

**MINUTES OF THE
JOINT MEETING OF THE RULES AND OPEN GOVERNMENT COMMITTEE AND
COMMITTEE OF THE WHOLE**

SAN JOSE, CALIFORNIA

WEDNESDAY, November 30, 2022

COVID-19 NOTICE

Consistent with AB 361 and City of San Jose Resolution Nos. 80628, 80659, 80685, 80724 and 80758, Committee Members may have teleconferenced from remote locations.

The Committee meeting was held in a hybrid format, both in person in the Council Chambers and teleconferenced from remote locations. The meeting convened at 2:01 p.m.

Present: Councilmembers- Arenas, Cohen, Davis, Peralez, Jones

Absent: Councilmembers- None

Staff: Assistant City Manager, Lee Wilcox; City Attorney, Nora Frimann; City Clerk, Toni Taber; City Manager's Office, Rachelle Blattman; and Deputy City Clerk, Megan Roche.

A. City Council (City Clerk)

1. Review December 6, 2022 Final Agenda

- a) Add new items to Final Agenda
- b) Assign "Time Certain" to Agenda Items (if needed)
- c) Review of Notice of Waiver Requests for Agenda Items or Documents (if needed)

Public Comments: The following member of the public provided comments: Blair Beekman.

Action: Upon motion by Councilmember Dev Davis, seconded by Councilmember David Cohen, and carried unanimously, the Committee approved the final agenda for the City Council meeting on December 6, 2022 with the Add Sheet, with an 11:00 a.m. start time, with items 8.3 and 8.4 to be heard after the Consent Calendar, and with a lunch break from 12:30 - 1:30 p.m. (5-0-0)

2. Review December 13, 2022 Draft Agenda

- a) Add new items to Draft Agenda
- b) Assign "Time Certain" to Agenda Items (if needed)
- c) Review of Notice of Waiver Requests for Agenda Items or Documents (if needed)

Public Comments: The following members of the public provided comments: Blair Beekman and Paul Soto.

Action: Upon motion by Councilmember Dev Davis, seconded by Councilmember Sylvia Arenas, and carried unanimously, the Committee approved the draft agenda for the City Council meeting on December 13, 2022, with a start time of 11:00 a.m. (5-0-0)

B. Consent Calendar

Public Comments: The following members of the public provided comments: Blair Beekman, Cher, Paul Soto, and Martha O’Connell.

Action: Upon motion by Councilmember David Cohen, seconded by Councilmember Dev Davis, and carried unanimously, the Consent Calendar was approved. (5-0-0)

1. The Public Record for November 9 - November 22, 2022. (City Clerk)

The Public Record for November 9 – November 22, 2022 was noted and filed.

2. Approval of the End of Term Celebration Event Sponsored by Council District 3 as a City Council Sponsored Special Event to Expend City Funds and Accept Donations of Materials and Services for the Event. (Perez)

The End of Term Celebration Event scheduled on December 15, 2022, sponsored by Council District 3, was approved for placement on the December 6, 2022 City Council agenda.

3. Retroactive Approval of the District 3 Community Chat Sponsored by Council District 3 as a City Council Sponsored Special Event to Expend City Funds and Accept Donations of Materials and Services for the Event. (Perez)

The District 3 Community Chat scheduled on December 20, 2022, sponsored by Council District 3, was approved for placement on the December 6, 2022 City Council agenda. *The supplemental memorandum from Councilmember Raul Perez, dated November 30, 2022, revised the date of the District 3 Community Chat event from December 5, 2022 to December 20, 2022.*

4. Retroactive Approval of the World AIDS Day Flag Raising and Tower and Rotunda Lighting Sponsored by Council District 3 as a City Council Sponsored Special Event to Expend City Funds and Accept Donations of Materials and Services for the Event. (Perez and Foley)

The World AIDS Day Flag Raising and Tower and Rotunda Lighting scheduled on December 1, 2022, sponsored by Council District 3, was approved for placement on the December 6, 2022 City Council agenda.

