

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

SAN JOSE, CALIFORNIA

WEDNESDAY, DECEMBER 8, 2021

COVID-19 NOTICE

Consistent with AB 361 and City of San Jose Resolution Nos. 79485, 80237 and 80266, this meeting will not be physically open to the public and the (Board/Commission/Committee) Members will be teleconferencing from remote locations.

The Council meeting was teleconferenced from remote locations and convened at 2:02 p.m.

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

Absent: Councilmembers - All present.

Staff: Assistant City Manager, Lee Wilcox; City Attorney, Nora Frimann; 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 14, 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)

Public Comments: (1) Blair Beekman spoke to using subsidies for future urban village planning and addressed rate issues for local community energy. (2) Jill Borders asked that general land use issues not be consolidated for discussion, allowing the public a greater opportunity to speak. (3) Paul Soto spoke to democratic principles and allowing the public to pull consent calendar items. (4) Brian Darby asked for some verification that Council reads its email.

City Attorney, Nora Frimann addressed consent calendar items, clarifying that it's the Council's ability, not the public's, to pull consent items.

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1. Review December 14, 2021 Final Agenda (Cont'd.)

Motion: Councilmember Dev Davis moved approval of the December 14, 2021 final agenda, with an 11 a.m. start time, Item 10.5 not to be heard before 6 p.m., to move 2.13 off the Consent Calendar to 3.x (Strategic Support), to hear 3.4 last, to accept the Add Sheet and defer items 3.5 and 3.7 to January 11, 2022. Councilmember Sylvia Arenas seconded the motion.

City Attorney, Nora Frimann noted that under Council policy, technically all Land Use items should be heard in the evening, unless Planning staff with the concurrence of the Rules Committee specifically requests an afternoon hearing.

Substitute Motion: Councilmember Raul Peralez moved approval of those items moved by Councilmember Dev Davis, but without the deferral of Item 3.7. Councilmember David Cohen seconded the motion.

Action: On a call for the question, the substitute motion carried, and the Committee accepted the December 14, 2021 Final Agenda with an 11 a.m. start time, to move 2.13 off the Consent Calendar to 3.x (Strategic Support), to hear 3.4 last, to accept the Add Sheet and defer item 3.5 to January 1, 2022. (4-0-1. Noes: Davis.)

2. Review December 21, 2021 Draft Agenda - Cancelled

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 November 23 to December 2, 2021. (City Clerk)

Public Comments: (1) Paul Soto spoke on data collection and its abuse. (2) Blair Beekman addressed recent crime activity and accountability in using surveillance technology. (3) Brian Darby spoke on surveillance technology and lessons learned building humanity into technology.

Action: Upon motion by Councilmember Raul Peralez, seconded by Councilmember Sylvia Arenas, and carried unanimously, the Public Record for November 23 – December 2, 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) Retroactive Approval of Multiple Special Events Sponsored by Council District 7 as a City Council Sponsored Special Event to Expend City Funds and Accept Donations of Materials and Services for the Event. (Esparza)

