

San José Charter Review Commission

Recommendation Memo

Drafted April 19th, 2021; Revised May 25th, 2021

Proposal Name

Proposal Name:	Equity Values, Equity Standards, Equity Assessment
Submitted by:	Rick Callender
Date submitted:	10/17/21

Proposal Details

<p>1) What problem(s) are you trying to address?</p> <p><i>Before suggesting a solution, it is important to be clear about the problem you aim to solve.</i></p>	<p>San Jose 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.</p> <p>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.</p>
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	<p>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.</p>
<p>2) How has this problem possibly benefited or burdened people, especially BIPOC, low-income, undocumented and immigrant, those experiencing houselessness, etc.? <i>Is there data that speaks to the impact of this problem? What does the disaggregated data tell us?</i></p>	<p>By definition, the lack of equity for BIPOC and low-income people burdens those constituencies. Data demonstrating these inequities is widespread and essentially undisputed.</p>
<p>3) What change are you proposing? <i>Describe the revision to San José’s Charter that you are proposing. Include relevant Charter section numbers.</i></p>	<p>Article VI Section 610 Statement of Values 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.</p> <p>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</p>

shares power. c “Racial and 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.

Section 612 Equity Standards

To advance the values in Section 2000 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 Jose. *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 2002 (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.
- (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.

Section 613 Equity Assessment

(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

	<p>discrimination receive a fair share of city services and benefits? 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.</p>
<p>4) Is this change feasible? <i>Think through the revision you are proposing. Is it legally possible? Is it practical? If there are questions you cannot answer, list them here.</i></p>	<p>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 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</p>

	<p>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 direction petition of residents, the number required being challenging but not insurmountable.</p>
<p>5) Who might benefit from or be burdened by this change? <i>Is there data that speaks to the potential impact of this change? What are the potential unintended consequences of this change?</i></p>	<p>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.</p>
<p>6) What are the arguments against this proposal? <i>Summarize the arguments you expect or data you have found in opposition to this recommendation.</i></p>	<p>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.</p>

<p>7) Must this be a Charter revision? <i>Can this problem be addressed without changing the charter (e.g., Council action, cultural change)? If not, should this idea still be included in the Commission's report?</i></p>	<p>No, the same goals might eventually be achieved through city council action or cultural change. But those other strategies have this 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</p>
<p>8) Are there other examples of this change? <i>If you have found other examples of this change, please share them and any outcomes that have been observed.</i></p>	<p>Yes. A statement of values is included in the current charter – Section 607 Code of Ethics. The proposed provision expands on the existing concept of ethics. An example of an equity standard is the Detroit's Bill of Rights. That example which is much stronger than the one being proposed was presented at a full meeting of the Charter Review Commission.</p> <p>Examples of racial equity assessments are provided in Attachment B</p>

Research & Citations

List below the results of any research conducted to inform this memo.

- All data must be cited so that Commissioners who are not part of the Subcommittee in question may locate the source of information as needed.
- Any speakers who presented to the subcommittee must be listed (name, title, affiliations, etc.) along with a brief summary of the information presented by them.
- Provide links or locations of the information in this research as much as possible, otherwise provide attachments.

SEE ATTACHMENT B

Racial Equity Impact Assessment

What are Racial Equity Impact Assessments?

A Racial Equity Impact Assessment (REIA) is a systematic examination of how different racial and ethnic groups will likely be affected by a proposed action or decision. REIAs are used to minimize unanticipated adverse consequences in a variety of contexts, including the analysis of proposed policies, institutional practices, programs, plans and budgetary decisions. The REIA can be a vital tool for preventing institutional racism and for identifying new options to remedy long-standing inequities.

Why are they needed?

REIAs are used to reduce, eliminate and prevent racial discrimination and inequities. The persistence of deep racial disparities and divisions across society is evidence of institutional racism--the routine, often invisible and unintentional, production of inequitable social opportunities and outcomes. When racial equity is not consciously addressed, racial inequality is often unconsciously replicated.

When should it be conducted?

REIAs are best conducted during the decision-making process, prior to enacting new proposals. They are used to inform decisions, much like environmental impact statements, fiscal impact reports and workplace risk assessments.

Where are they in use?

The use of REIAs in the U.S. is relatively new and still somewhat limited, but new interest and initiatives are on the rise. The United Kingdom has been using them with success for nearly a decade.

EXAMPLES OF RACIAL JUSTICE EQUITY IMPACTS

Equity and Social Justice Initiative

King County, WA

The county government is using an Equity Impact Review Tool to intentionally consider the promotion of equity in the development and implementation of key policies, programs and funding decisions.

Race and Social Justice Initiative

Seattle, WA

City Departments are using a set of Racial Equity Analysis questions as filters for policy development and budget making.

Minority Impact Statements

Iowa and Connecticut

Both states have passed legislation which requires the examination of the racial and ethnic impacts of all new sentencing laws prior to passage. Commissions have been created in Illinois and Wisconsin to consider adopting a similar review process. Related measures are being proposed in other states, based on a model developed by the Sentencing Project.

Proposed Racial Equity Impact Policy

St. Paul, MN

If approved by the city council, a Racial Equity Impact Policy would require city staff and developers to compile a "Racial Equity Impact Report" for all development projects that receive a public subsidy of \$100,000 or more.

Race Equality Impact Assessments

United Kingdom

Since 2000, all public authorities required to develop and publish race equality plans must assess proposed policies using a Race Equality Impact Assessment, a systematic process for analysis.