5. Request for Travel Authorization for Councilmember Cohen. (Cohen)

Travel was authorized for Councilmember Cohen to Israel from March 17 - 27, 2023 for the Israel Seminar for Bay Area elected leaders, sponsored by Jewish Community Relations Council (JCRC) and Bay Area Network of Jewish Officials (BANJO).

6. Approval of the Santa Visits Alviso and Breakfast with Santa Holiday Events Sponsored by Council District 4 as a City Council Sponsored Special Events to Expend City Funds and Accept Donations of Materials and Services for the Events. (Cohen)

The Santa Visits Alviso Holiday Event scheduled on December 10, 2022 and the Breakfast with Santa Holiday Event scheduled on December 10, 2022, both sponsored by Council District 4, were approved for placement on the December 6, 2022 City Council agenda.

7. Retroactive Approval of Multiple Special Events Sponsored by Council District 7 as a City Council Sponsored Special Events to Expend City Funds and Accept Donations of Materials and Services for the Events. (Esparza)

The Shirakawa Elementary Family Movie Night scheduled on June 3, 2022, the Shirakawa Elementary Promotion scheduled on June 9, 2022, the Dahl Kinder Promotion scheduled on June 15, 2022, the Dahl 6th Grade Promotion scheduled on June 16, 2022, the Shirakawa 8th Grade Promotion scheduled on June 16, 2022, the Santee 6th Grade Promotion scheduled on June 16, 2022, the Santee Kinder Promotion scheduled on June 17, 2022, the 2nd Annual Lone Bluff NA Ice Cream Social scheduled on June 18, 2022, the Tully Night Market scheduled on July 13, July 20, July 27, August 3, August 10, August 17, August 24, and August 31, 2022, the Communications Hill Movie Night scheduled on July 15, 2022, the Lone Bluff Senter Neighborhood BBQ scheduled on July 16, 2022, the Rocksprings Park Family Movie Night scheduled on July 21, 2022, the Lone Bluff Way Dumpster Day scheduled on August 6, 2022, the Flory Drive Dumpster Day scheduled on August 20, 2022, the Kennedy Family Movie Night scheduled on August 26, 2022, the Community Day at the VACC scheduled on August 27, 2022, the Meadows Family Movie Night scheduled on September 9, 2022, the Communications Hill Mid-Autumn Festival scheduled on September 10, 2022, the Yerba Buena Moon Festival scheduled on September 10, 2022, the VACC Moon Festival scheduled on September 16, 2022, the Franklin Family Movie Night scheduled on September 16, 2022, the Dahl Dumpster Day scheduled on September 24, 2022, the Lairon Family Resource Center Resource Fair scheduled on September 24, 2022, the Dahl Family Movie Night scheduled on September 30, 2022, the Sylvandale Middle School Clean Up scheduled on October 1, 2022, the Ramblewood Dumpster Day scheduled on October 8, 2022, the O.B. Whaley Family Movie Night scheduled on October 14, 2022, the Seven Trees Trunk or Treat scheduled on October 28, 2022, the Kennedy Elementary Costume Parade scheduled on October 31, 2022, and the Communications Hill Dumpster Day scheduled on November 5, 2022, all sponsored by Council District 7, were approved for placement on the December 6, 2022 City Council agenda.

8. Update to the August - December 2022 Smart Cities and Service Improvements Committee Work Plan. (City Manager)

An amendment to the August - December 2022 Smart Cities and Service Improvements Committee Work Plan was approved to drop the following item from the December 1, 2022, Committee meeting: Digital Inclusion and Broadband Strategy Status Report.

9. Update to the August - December 2022 Neighborhood Services and Education Committee Work Plan. (City Manager)

An amendment to the August - December 2022 Neighborhood Services and Education Committee Work Plan was approved to drop the following item from the December 8, 2022, Committee meeting: City Initiatives Roadmap: Children and Youth Services Master Plan Status Report.

10. Special Meeting on Filling Vacancies in Council Districts 8 and 10. (City Clerk)

The date was set for a Special Meeting on Filling Vacancies in Council Districts 8 and 10 for December 5, 2022 at 5:00 p.m. and the agenda for the meeting was approved.