1. Retroactively approve the Dumpster Day held on Clemence Avenue scheduled on September 11, 2021 as a City Council sponsored Special Event and approve the expenditure of funds.
2. Retroactively approve the Dumpster Day held on Lone Bluff Way scheduled on September 18, 2021 as a City Council sponsored Special Event and approve the expenditure of funds.
3. Retroactively approve the Franklin Family Movie Night held at Franklin Elementary School on September 24, 2021 as a City Council sponsored Special Event and approve the expenditure of funds.
4. Retroactively approve the Moon Festival at the Vietnamese American Cultural Center held on September 25, 2021 as a City Council sponsored Special Event and approve the expenditure of funds.
5. Retroactively approve the Dumpster Day held at Meadows Elementary School scheduled on September 25, 2021 as a City Council sponsored Special Event and approve the expenditure of funds.
6. Retroactively approve the Dumpster Day held at Yerba Buena High School scheduled on October 16, 2021 as a City Council sponsored Special Event and approve the expenditure of funds.
7. Retroactively approve the Lone Bluff Senter Family Movie Night held at Lone Bluff Park on October 16, 2021 as a City Council sponsored Special Event and approve the expenditure of funds.
8. Retroactively approve the Dumpster Day held in the Seventrees Neighborhood scheduled on October 23, 2021 as a City Council sponsored Special Event and approve the expenditure of funds.
9. Retroactively approve the Seventrees Halloween Trunk-or-Treat held at the Seventrees Community Center on October 29, 2021 as a City Council sponsored Special Event and approve the expenditure of funds.
10. Retroactively approve the Lairon Halloween Trunk-or-Treat held at Lairon Family Resource Center on October 29, 2021 as a City Council sponsored Special Event and approve the expenditure of funds.
11. Approve and accept donations from various individuals, businesses or community groups to support the event.
12. Place the item on the December 14, 2021 Council Agenda for action.

Public Comments: (1) Blair Beekman spoke to neighborhood cooperation and appreciation for dumpster days. (2) Paul Soto asserted his constitutional rights regarding the consent calendar issue and Evans Lane community resident's resiliency. (3) Jill Borders expressed appreciation regarding her mobile home park's courtesy of providing an annual dumpster event.

1. Consent Calendar

- (b) Approval of Gift Drive for Residents of Emergency Interim Housing at Evans Lane 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)**
- (c) Retroactive Approval of The Eastridge Tree Lighting Ceremony Community Event 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)**
- (d) Retroactive Approval of Deck the Doors Community Event 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)**

Action: Upon motion Councilmember Dev Davis, seconded by Councilmember Raul Peralez and carried unanimously, the City Council Sponsored Special Events were approved and cross-referenced to the December 14, 2021 Council Agenda for action. (5-0.)

G. 2. ADA Compliance for Small Businesses. (Peralez, Davis, Esparza)

Items G.2 and G.3 were heard together.

Direct the City Manager to:

1. Return to Council with a Certified Access Specialist (CASP) Inspection Grant program offering up to \$1,000 grants to assist small businesses seeking to reach ADA compliance by first initiating a CASp inspection by a CASp.
2. Develop an outreach and educational campaign targeting small businesses focusing on business areas such as Little Saigon, La Placita, The Alameda, Lincoln Avenue, Downtown Core, Japantown, East Santa Clara Street, Calle Willow and 13th Street Business Corridor.
 - a. As part of the outreach and educational campaign, direct Staff to develop a multilingual ADA Compliance for Small Businesses brochure including information such as the importance of ADA compliance, penalties for ADA noncompliance, financial resources available for small businesses to become compliant, and the benefits of hiring a CASp Inspector.
3. Return to Council with an informational memo on current State and Federal bills seeking to update legislation related to ADA compliance.

[Deferred from 12/1/2021 - Item G.2 (ROGC 21-850)]

Public Comments: (1) Blair Beekman spoke to the need for small business loans for ADA, and litigation issues with a COVID-19 component. (2) Kathryn Hedges offered support of ADA compliance and spoke against predatory lawyers. (3) Victor Gomez Pinnacle Strategy Consulting, urged support for small businesses. (4) Nate LeBlanc, San José Downtown Association, offered her appreciation for the outreach and educational campaign.

Assistant City Manager, Lee Wilcox referenced Early Consideration Forms for G.2 and G.3 and a green light for all except for the one yellow light for promoting outreach.

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G. 2./G.3 ADA Compliance Issues (Cont'd.)

Responding to questions from Councilmember Dev Davis regarding the “yellow light” regarding outreach issues, Assistant City Manager, Lee Wilcox offered insight to the roadmap process, and Economic Development Director, Nanci Klein expressed appreciation for Councils’ memoranda. She addressed the thoughtful approach required regarding the additional resources needed to promote and market a new program.

