

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

SAN JOSE, CALIFORNIA

WEDNESDAY, JULY 28, 2021

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 2:00 p.m.

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

Absent: Councilmembers - All Present.

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 August 3, 2021 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)**

Action: Upon motion by Councilmember David Cohen, seconded by Councilmember Dev Davis, and carried unanimously, the Committee accepted the August 3, 2021 Final Agenda with an Add for Item 2.x Board and Commissions Appointment accepted. (5-0.)

- 1. Review August 10, 2021 Draft Agenda**
 - a) Add new items to Draft Agenda**
 - b) Assign "Time Certain" to Agenda Items (if needed)**
 - c) Review of Notice Waiver Requests for Agenda Items or Documents (if needed)**

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1. Review August 10, 2021 Draft Agenda

Action: Upon motion by Councilmember Dev Davis, seconded by Councilmember Sylvia Arenas, and carried unanimously, the Committee accepted the August 10 draft Agenda. (5-0.)

B. Review of Upcoming Meeting Agenda(s)

None provided.

C. Legislative Update

1. State

2. Federal

There were none presented.

D. Meeting Schedules

There were none presented.

E. The Public Record for June 17 – July 22, 2021. (City Clerk)

Action: Upon motion by Councilmember Dev Davis, seconded by Councilmember Raul Peralez and carried unanimously, the Public Record for June 17 – July 22, 2021 was noted and filed. (5-0.)

F. Boards, Commissions and Committees

None provided.

G. Rules Committee Reviews, Recommendations and Approvals

1. Consent Calendar

- (a) Approval of Breastfeeding Awareness Month Sponsored by Council District 8 as a City Council Sponsored Special Event to Expend City Funds and Accept Donations of Materials and Services for the Event. (Arenas)**
- (b) Retroactive approval of Brigadoon Public Safety Community Meeting Community Event Sponsored by Council District 8 as City Council Sponsored Special Event to Expend City Funds and Accept Donations of Materials and Services for the Event. (Arenas)**
- (c) Retroactive approval of Arcadia Ballpark Open House Community Event Sponsored by Council District 8 as City Council Sponsored Special Events to Expend City Funds and Accept Donations of Materials and Services for the Event. (Arenas)**
- (d) Retroactive approval of Two Dumpster Days Sponsored by Council District 5 as City Council Sponsored Special Events to Expend City Funds and Accept Donations of Materials and Services for the Events. (Carrasco)**

- (e) Retroactive approval of Three Special Events Sponsored by Council District 4 as City Council Sponsored Special Events to Expend City Funds and Accept Donations of Materials and Services for the Event. (Cohen)**
- (f) Approval of Blue Zones Project Presentation and Reception Sponsored by Council District 6 as a City Council Sponsored Special Event to Expend City Funds and Accept Donations of Materials and Services for the Event. (Davis)**

Action: Upon motion by Councilmember Dev Davis, seconded by Councilmember David Cohen and carried unanimously, the City Council Sponsored Special Events were approved and cross-referenced to the August 3, 2021 Council Agenda for action. (5-0.)

Public Comments: 1. Soto spoke to science of gentrification and eugenics as a precursor to eugenics. 2. Tessa Woodmansee spoke to capitalism and its basis in fossil fuels, the exploitation of people and nature for profit.

- (g) Approval of Flag Raisings, Lighting, and Proclamation Recognizing Silicon Valley Pride Sponsored by Council District 9 as a City Council Sponsored Special Event to Expend City Funds and Accept Donations of Materials and Services for the Event. (Foley & Davis)**

Action: Upon motion by Councilmember Dev Davis, seconded by Councilmember David Cohen and carried unanimously, the City Council Sponsored Special Event was proved and cross-referenced to the August 24, 2021 Council Agenda for action. (5-0.)

G. 2. Terminate San Jose's Service Retirement Benefits for Convicted Felons. (Mayor)

Recommendation: Revise San Jose Municipal Code Section 3.36.830 to automatically terminate service retirement benefits upon conviction of a felony, barring extremely unusual circumstances meriting an extraordinary exception, such as the vacation or overturning of the conviction on appeal.

- (a) Any such extraordinary circumstances requiring an exceptional consideration of the Retirement Board must be raised in a noticed public hearing, and they require presentation of competent, credible evidence in a manner consistent with the California Rules of Evidence.
- (b) The Board retains discretion to provide benefits for spouse or minor children of the terminated retiree so long as they no longer share living expenses nor a residence with the retiree.

