

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

SAN JOSE, CALIFORNIA

WEDNESDAY, DECEMBER 9, 2020

Consistent with the California Governor's Executive Order No. N-29-20, Resolution No. 79450 from the City of San José and the Santa Clara County Health Officer's March 16, 2020 Shelter in Place Order, the City Council meeting was not physically open to the public. Public comments were accepted via eComment, email, by phone/Webinar or online.

The Council meeting was teleconferenced from remote locations and convened at 1:30 p.m.

Present: Councilmembers - Liccardo, Davis, Jones, Khamis.

Absent: Councilmembers - Arenas. (Excused)

Staff: Office of the City Manager, Chief of Staff, Lee Wilcox; City Attorney, Nora Frimann; City Clerk, Toni Taber; City Manager's Office, Gloria Schmanek; Henry Smith, Mayor's Office; and Deputy City Clerk Ruth Krantz.

A. City Council (City Clerk)

- 1. Review December 15, 2020 Final Agenda**
 - a) Add new items to Final Agenda**
 - b) Assign "Time Certain" to Agenda Items (if needed)**
 - c) Review of Notice Waiver Requests for Agenda Items or Documents (if needed)**

Public Comments: (1) Shani Kleinhaus spoke against electronic billboards. (2) Blair Beekman addressed accountability issues and addressed Item 10.2 and housing advocacy and equity. (3) Martha O'Connell urged a procedure to handle glitches in participating in meetings using Zoom.

Mayor Sam Liccardo spoke to a simplified approach in producing the ROG C agenda.

Action: Upon motion by Vice Mayor Chappie Jones, seconded by Councilmember Dev Davis, and carried unanimously, the Committee accepted the December 15, 2020 Final Agenda, including the Add Sheet and Sunshine Waivers, approving an 11 a.m. Council start time, and a 9 a.m. start time for Closed Session. Item 2.10 was deferred. (4-0-1. Absent: Arenas.)

2. Review December 22, 2020 Draft Agenda - Canceled

B. Review of Upcoming Meeting Agenda(s)

None provided.

C. Legislative Update

1. State

2. Federal

There were none presented.

D. Meeting Schedules

1. Public Hearing Schedule on the Proposed Modifications to the Spending Plan for Measure E Tax Revenues for FY 2020-2021 Pursuant to Council Policy 1-18. (Housing)

Director of Housing Jacky Morales-Ferrand responded to question regarding the necessity of the public hearing.

Public Comments: Blair Beekman spoke to homelessness, housing issues, fireworks issues, and surveillance.

Action: Upon motion by Councilmember Dev Davis, seconded by Councilmember Johnny Khamis and carried unanimously, the public hearing schedule on February 2, 2021 and February 16, 2021 regarding the proposed modifications to the spending plan for Measure E tax revenues for FY 2020-2021 pursuant to Council Policy 1-18 was approved.
(4-0-1. Absent: Arenas.)

E. The Public Record – none provided.

F. Boards, Commissions and Committees

None provided.

G. Rules Committee Reviews, Recommendations and Approvals

1. Consent Calendar

(a) Approval of Community Awards-Virtual Celebration and the Free Sock/Glove Giveaway Sponsored by Council District 2 as a City Council Sponsored Special Event to Expend City Funds and Accept Donations of Materials and Services for the Event. (Jimenez)

(b) Retroactive Approval of the Park Pleasant Dumpster Day Sponsored by Council District 5 as a City Council Sponsored Special Event to Expend City Funds and Accept Donations of Materials and Services for the Event. (Carrasco)

1. Consent Calendar (Cont'd.)

Public Comments: Blair Beekman spoke to the merits of Free Sock/Glove Giveaway; he indicated that this, as well as dumpster days, promotes Communication between neighbors.

Action: Upon motion by Councilmember Johnny Khamis, seconded by Councilmember Dev Davis and carried unanimously, the City Council sponsored Special Events were approved and cross-referenced to the December 15, 2020 Council Agenda for action.
(4-0-1. Absent: Arenas.)

G. 2. Monthly Report of Activities for November 2020. (City Auditor)

Joe Rois, City Auditor, provided a brief Report and indicated the timing of the December 18, 2020 report.

Public Comment: Blair Beekman addressed state of technology practices and articulated appreciation for privacy policies reviewed at last night's council meeting.

Action: Upon motion by Vice Mayor Chappie Jones, seconded by Councilmember Johnny Khamis, and carried unanimously, the Auditor's Office Monthly Report of Activities for the month of November 2020 was accepted. (4-0-1. Absent: Arenas.)