Assistant City Manager, Lee Wilcox and Rosalynn Hughey, Director, Planning, Building and Code Enforcement indicated that this is an issue for review through the budget process to determine if existing funding may be used. It was determined that an information would be forthcoming, with the possibility that it may have to return to Council.

Councilmember Dev Davis stressed the need for outreach to give reassurance to small businesses for their protection.

Motion: Councilmember Dev Davis moved both memoranda, the joint memorandum that she coauthored with Councilmember Maya Esparza and Councilmember Raul Peralez, dated November 18, 2021 and the joint memorandum from Vice Mayor Chappie Jones, Councilmember Sergio Jimenez and Councilmember Pam Foley, dated November 24, 2021. Councilmember Sylvia Arenas seconded the motion.

Action: On a call for the question, Item G.3, ADA Compliance for Small Businesses and Item G.4, ADA Compliance recommendations were accepted, including the joint memorandum from Councilmembers Esparza, Peralez and Davis, dated November 18, 2021 and the joint memorandum from Vice Mayor Chappie Jones, and Councilmembers Jimenez and Foley, dated November 24, 2021, with Items 1, 1.3, 2a, 2b, 3, 4, 5, 6, 7a, 7b, 8 and 9 green-lit; 1.2 yellow-lit, and with staff to return with an informational memo. (5-0.)

G. 3. ADA Compliance. (Jones, Jimenez, Foley)

Items G.2 and G.3 were heard together.

Direct City Manager to ensure all businesses, specifically small, minority-owned businesses, are educated about the American with Disabilities Act (ADA) Compliance requirements at the state and federal level, and have access to resources and tools, to ensure the City of San José is barrier free, inclusive, and accessible to all residents and visitors through the following actions.

1. Provide and improve multi-language education through:

1) A new City webpage that includes information about ADA compliance tools, resources, and access to local and state services to help business owners and nonresident landowners comply with ADA requirements.

2) Mailers/flyers to be distributed to San José certified businesses in the zip codes listed in Attachment A, providing them education about the obligation to comply with state and federal ADA laws and access to resources and tools.

3) City-sponsored webinar in partnership with ADA compliance subject expert(s) providing overview and education on state and federal laws, local and state resources for assistance in ensuring places of business are accessible, and protection against accessibility lawsuits.

G. 3. ADA Compliance. (Cont'd.)

2. Include distribution of work between Office of Economic Development and the Planning Division's Business Ally Program/Coaching Center to utilize existing resources and workplans such as:
 - a. OED's current efforts towards redesign of the Business Owner Space website and creation of a Virtual Business Center as a "one-stop-shop" in alignment with the Mayor's Budget Message in June 2021.
 - b. Planning Division's "Disability Access and Education Revolving Fund;" this is a state mandated program that has created a local revenue stream for training and certification of municipal CASp inspectors, and education, outreach, and grants to facilitate ADA compliance for small businesses.
3. Increase promotion of the City's Disabled Access Improvement Grant Program, which was launched in 2020 to facilitate ADA compliance for small businesses; partner with third party organizations specialized in providing technical assistance and support for small businesses.
4. Report on appropriation of funds collected through the state mandated Disability Access Education Revolving Fund; expand use of funds to include the "Accessibility & Legal Guidance Fund Program" to provide financial assistance grants and guidance to qualifying small businesses with:
 - a. Correcting construction-related physical access violations per a completed Certified Access Specialist (CASp) inspection report, specifically to cover the top three violations reported statewide:
 - 1) Noncompliant existing parking spaces, e.g. excessive slopes/cross-slopes, improper dimensions, striping, etc.;
 - 2) Access heights within public facility, e.g. heights of surfaces such as counters, bars, or tables are not compliant;
 - 3) Noncompliant or nonexistent Parking for Van-accessible and/or loading zones;
 - b. Navigating through remediation of accessibility violations and litigation.
5. Ensure the City's "Al Fresco Forever" initiative includes education about ADA compliance requirements and guidelines on access solutions for businesses to implement in order to adequately serve customers with disabilities and prevent violations that may place businesses at risk for lawsuits.
6. When considering establishment of the new Office of Disability Affairs as part of the budget process, include a forum or point of contact for citizens to submit communication regarding access and barriers at public spaces and places of businesses within the City so that these issues may be potentially addressed proactively and outside of the litigation process.
7. Direct Office of Intergovernmental Relations to:
 - a. Work with City's State lobbyist and/or Assembly Members Alex Lee, Evan Low, Ash Kalra, and Senator Dave Cortese to:
 - i. Advocate for maintaining the state mandated "Disability Access and Education Revolving Fund" fee at \$4 and retainment of the fees collected at 90% for local municipalities before it reverts to a \$1 fee and 70% retainment in 2023. This will allow the City to continue with providing funding for training of CASp inspectors, the City's Disabled Access Improvement Grant Program, and other potential programs as proposed at the local level that may serve as tools for small businesses to utilize and ensure accessibility for individuals with disabilities; and