Public Comments: (1) Tessa Woodmansee: spoke to climate change and risk to our future. (2) Matt Mason, IFPTE Union Representative, questioned overbroad language and concerns of the Union, specifying felonies that have nothing to do with public service and may be in violation of Prop B. (3) Paul Soto questioned the use of the City's moral compass, picking and choosing what is addressed. (4) Jason Condit (IFPTE Local 21) opined that the Municipal Code already allows for certain actions and questions the recommendations. (5) Mary Blanco, Operating Engineers O/E 3 noted poor timing of this recommendation, adding that types of felony aren't delineated.

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G. 2. (Cont'd.)

Director of Retirement Services Roberto Peña, City Attorney, Nora Frimann and Director of Employee Relations/Human Resources, Jennifer Schembri responded to questions.

The Committee engaged in discussion and whether it should return to Council or Closed Session for further discussion.

Motion: Councilmember Sylvia Arenas moved for this item to return to Closed Session, with an analysis on the legal aspects of these actions by the City Attorney's Office and a meet & confer discussion with union representatives, and determination of a process with the Retirement Board on how affected employees would be identified. Councilmember David Cohen seconded the motion.

Chief of Staff, Office of the City Manager, Lee Wilcox, offered procedural input, and City Attorney, Nora Frimann indicated a possible consult with outside counsel.

Councilmember Raul Peralez suggested the Mayor return with a response to put in for early consideration before giving direction to staff. He indicated he could not support the motion on the floor, but added that any Closed Session include discussion around notification of qualifiers.

Councilmember Sylvia Arenas indicated no objection with having it return to the Mayor's Office then resubmitted to the Rules and Open Government Committee. Councilmember David Cohen suggested following up with a discussion in Closed Session with next steps.

Councilmember Sylvia Arenas amended her motion, indicating a rejection of the Mayor's July 15, 2021 memorandum, with this item to return to Closed Session for further discussion. Councilmember David Cohen seconded the motion.

Councilmember Raul Peralez requested an amendment that this be limited to felonies related to the employee's position and what is currently stated in the MOA. The seconder of the motion, Councilmember David Cohen, declined the amendment to the motion.

Vice Mayor Chappie Jones asked for clarification from the City Attorney if parameters should be clearly defined in closed session. Councilmember Raul Peralez indicated he could second Councilmember Sylvia Arenas' standing motion if including only non-federated employees. Impact to the MOA and Measure B were discussed.

Action: Councilmember Sylvia Arenas indicated she would maintain her motion to reject the Mayor's July 15, 2021 memorandum, with this item to return to Closed Session for further discussion, and Councilmember David Cohen seconded the motion. On a call for the question, the motion carried. (4-0-1. Noes: Peralez.)

H. Review of Additions to Council Committee Agendas/Workplans

1. (a) Retroactive Update to the January - June 2021 Community and Economic Development Committee Work Plan. (City Manager)

Public Comments: (1) Brian Darby offered support. (2) Paul Soto asked what follow-up and analysis would be done, particularly on the Citywide Residential Anti-Displacement Strategy.

Action: Upon motion by Councilmember Sylvia Arenas, seconded by Councilmember Dev Davis and carried unanimously, the following two items from the Community and Economic Development Committee work plan scheduled for June 28, 2021 were dropped: (a) Economic Recovery Status Report. (Economic Development) (b) Citywide Residential Anti-Displacement Strategy Verbal Status Report. (Housing) (5-0.)

2. Neighborhood Services and Education Committee

None provided.

3. (a) Transportation and Environment Committee Work Plan (Mayor and Davis)

Public Comments: Brian Darby spoke to problems with the VTA.

Action: Upon motion by Councilmember Sylvia Arenas, seconded by Councilmember David Cohen and carried unanimously, the a) Approval of the Transportation and Environment Committee Work Plan for the period August through December 2021 and setting its meeting schedule on the first Monday of each month at 1:30 p.m., with the exception of the month of September that is set on the last Monday in August, by virtual meeting during the month of August and in the City Council Chambers for the months of September through December. b) Accept the draft Transportation and Environment Committee Work Plan for the period January through June 2022 was approved. (5-0.)

4. Public Safety, Finance and Strategic Support Committee

5. Joint Meeting of the Rules and Open Government Committee and Committee of the Whole Rules and Open Government Committee Workplan

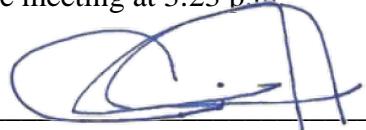
None provided.

OPEN FORUM

1. Brian Darby spoke on the VTA tragedy.
2. Paul Soto offered objections to the selection of Chris Burton as the Director of the Planning, Building and Code Enforcement (PBCE) Department.

G. Adjournment

Vice Mayor Chappie Jones adjourned the Committee meeting at 3:23 p.m.



Vice Mayor Chappie Jones, Chair
Rules and Open Government Committee

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