G. 3. Offering Wage Advances and Micro Loans to City Employees Through Fintech Services. (Diep)

Councilmember Lan Diep addressed his memorandum dated December 3, 2020, noting ideas presented in the *Harvard Business Review*.

Chief of Staff, Office of the City Manager, Lee Wilcox, indicated a "green light" and noted as a part of the 'roadmap process'.

Director of Employee Relations/Human Resources, Jennifer Schembri responded to questions and addressed surveys by employees/bargaining units. Councilmember Dev Davis asked that this be further investigated to see if there is a demonstrated need.

Motion: Vice Mayor Chappie Jones moved approval, with moving ahead to the Priority Setting Session. Councilmember Johnny Khamis seconded the motion.

Action: On a call for the question, the motion carried unanimously, with this item given a 'green light', moving approval of Councilmember Lan Diep's December 3, 2020 memorandum, with Staff directed to explore the menu of services offered by fintech firms such as PayActiv and Salary Finance and report back to Council on whether it is feasible and beneficial to partner with them to extend the following benefits to City of San José employees who may need them:

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G. 3. (Cont'd.)

1. Advancing wages that employees have already accrued but haven't yet received in between pay periods;
 2. Offering loans (through partnerships with fintech firms, not from the City funds) that will be repaid by drawing from the employee's paycheck.
- (4-0-1. Absent: Arenas.)

G. 4. Inter-Department Transfer of District 4 Council Funds to Other Departments. (Diep)

Councilmember Lan Diep addressed his memorandum dated December 3, 2020, asking that his unused D4 funds be used for under-funded City projects. He read a letter into the record from incoming D4 Councilmember, David Cohen. Councilmember Lan Diep addressed Mr. Cohen's objections.

Concerns were expressed by Councilmembers Dev Davis and Vice Mayor Chappie Jones, citing the idea that funds should be used exclusively for benefit of D4. Councilmember Lan Diep asked for the opportunity for this to go to Council, indicating that prior to doing so, he will provide amendments to his memo to allow more focus to D4 needs.

Action: Upon motion by Councilmember Johnny Khamis, seconded by Mayor Sam Liccardo and carried unanimously, this item was referred to the December 15, 2020 Council meeting for further Council discussion. (4-0-1. Absent: Arenas.)

G. 5. Fee Cap on Food Delivery Services. (Mayor and Diep)

Mayor Sam Liccardo provided an introduction to this item, speaking to its merits.

Public Comments: Nate LeBlanc asked that Rules Meeting visual prompts be more clearly displayed on Zoom. He addressed the fee cap, noting it may be a temporary fix to directly benefit restaurants, and indicated the Downtown Association's support. Additional representatives from the community, including Jenneke (Pizza Bocca) and Marcia (Hawaiian Poke Bowl) expressed support. Chad Horrell and Mariah Ray (Door Dash) spoke to restaurants on Door Dash platform, opining it as a solid foundation for offering restaurant relief and reiterating their support for the proposal. Jennifer Cannella-Echeverri (Habana Cuba) spoke to a need for a cap. Speaker "5140" advised this is the 'wrong direction'. Blair Beekman spoke to good government review and guidelines.

Vice Mayor Chappie Jones expressed concerns and had questions for the speaker, Door Dash representative Chad Horrell, who spoke to additional consumer fees and off-setting losses produced by such a cap.

Councilmember Johnny Khamis expressed concerns that 'permanent price fixing' would ensue and cautioned about 'micro-managing economics'.
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G. 5. (Cont'd.)

Action: Upon motion by Councilmember Dev Davis, seconded by Mayor Sam Liccardo and carried unanimously, the joint memorandum from Mayor Sam Liccardo and Councilmember Lan Diep dated December 3, 2020, was approved, with this item to return to the December 15, 2020 Council Meeting, and directing the City Manager to draft and enact an urgency ordinance that:

1. Caps the delivery fee that third-party food delivery platforms can charge member establishments at 15% of the purchase price of an online order; and 2. Caps the total fee amount for the use of all services-including the delivery and processing fees- that third-party food delivery platforms can charge at 18% of the purchase price of an online order; and 3. Allows member establishments to agree to pay a third-party food delivery platform a fee that exceeds the limits in sections 1 and 2 to obtain optional products or services, including, but not limited to, advertising, marketing, or access to customer subscription programs, in addition to delivery or pickup service; and 4. Prohibits the reduction of compensation to food delivery drivers, including the reduction of any amount of tips provided to delivery drivers that results from the restrictions on commission or delivery fees as set forth in this order; and 5. Exempts chain restaurants, with the exception of those franchisees who own and operate only three restaurants or fewer; and 6. Grants food-delivery companies 14 days per incident to refund any fees taken in excess of these limits; and 7. Remains in effect through June 2021, at which point the City Council may choose to extend or suspend the fee cap based on the extent of indoor restaurant capacity (e.g. 50%) and the availability of a COVID-19 vaccine for essential workers.