G. 3. ADA Compliance. (Cont'd.)

ii. Request allocation in the state budget to establish grants for small businesses in order to upgrade their premises to be administered through the California Commission on Disability Access (CCDA); in addition to working with members representing the Bay Area, consider also working with members representing the Central Valley, which historically has also been hard hit by these lawsuits.

b. Advocate for federal legislative reforms that make it more difficult to file predatory ADA lawsuits in federal court, especially considering the 45% increase in the number of ADA lawsuits against small businesses in California through the federal courts since 2017.

8. Collaborate with the State's California Commission on Disability Access (CCDA) and Disability Rights California to explore best practices in other cities throughout the State, increase education, and promote available state resources and tools to ensure businesses are accessible by individuals with disabilities.

9. Report Back to Council with an Information Memorandum on Recommendations 1 - 6, and 8; report back to Council on Recommendation 7 at the next IGR Quarterly Report.

[Deferred from 12/1/2021 - Item G.3 (ROGC 21-862)]

Action: Heard concurrently with Item G.2 – See Item G.2 for action.

G. 4. Monthly Report of Activities for November 2021. (City Auditor)

City Auditor Joe Rois asked for acceptance of the report.

Public Comments: (1) Blair Beekman spoke to the wage theft protection policy, Our City Forest, disaster preparedness ideas and other topics addressed in the report. (2) Paul Soto opined that any reference to equity in these documents are false.

Action: Upon motion by Councilmember David Cohen, seconded by Councilmember Sylvia Arenas, and carried unanimously, the Auditor's Office Monthly Report of Activities for the month of November 2021 was accepted. (5-0.)

G. 5. External Quality Control Review of the Office of the City Auditor for the Period July 1, 2019 to June 30, 2021

City Auditor Joe Rois provided a report.

Public Comments: (1) Blair Beekman spoke to renewable energy practices and equity. (2) Paul Soto spoke to mistrust of Texas when considering equity.

Action: Upon motion by Councilmember Dev Davis, seconded by Councilmember Sylvia Arenas, and carried unanimously, the External Quality Control Review of the Office of the City Auditor for the Period July 1, 2019 to June 30, 2021. (City Auditor) was accepted. (5-0.)

H. Review of Additions to Council Committee Agendas/Workplans

- 1. Community and Economic Development Committee**
 - 2. Neighborhood Services and Education Committee Work Plan**
 - 3. Transportation and Environment Committee**
 - 4. Public Safety, Finance and Strategic Support Committee**
 - 5. Joint Meeting of the Rules and Open Government Committee**
- None provided.

