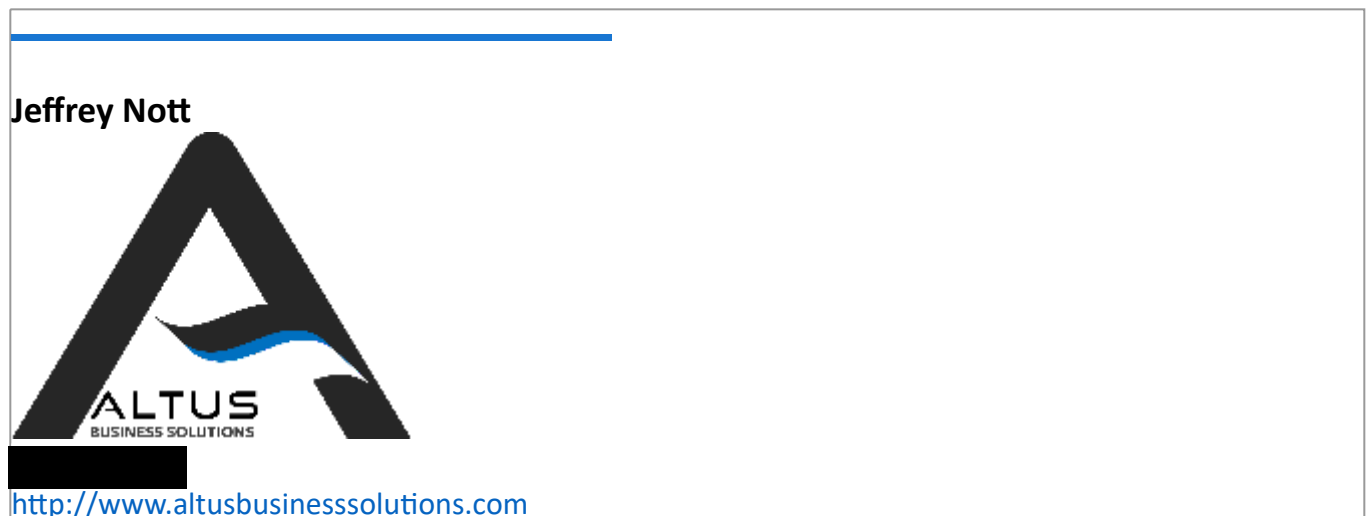
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As a former service business owner and as a current consultant to the same, the ADA lawsuits are the last nail in the coffin for many businesses.

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]  
[REDACTED]  
**MOBILE:** [REDACTED]  
**OFFICE PHONE** [REDACTED]  
**EMAIL:** [REDACTED]

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FOR OTHERS AND REST OF THE WORLD REMAINS IMMORTAL.**

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