



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

SAN JOSE, CALIFORNIA

WEDNESDAY, December 7, 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 (2:06 p.m.), 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 13, 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 David Cohen, seconded by Councilmember Raul Peralez, and carried unanimously, the Committee approved the final agenda for the City Council meeting on December 13, 2022 with the Add Sheet, with an 11:00 a.m. start time; it was noted that the memorandum for item 3.4 will be added to the agenda on December 9, 2022. (5-0-0)

2. Review December 20, 2022 Draft Agenda - Cancelled

B. Consent Calendar

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 David Cohen, and carried unanimously, the Consent Calendar was approved. (5-0-0)

1. The Public Record for November 22 – December 1, 2022. (City Clerk)

The Public Record for November 22 – December 1, 2022 was noted and filed.

2. Monthly Report of Activities for November 2022. (City Auditor)

The Auditor's Office Monthly Report of Activities for the month of November 2022 was approved.

3. Approval of the End of Term Celebration Event Sponsored by the Mayor's Office as a City Council Sponsored Special Event to Expend City Funds and Accept Donations of Materials and Services for the Event. (Mayor)

The End of Term Celebration to be held in December 2022, sponsored by the Mayor's office, was approved for placement on the December 13, 2022 City Council agenda.

4. Retroactive Approval of the Tree Planting Event at Orchard School Sponsored by Council District 4 as a City Council Sponsored Special Event to Expend City Funds and Accept Donations of Materials and Services for the Event. (Cohen)

The Tree Planting Event at Orchard School scheduled on November 30, 2022, sponsored by Council District 4, was approved for placement on the December 13, 2022 City Council agenda.

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

The International Children's Assistance Network Toy Drive scheduled on December 3, 2022, the Mariposa Park Celebration scheduled on December 10, 2022, the Franklin Family Giving Tree scheduled on December 16, 2022, the Santee Posada scheduled on December 16, 2022, and the Tropicana-Lanai Posada scheduled on December 16, 2022, all sponsored by Council District 7, were approved for placement on the December 13, 2022 City Council agenda.

6. 2022-2023/2023-2024 City Budget Calendar and Budget Study Session Schedule. (City Manager)

The proposed 2022-2023/2023-2024 City Budget Calendar as presented in Attachment A to the staff memorandum and the schedule for City Council Budget Study Sessions for the 2023-2024 Operating Budget, 2023-2024 Capital Budget and 2024-2028 Capital Improvement Program, and 2023-2024 Fees and Charges Report as presented in Attachment B and explained in the staff memorandum were both approved.

7. Update to the August - December 2022 Public Safety, Finance and Strategic Support Committee Work Plan. (City Manager)

An amendment to the August - December 2022 Public Safety, Finance and Strategic Support Committee Work Plan was approved to drop the following item from the December 15, 2022 Committee meeting: Recruitment, Hiring, and Retention Strategies Status Report.

C. Rules Committee Reviews, Recommendations and Approvals

Councilmember Sylvia Arenas requested that items C.6, C.7, C.8, and C.9 be heard together. The request was granted by Chair Chappie Jones.

1. Protecting the Public from Sexual Assaults Associated With Uber, Lyft, and Taxi's. (Mayor)

Discussion: Deputy Chief of Police Ellen Washburn, San José Police Department; Terry Harmon, Assistant District Attorney; Tasia Wiggins, Director of Victim Services for the District Attorney's Office; Jeff Rosen, District Attorney; and Mayor Sam Liccardo provided comments on this item. Mayor Sam Liccardo also shared a video regarding a sexual assault of a Lyft driver in San José.

Public Comments: The following members of the public provided comments: Minister Cherri Murphy, Melissa Luke, Cesar, Adriana Caldera, Christine Smith, Blair Beekman, Amie McClane, Erica Elliot, John L. Finley, Lindsey Mansfield, Kendra Asbury Steele, Hermelinda Vasquez, David Lee, Lidia Cruz, Colsaria Henderson, Kim Gutierrez, Matt King, Abbey Wise, Teri VandeLinde, Paul Soto, Cindi Hunter, Vanessa Torres, Adriana Marquez, and Jennifer Dow-Rowell.

Action: Councilmember Raul Peralez made a motion to approve the memorandum from the Mayor with the Early Consideration Response Form.

Action: Councilmember David Cohen proposed a friendly amendment Councilmember Raul Peralez' motion, to continue to engage with stakeholders and agencies on how to improve public safety around rideshare sexual assaults, and to direct the City Attorney's office to determine if the City has jurisdiction, and to identify parameters of the City's jurisdiction. Councilmember Raul Peralez accepted the friendly amendment and Councilmember David Cohen seconded Councilmember Raul Peralez' motion.