I. Open Government

a) ROGC Public Records Appeal - Katherine Weiland. (Police)

Heard immediately following Consent Calendar

- a. As directed by Rules Committee on 12/1/2021, accept a progress update from staff.**
 - b. Deny the appeal from Katherine Weiland (aka Katherine Reichenbach) regarding the City's response to her request for public records seeking records, specifically body worn camera footage, related to a complaint submitted to the San Jose Police Department's Internal Affairs Unit (number I2020-2023), related to event number 20-211-0547.**
- [Continued from 12/1/2021 - Item I.a (ROGC 21-851)]**

Assistant City Manager, Lee Wilcox introduced the topic. Deputy Chief Elle Washburn addressed the case assigned to the family violence unit and briefly summarized the review.

Police Lieutenant Steve Donohue spoke to review of bodycam footage and actions taken to reach out to survivor. He discussed alternatives of releasing the bodycam footage or allowing the department to finish investigating the case and establish elements.

Katherine Weiland spoke on her discussion with the Independent Police Auditor (IPA) regarding review of footage and cited misrepresentation, urging the need to rely on facts.

Domestic Violence Advocate, Amanda Gould noted that Ms. Weiland should be categorized as victim of a crime, and questioned whether the body cam footage was reviewed again, indicating that the actions taken were not trauma informed or appropriate, and no conduct violation was found for the courtesy aspect of her complaint. Assistant Independent Police Auditor, Erin O'Neill confirmed that camera footage had been reviewed again.

Ms. Weiland further outlined the treatment she received and disagreement with interpretation of the department's adherence to the 'courtesy' factor. Independent Police Auditor's Office Shivaun Nurre responded to questions and outlined the definition of department members 'courtesy', being officer's being tactful and courteous in the performance of their duties.

Motion: Councilmember Sylvia Arenas asked that our systems be set up so they trigger these kinds of reviews to assure what we set up in policy is what we do in practice and asked how policy can better support and make this a learning opportunity. She subsequently asked for a motion to defer this item until the January 5, 2022 ROGC Meeting. Councilmember Raul Peralez seconded the motion.

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b) ROGC Public Records Appeal - Katherine Weiland. (Cont'd.)

Councilmember Raul Perez additionally recommended deferring further comments and a decision until the January meeting, but should it be determined that enough elements are present to identify a crime, then the PD release the video to the survivor as soon as possible and alert the Rules and Open Government Committee that this action has taken place.

Public Comments: (1) Paul Soto spoke to his own sexual assault. (2) Kathryn Hedges questioned the processes being used and need for victims of crimes to have access to body cam footage. (3) Blair Beekman spoke to 'best practices'. (4) Scott Largent offered criticism of the City's practices.

Ester Perez-Dieckmann, Next Door Solutions, urged quarterly meetings being held, as many cases of this nature are coming through. She added it is unacceptable how long it has taken Ms. Weiland to get justice, that she is still at risk from the perpetrator, and the City must be more sensitive to issues.

Action: On a call for the question, the motion was carried unanimously, with this item deferred to the January 5, 2022 ROGC Meeting. Should it be determined that enough elements are present to identify a crime, then the Police Department is to release the video to the survivor as soon as possible and alert the Rules and Open Government Committee that this action has taken place. (5-0.)

OPEN FORUM

1. Paul Soto spoke to the Fallon Station removal.
2. Blair Beekman spoke to public health and need for flexibility of choices with the vaccine process.
3. Gail Osmer urged the need to move porta-potties and safety issues regarding Columbus Park – Spring Street.
4. Scott Largent spoke to fires due to 'wood chucker' and illegal burn piles at Columbus Park – Spring Street and safety issues.
5. Kathryn Hedges complained of major fire safety at Columbus Park and compensation for hourly workers.
6. Caller User #1: expressed concerns of lighting fires and the City's negligence.
7. Jill Borders offered appreciation to the Rules and Open Government Committee and addressed responsiveness of developers, specifically Fish Market property, and encouraged developers to return calls to constituents as they have been non-communicative.

G. Adjournment

Vice Mayor Chappie Jones adjourned the Committee meeting at 4:41 p.m.

Vice Mayor Chappie Jones, Chair
Rules and Open Government Committee

CJ/rk:rulesmin20211208