C. Rules Committee Reviews, Recommendations and Approvals

1. Accelerating Digital Equity by Deploying High-Speed Fiber to All Households at No Cost to Taxpayers. (Mayor, Carrasco, Cohen, and Foley)

Public Comments: The following members of the public provided comments: Blair Beekman and Paul Soto.

Action: Upon motion by Councilmember David Cohen, seconded by Councilmember Dev Davis, and carried unanimously, the memorandum from the Mayor and Councilmembers Carrasco, Cohen, and Foley was approved with option one from the Early Consideration Response Form. (5-0-0)

Memorandum from Mayor, Carrasco, Cohen, and Foley: Direct the City Manager to: (1) Explore developing a Request for Information (RFI) or other appropriate open solicitation for respondents to provide approaches to a citywide open access fiber network that: (a) Encompasses all or nearly all premises (households and businesses) in the City for 1 Gbps baseline symmetrical internet speeds - undoing decades of “digital redlining” by providing ubiquitous high-quality coverage that will be essential for educational and economic opportunity. (b) Relies wholly on private-sector financing for construction, operations, and maintenance, at no cost to the City and our taxpayers. (c) Maximizes public benefit to the community, including but not limited to such elements as: ● provision of free or low-cost broadband service to low-income residents; ● support for critical City functions, such as traffic signal management; ● co-location of public fiber in the same trench (“dig once”); and ● provision of free access for schools, community centers, libraries, medical facilities, and other public locations. (d) Ensures compatibility of the fiber technology deployment, maintenance, etc.) with existing City infrastructure and processes, considering power availability, disaster resilience, and minimizing surface-level disruption. (e) Prioritizes speed of deployment in neighborhoods most historically impacted by digital inequity, while addressing last-mile barriers to access. (2) Identify and bring forward for Council consideration changes the City can make to expedite permitting process for rapid deployment of fiber at scale, including options for effective micro-trenching/fiber trenching that minimize impact on City streets, and including opportunities to offset staffing costs associated with permitting. (3) Explore opportunities to leverage historical levels of state and federal funding for next-generation connectivity infrastructure to deliver the wide-ranging benefits outlined in Recommendation #1.

Option 1 from the Early Consideration Response Form: General Feasibility and Options Review (Green): Conduct a narrow Request for Information to address options and feasibility of near-universal wired/wireless telecommunications. This approach would be Green-lit by using scope control to contain the work required; it does not produce a full evaluative process. Rather, it would inform staff on options and the state of the market. The effort would address the items in the memo as follows: (1) Staff would issue a Request for Information (RFI) in January 2023 with ~10 questions focused on... • Private-Public-Nonprofit approaches to a wired/wireless telecommunications network with near-universal coverage in San Jose at 1 Gbps symmetrical internet speeds; • Feasibility of construction methods, speeds, risks, and mitigation on City assets; • Financing and commitment models that support construction, service delivery, and infrastructure maintenance that require no funding from the City and taxpayers; • Public benefits companies provide to the City, residents, businesses, schools, and nonprofits; • Feasibility of utilizing private-public telecommunications network to enhance the City's infrastructure and advance the use of Smart City technologies to improve services at lower costs; • Regulatory oversight and liability; • City staffing and resources needed to initiate and provide oversight throughout the process, and • Methods best practices for infrastructure—e.g., vertical infrastructure use, fiber trenching, “dig once” moratoriums, rights-of-way agreements, coordinated support, resilience, disaster response, et al. (2) This option does not include a complete analysis of permitting processes specifically for trenching. Information from industry will be gathered on trenching, building at scale and speed, and requirements of the City to support as part of the RFI. A more complete analysis would require more than 40 hours effort and is Yellow Lit (see Option 2). (3) Staff would evaluate available Federal, state, and grant funding to leverage funding sources to address long-term resident and business connectivity needs. Staff would report on approaches and timing to best deliver the desired benefits.