Final Action: Upon motion by Councilmember Raul Peralez and seconded by Councilmember David Cohen, the Committee approved the continuation of engaging with stakeholders and agencies on how to improve public safety around rideshare sexual assaults, and also directed the City Attorney's office to determine if the City has jurisdiction, and to identify parameters of the City's jurisdiction. (4-1-0; Noes: Arenas)

Memorandum from Mayor: Direct the City Attorney and City Manager to: (1) After consultation and outreach with local survivor support organizations and law enforcement agencies, return to Council for consideration of a proposed ordinance that would require all taxi companies and ride-share companies (aka, "transportation network companies," or TNC's) made aware of the

occurrence of a sexual assault associated with their operations, to immediately: (a) Inform survivors in clear, simple language, of (1) contact information for survivor support organizations in their area; (2) the phone number, email, and any other information that will expedite reporting of the incident to the sexual assault investigations unit (SAIU) of the San Jose Police Department; (3) a description of their rights as survivors, including their right to choose whether or not to respond to questions from police investigators; (4) the fact that there cannot be any criminal investigation, arrest, adjudication, restraining order, or sanction of the assailant without the survivor's independent communication with law enforcement; (5) their eligibility for a free SART medical examination of their injuries; and (6) an explanation that the timing of the SART exam is critical to preserve evidence of assault, and to protect their health. (b) Notify law enforcement of the assault allegation, and of contact information of the survivor, alleged assailant, and non-victim witnesses.

(2) Determine whether state law wholly or partly preempts the enactment of an ordinance consistent with the requirements of Paragraph 1, *supra*, to generally apply to all transportation carriers, including taxis, transit agencies, and TNC's. (a) Specifically, determine whether the City could impose such requirements pursuant to its existing police powers to regulate TNC's and other transportation carriers to protect public safety, as it does routinely in regulating airport operations and access, parking, traffic violations, or vehicular assaults. For example, in 2017, a Superior Court upheld the San Francisco Tax Collector's right to subpoena information from TNC's to assess compliance with the City's registration requirement. (b) Further explore whether any specific legislative enactment or court decision makes explicit whether a TNC's reporting obligations of sexual assaults to law enforcement would constitute, under Article XII of the California Constitution, "matters over which the Legislature grant regulatory power to the Commission," particularly in light of the fact that CPUC's regulatory authority emerged merely through a settlement of an enforcement action with TNC's in 2013, rather than through legislative action. (3) If an undue risk of preemption exists, then: a. Evaluate and return to Council to determine whether the City should formally seek the California Public Utilities Commission (CPUC) to issue regulations, (within 3.1(D) of the Third Amended Phase III, or in an additional phase of Rulemaking 12-12-011), to require all ridesharing companies, aka transportation network companies (TNC's), when notified of a sexual assault, to immediately report to local law enforcement. (b) Collaborate with District Attorney Jeff Rosen, the City Council, the Santa Clara County Chiefs of Police, and the County Board of Supervisors to determine whether other cities or counties may wish to join San Jose in a CPUC action.

2. Waiver of Revolving Door Restrictions. (City Attorney)

Public Comments: The following member of the public provided comments: Christina Ramos.

Action: Upon motion by Councilmember Raul Peralez, seconded by Councilmember David Cohen, and carried unanimously, the memorandum from the City Attorney was approved. (5-0-0)

Memorandum from City Attorney: (1) Consider the request by Christina Ramos, former Chief of Staff for Councilmember Raul Peralez, for a Waiver of the Revolving Door Restrictions for the work described in the memorandum and in Ms. Ramos' November 8, 2022 Waiver Request Letter and make findings as to whether such waiver is in the best interest of the City and consistent with

the purpose of San José Municipal Code Chapter 12.10; and (2) Forward the request and findings to the City Council for approval and place the item on the December 13, 2022 Council agenda.

3. Homeless Funding Transparency. (Mayor, Jones, Cohen, and Mahan)

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 Raul Peralez, and carried unanimously, the memorandum from the Mayor and Councilmembers Jones, Cohen, and Mahan was approved with the Early Consideration Response Form, and with flexibility granted for the implementation date. (5-0-0)

Memorandum from Mayor, Jones, Cohen, and Mahan: Direct the City Manager to develop a public-facing page on the City's website by the end of January 2023 that clearly and simply reports the various sources, expenditures, and outcomes of the City of San Jose's direct expenditures on permanent and transitional housing, emergency shelter, homelessness prevention, and related services. (1) The public should be able to clearly and simply identify the sources of funding - whether local, state and federal - without interpreting bewildering jargon or navigating an alphabet soup of acronyms. (2) Each program/ initiative/ funding category (e.g. "permanent housing," or "transitional housing") should be identified, with some link to a definition of what the program does and who is served. (3) "Outcomes" must be described, rather than mere "outputs." Outcomes should focus upon the number of people we're serving, housing, keeping housed, etc. (4) In parallel, staff should update relevant data on San Jose's open data platform (data.sanjoseca.gov). (5) Staff should update the webpage at least quarterly to reflect funding decisions and updated outcomes.