(3-1-1. Noes: Khamis. Absent: Arenas.)

G. 6. Procurement Programs for Minority-Owned and Other Businesses. (Jones and Arenas)

Vice Mayor Chappie Jones spoke to the memorandum he cosigned with Councilmember Sylvia Arenas, dated December 3, 2020 and urged approval.

Public Comments: (1) Blair Beekman spoke to good practices and need for this program during the pandemic. (2) Dennis King, representing the Small Business Advisory Task Force and Hispanic Chamber of Commerce spoke in strong support of the recommendations, particularly those for a disparity study.

Motion: Vice Mayor Chappie Jones moved approval, and Councilmember Dev Davis seconded the motion.

Chief of Staff, Office of the City Manager, Lee Wilcox, spoke to taking these recommendations and building them into the budget process through the Manager's Agenda, asking that it be 'green-lit' and brought to Council in January.

Action: On a call for the question the motion carried unanimously, the joint memorandum from Vice Mayor Chappie Jones and Councilmember Sylvia Arenas, dated December 3, 2020, was approved, with the item to be brought to the **January 12, 2021** Council Meeting for further discussion and action, to:

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G. 6. (Cont'd.)

1. Present the Report on Small/Local Business Contract Participation in FY 2019-20 as accepted by the Community & Economic Development (CED) Committee on November 23, 2020.
2. Accept Recommendations outlined in the letter submitted to the CED Committee from the San Jose Small Business Advisory Task Force and integrate into the workplan.
3. Explore options for implementing a Disparity Study to evaluate and potentially determine the need for new procurement policies that facilitate participation of Minority, Women, and Other owned Business Enterprises (MWOBE) as appropriate.
4. Return to Council in Spring 2021 with proposal, cost estimate, and scope of study to be considered in the annual budget process.

(4-0-1. Absent: Arenas.)

H. Review of Additions to Council Committee Agendas/Workplans

1. Community and Economic Development Committee

2. Neighborhood Services and Education Committee

3. Transportation and Environment Committee

None provided.

4. Public Safety, Finance and Strategic Support Committee Work Plan. (Mayor and Perez)

Public Comments: Blair Beekman commented on interchangeable issues between the Smart Cities Committee and PSFSS. He spoke to surveillance technology, neighborhood safety, Vision Zero, and responsible practices.

Action: Upon motion by Councilmember Johnny Khamis, seconded by Vice Mayor Chappie Jones and carried unanimously, the Public Safety, Finance, and Strategic Support Committee Work Plan for the period January through June 2021 and setting its meeting schedule on the third Thursday of each month at 1:30 p.m. by virtual meeting due to the COVID-19 pandemic restrictions, until further notice, was approved.

(4-0-1. Absent: Arenas.)

5. Joint Meeting of the ROG and Committee of the Whole – none provided.

6. Smart Cities and Service Improvements Committee Work Plan. (Mayor and Diep)

Action: Upon motion by Councilmember Johnny Khamis, seconded by Vice Mayor Chappie Jones and carried unanimously, the Smart Cities and Service Improvements Committee Work Plan for the period January through June 2021, setting its meeting schedule on the first Thursday of each month at 1:30 p.m. by virtual meeting due to the COVID-19 pandemic restrictions, until further notice, was approved.

(4-0-1. Absent: Arenas.)

I. Open Government

None provided.

J. OPEN FORUM

- (1) Blair Beekman addressed Commission practice and better public access, specifically for the Clean Energy Commission.
- (2) Gayle Osmer urged opening the Tully Library for winter shelter for the unhoused.
- (3) Martha O'Connell thanked Councilmember Johnny Khamis for his contributions to the community and thanked all for the Meals on Wheels. She added that Commission Minutes are available on the City's website.
- (4) Speaker "5140" spoke to opening businesses and problems in the City.

G. Adjournment

Mayor Sam Liccardo adjourned the Committee meeting at 4:13 p.m.

Mayor Sam Liccardo, Chair
Rules and Open Government Committee

SL/rk:rulesmin_12-09-20