2. Roles in the Criminal Justice System. (Jones)

Public Comments: The following members of the public provided comments: Paul Soto and Robert Brownstein.

Action: Upon motion by Councilmember Sylvia Arenas, seconded by Councilmember Dev Davis, and carried unanimously, the memorandum from Councilmember Jones was approved with the Early Consideration Response Form. (5-0-0)

Memorandum from Jones: Direct City Manager to coordinate with county agencies on the following actions: (1) Engage with the Sheriff's Office, Pre-Trial Services, the District Attorney's Office as well as a representative from the Judicial branch to investigate how high bail should be, and to communicate the need for keeping a subject in custody. (2) Engage with the Sheriff's Office, Pre-Trial Services, the District Attorney's Office and the Public Defender's Office to understand under what circumstances, and what factors are taken into consideration when an arrestee is released on their own recognizance. (3) Engage with the District Attorney, the Public Defender, and a representative from the Judicial Branch to understand the impact of the Humphrey Decision. (4) Engage with Behavioral Health Services, Probation and Reentry Services to understand how law enforcement may better assist persons who do not meet the criteria for 5150 W&I, suffer from mental illness, are chronic substance abusers, whose conduct is repeated and

problematic and refuse services. (a) Investigate the need to also involve additional County partners, as well as Social Services and Veterans Services as appropriate. (5) Return to the Public Safety, Finance & Strategic Support Committee with a report on their findings based on recommendations 1 - 4 by April 2023.

3. San José Elected Official Political Fundraising and Independent Expenditure Involvement Ordinance. (Esparza)

Public Comments: The following members of the public provided comments: Robert Brownstein, Huascar Castro, Sarah McDermott, Jose Luis Pavon, and Paul Soto.

Action: Councilmember Dev Davis made a motion which was seconded by Councilmember Sylvia Arenas, to approve the memorandum from Councilmember Esparza to be agendized for a Council meeting in early January.

Action: Councilmember David Cohen requested a friendly amendment to Councilmember Dev Davis' motion, to also direct the City Attorney to look into: limitations, legality, and liability of prohibiting sitting Council staff from working for or chairing independent expenditure committees, and also amending the revolving door policy. Councilmembers Dev Davis and Sylvia Arenas accepted the amendment.

Final Action: Upon motion by Councilmember Dev Davis, seconded by Councilmember Sylvia Arenas, and carried unanimously, the memorandum from Councilmember Esparza was approved to be agendized for a Council meeting in early January, with direction to the City Attorney to look into: limitations, legality, and liability of prohibiting sitting Council staff from working for or chairing independent expenditure committees, and also amending the revolving door policy. (5-0-0)

Memorandum from Esparza: Direct the City Attorney to return to Council with an ordinance addressing the following issues: • Aligning the Municipal Code's definition of a "candidate" and "candidate controlled committee" with the California Political Reform Act Sections 82007 and 84214 as well as California Code of Regulations § 18404.1 and 18404; • Clarify that the Municipal Code's established campaign contribution limits and the campaign fundraising period also apply to all "candidate controlled committees", including those that elect to make independent expenditures, in accordance with recent California Fair Political Campaigns Commission findings; • Clarify "candidate controlled committee" to include both direct and indirect control by a "candidate", such as an independent expenditure committee run by a staff member who reports to a current City Official now defined as a "candidate"; and • Amend the Municipal Code's Revolving Door policy to prohibit former City officers and staff from serving as officers within an independent expenditure committee for one year following termination of office or employment.

4. Readyng Downtown for the Next Wave of Growth-and Greater Vibrancy. (Mayor and Peralez)

Public Comments: The following members of the public provided comments: Blair Beekman and Paul Soto.