4. Resolutions Denouncing Hate Crimes and Islamophobia. (Jones)

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

Action: Upon motion by Councilmember David Cohen, seconded by Councilmember Raul Peralez, and carried unanimously, the memorandum from Councilmember Jones was approved to schedule the resolutions provided in the memorandum, which denounce hate crimes and Islamophobia, for approval on the City Council Agenda of December 13, 2022. (5-0-0)

5. Staffing Recruitment, Retention, and Vacancies. (Arenas)

Public Comments: The following members of the public provided comments: Louise Averhahn, Paul Soto, John Tucker, and Blair Beekman.

Action: Upon motion by Councilmember Sylvia Arenas, seconded by Councilmember Dev Davis, and carried unanimously, item 2 from Councilmember Arenas' memorandum was approved, the questions raised by staff in the Early Consideration Response Form were directed to be brought to

the Public Safety, Finance & Strategic Support Committee (PSFSS), and the item was directed to be cross-referenced to the City Council. (5-0-0)

Memorandum from Arenas: (1) Agendize a special meeting no later than March of 2023 on the subject of Staff Vacancies, Recruitment, and Retention. (a) Meeting should provide Council with a review of all existing strategies, but also additionally presentations on new strategies proposed by HR, bargaining units, and community organizations. (b) Council should be presented with strategies that would require: (i) New funding for HR staff or internal HR staff in various departments (ii) New focus on addressing issues in high-turnover classifications (iii) Substantial changes in job requirements for chronically vacant positions (iv) Strategies for addressing acute vacancy rates in critically effected departments, including: (1) Environmental Services (2) Housing (3) Parks, Recreation and Neighborhood Services (4) Planning, Building & Code Enforcement (5) Public Works (6) Information Technology; (2) Direct the City Manager to author a Manager's Budget Addendum for the upcoming budget cycle which provides the Council with accurate budgetary figures for implementing the strategies discussed at the Special Meeting.

6. Staffing Recruitment, Retention, and Vacancies. (Arenas)

[Items C.6, C.7, C.8, and C.9 were heard together. Public Comment was taken on the four items at one time, and the Committee took action on the four items with one motion.]

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

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

Memorandum from Arenas: Direct the City Manager to produce a Manager's Budget Addendum that brings forward a funding strategy to implement the City's recent report on restoring Lake Cunningham, for Council consideration in the upcoming budget cycle.

7. Staffing Recruitment, Retention, and Vacancies. (Arenas)

[Items C.6, C.7, C.8, and C.9 were heard together. Public Comment was taken on the four items at one time, and the Committee took action on the four items with one motion.]

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

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

Memorandum from Arenas: Direct the City Manager to produce a Manager's Budget Addendum that presents a funding plan to implement the remaining items in the Gender Based Violence

Response and Strategy Workplan and determine the spending plan for the remaining funds of the \$690,000 Sexual Assaults System Improvements Budget Reserve.

8. Staffing Recruitment, Retention, and Vacancies. (Arenas)

[Items C.6, C.7, C.8, and C.9 were heard together. Public Comment was taken on the four items at one time, and the Committee took action on the four items with one motion.]

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

Action: Upon motion by Councilmember Sylvia Arenas, seconded by Councilmember David Cohen, and carried unanimously, the Committee directed staff to develop an informational memorandum to be distributed in February 2023, and directed staff to come forward in closed session in March 2023 prior to the budget process negotiations. (5-0-0)

9. Staffing Recruitment, Retention, and Vacancies. (Arenas)

[Items C.6, C.7, C.8, and C.9 were heard together. Public Comment was taken on the four items at one time, and the Committee took action on the four items with one motion.]

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

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

Memorandum from Arenas: Direct the City Manager to add joint hearings between the Neighborhood Services and Education Committee and the Public Safety, Finance, and Strategic Support Committee and their County counterparts in the upcoming year, to the committee workplans, in coordination with the County Board of Supervisors and administration.

Open Forum

1. Blair Beekman thanked Councilmembers Arenas, Peralez, and Jones, as well as the community, City government, staff, and the City Council for their years of service and good work.
2. Paul Soto wished for there to have been warning before the video on sexual assault was shown during item C.1.

E. Adjournment

Vice Mayor Chappie Jones adjourned the Committee meeting at 4:40 p.m.

Chappie Jones

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

Vice Mayor Chappie Jones, Chair
Rules and Open Government Committee

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