Action: Upon motion by Councilmember Raul Peralez, seconded by Councilmember Dev Davis, and carried unanimously, the memorandum from the Mayor and Councilmember Peralez was approved in accordance with the Early Consideration Response Form. (4-0-1; Absent: Arenas)

Memorandum from Mayor and Peralez: (1) In anticipation of several massive construction projects planned for Downtown in the coming years: (a) Direct the City Manager to bring to Council through the 2023-24 budget process a Manager's Budget Addendum outlining the costs and benefits of adding a position specifically focused on managing and coordinating the many major construction projects in Downtown-e.g., BART, Diridon Station, large office and housing towers, Google- that pose tremendous risks for many stakeholders, including small business owners, the Sharks, and downtown residents. (b) Return to Council in the first quarter of 2023 outlining a proposed work plan for revising the Downtown guidelines to require the siting of utility boxes in all new construction in any location--within, under, behind, or over buildings--other than on a public sidewalk. (2) Return to Council with revisions to the Code that enable the City to much more nimbly assess fines--in an increasing, "tourniquet" response to persistent non-compliance--on owners of long-neglected, vacant, and blighted buildings-such as Dr. Eu and the Church Christ Scientist buildings- which haven't paid a dime in fines or raised a finger in compliance, despite decades of neglect. (a) Utilize fines paid from such property owners exclusively for code enforcement and blight eradication in the surrounding area, and/or to support programs facilitating the filling of vacant storefronts. (b) Return to the Council with explicit OKR's for requiring Code Enforcement to proactively assess fines and elicit compliance. (3) Return to Council during the budget process to report on the cost for various options for filling vacant ground-floor retail sites, and provide options to the Council to consider. The following should be explored and considered: (a) Waiving fees for tenant improvements; (b) Providing VTA annual transit passes to new employees; (c) Waiving fees and/or streamlining permitting for pop-up shops or temporary uses; (d) Reinstating a program to facilitate temporary art installations in vacant storefronts; (e) Any other ideas for facilitating street-level activation of vacant storefronts.

5. Office to Residential Conversion Pilot Program. (Mayor and Peralez)

Public Comments: The following member of the public provided comments: Paul Soto.

Action: Upon motion by Councilmember Raul Peralez, seconded by Councilmember Dev Davis, and carried unanimously, the memorandum from the Mayor and Councilmember Peralez was approved in accordance with the Early Consideration Response Form. (4-0-1; Absent: Arenas)

Memorandum from Mayor and Peralez: To facilitate actions by the incoming Mayor and Council that can accelerate efforts to expand housing for a growing residential population Downtown, direct the City Manager and City Attorney to better enable conversions of older, Class "B" and "C" office buildings to housing in those locations that do not require any General Plan Amendment (i.e., with a "DC" land use designation), by: (1) Identifying the best path to enable local builders to access the recently-approved \$450 million in state funding to convert existing older office

buildings to affordable housing over the next two years; (2) Consulting with the authors of the pending ULI study regarding office building conversions to glean any lessons for cities wishing to catalyze the reuse of older office buildings; (3) Reviewing existing studies regarding office conversions, such as Gensler's recent study that spurred three conversions in downtown Calgary; (4) Convening builders and architects with experience or interest in such adaptive reuse-in collaboration with the current and incoming Mayor's Office-to ask them to help the City identify any unnecessary cost or regulatory local barriers to conversions; and (5) After collecting this information, (a) Return to Council with recommendations, and include evaluation of potential fee waivers (taken separately through the budget process) that could facilitate adaptive reuse to housing Downtown, such as a waiver of the Commercial, Residential, Mobile Home Park Construction (CRMP) tax for the first 1,000 units; and (b) Consider whether the City should identify specific Class B and C office buildings for incentives or prioritization for housing conversion.

Open Forum

1. Blair Beekman hoped for participatory democratic processes and involvement of the community on a local level regarding the ongoing discussions on armed robots and AOPR technology.
2. Paul Soto discussed the Fifth Amendment's application to redlining and the right to private property, including language, in San José.

E. Adjournment

Vice Mayor Chappie Jones adjourned the Committee meeting at 3:09 p.m.

Chappie Jones

Email: chappie.jones@sanjoseca.gov
Date: 12/29/2022 GMT

Vice Mayor Chappie Jones, Chair
Rules and Open Government Committee

CJ/mr:rulesmin20221130