

RESOLUTION NO. 75246

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING THE RULES FOR THE CONDUCT OF ITS MEETINGS, SUPERSEDING RESOLUTION NO. 74574

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. The Council of the City of San José does hereby adopt and establish the following rules for the conduct of its meetings, proceedings, and business. These rules will also apply to the meetings, proceedings and business of the Board of the San Jose Redevelopment Agency.

RULE 1

MEETINGS

(a) Regular Meetings

The regular meetings of the Council are held in accordance with the Ralph M. Brown Act (California Government Code Sections 54950, et seq., hereinafter referred to as the "Brown Act"), and the additional rules of procedure as described in Rule 6.5 on Tuesday of each calendar week. The meeting commences at 9:30 a.m., for closed session purposes, in the Council Chambers in the City Hall of the City of San José, unless the session is publicly posted to begin at a different time, and upon completion of closed session is recessed until 1:30 p.m., in the Council Chambers in the City Hall of the City of San José or at such other time or place as the Council may from time to time prescribe. City Hall is situated at 200 East Santa Clara Street, San José, California, at the south side of East Santa Clara Street, between 4th and 6th Streets, San José, California. Evening sessions, when scheduled, commence at 7:00 p.m.

(b) Special Meetings

A special meeting of the Council may be called at any time by the Mayor, or by a majority of the members of the Council, in accordance with the Brown Act and the additional rules of procedure as described in Rule 6.5.

(c) Adjournment: Adjourned Meetings

The Council may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members will be or are absent from any regular or adjourned regular meeting, the City Clerk may declare the meeting adjourned to a stated time and place and cause a written notice of the adjournment to be given in the same manner as provided for special meetings. Within 24 hours after the time of adjournment, a copy of the order or notice of adjournment must be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held. When a regular or adjourned regular meeting is adjourned as provided in this Rule, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it must be held at the hour specified for regular meetings.

(d) Closed Sessions

The Council may hold closed sessions during a regular or special meeting, or at any time otherwise authorized by law, to consider or hear any matter which it is authorized by state law and Rule 1.5, to hear or consider in closed session, and may exclude from any such closed session any person or persons which it is authorized by state law to exclude from such closed sessions. Every person who attends closed session will be required to sign a notice acknowledging that he or she understands the potential penalties that exist under

California law and/or City Council policy for disclosing confidential information acquired by being present at closed session.

(e) Attendance

Section 407 of the San José City Charter requires that a sum, as established by the Council Salary Setting Commission, be deducted from the salary of each member, except the Mayor, for each regular meeting of the Council missed by said member. Attendance, for purposes of Charter Section 407, is deemed to mean being present at any such regular meeting, unless officially excused by the Council for authorized City business, illness or death of a close family member pursuant to provisions of Section 407 of the Charter. Requests to be excused from attendance must be a regular agenda item on the Council's Consent calendar.

(f) Cancellation

Any meeting of the Council may be canceled in advance by majority vote of the Council. The Mayor may cancel a meeting in the case of an emergency or when a majority of members have confirmed in writing their unavailability to attend a meeting.

(g) Chair

The Mayor presides over all Council meetings. In the Mayor's absence, the Vice Mayor serves as presiding officer. In the absence of both the Mayor and the Vice Mayor, the Mayor has discretion to appoint the Chair for the meeting. In the event the Mayor is unable to appoint the Chair, the Council designates the Chair.

RULE 1.5

CLOSED SESSION MEETINGS

The Council must adhere to the following provisions:

(a) **Agenda Disclosures**

1. Topics described on closed session agendas must follow the discretionary provisions of the Brown Act at a minimum. The following additional information is required:

A. License/Permit: If the purpose of closed session is to discuss and determine whether an applicant for a license or license renewal, who has a criminal record, is sufficiently rehabilitated to obtain the license, the type of license or permit at issue must be identified in addition to the number of applicants.

B. Real Property Negotiations: If the purpose of closed session is to meet with the Council's negotiator before the purchase, sale, exchange, or lease of real property or for the Council to grant authority to its negotiator regarding the price and terms of payment for purchase, sale, exchange, or lease, whether the likely value of the property at issue exceeds \$1 million must be disclosed in addition to the street address, parcel number or other unique reference of the property, the name(s) of the negotiator(s) or his or her agent(s) or designee(s) attending closed session, the negotiating parties and whether instructions to the negotiator will concern price, terms of payment, or both.

C. Existing Litigation: If the purpose of closed session is to confer with or receive advice from the Council's legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the Council in the litigation, the amount of money or other relief sought in the lawsuit must be provided in addition to the claimant's name, the names of the parties involved and the case or claim numbers (unless disclosure would jeopardize service of process or existing settlement negotiations).

D. Liability Claims: If the purpose of closed session is to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability,

the amount of money or other relief sought in the claim must be provided in addition to the claimant's name and the name of the agency against whom the claim is filed.

E. Public Employment/Appointment: If the purpose of closed session is to consider the appointment or employment of a public employee, the department or agency to which the appointment will be made, in addition to the title of the position to be filled, must be provided.

F. Public Employee Performance Evaluation: If the purpose of closed session is to consider the evaluation of a public employee, the name of the employee, in addition to the title of the position of the employee being reviewed, must be provided.

G. Public Employee Discipline/Dismissal/Release: If the purpose of closed session is to consider the discipline (which includes potential reduction of compensation) or dismissal of a public employee or to hear complaints or charges brought against the employee by another person unless the employee requests a public session, the number of employees and the agency or department involved must be disclosed.

H. Labor Negotiations: If the purpose of closed session is to meet with the Council's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily-provided scope of representation, the nature of the negotiations, such as the issues to be discussed (i.e. wages/salaries, hours, working conditions, benefits or some combination) as well as the name of the existing contract or memorandum of understanding and information on how to obtain a copy must be provided, in addition to the names of the designated representative(s) or his or her agent(s) or designee(s) attending the closed session and the name of the

employee organization representing the employees in question or the position and title of the unrepresented employee(s) who is (are) the subject of the negotiations.

2. Agenda disclosures cannot be misleading. No discussion may take place in closed session that has not been disclosed on the agenda.

(b) Topics

1. Closed session discussions about real property negotiations may not address any subjects other than instructions from the City Council to its negotiators regarding price and terms of payment, with an understanding that price includes a discussion on potential use of property. Moreover, closed session discussions about the purchase of real property or any proposed development of property may not include re-budget decisions.

2. Approval given to legal counsel to file a brief as a friend of the court in any form of litigation must be discussed in open session unless the City Attorney advises the Council that, because of potential liability to the City, filing a brief as a friend of the court should be discussed in closed session.

(c) Statement of Reasons for Closed Sessions

1. Before any closed session, the Council must meet in open session to (1) state the reason for closed session for each item on the agenda; and (2) cite the statutory authority for closed session for each item on the agenda, including the specific section of the Brown Act or other legal authority. The statement must not be misleading. The Council may discuss only those matters covered in its statement. Moreover, for real property negotiations, the Council must identify in open session the properties at issue, any development plans for the property (within the constraints of the California Environmental Quality Act) and source(s) of payment for the property.

2. If an item is added to the closed session agenda (i) upon a determination by a majority vote of the Council that an emergency situation exists; (ii) upon a determination by a 2/3 vote of the members of the Council present at the meeting, or if less than 2/3 of the members are present, on a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the Council after the agenda was posted; or (iii) the item was posted for a prior meeting of the Council occurring not more than five calendar days before the date action is taken on the item and at the prior meeting the item was continued to the meeting at which action is being taken, the Council must state in open session (1) the fact of the addition to the agenda; (2) why the item is being added; (3) the reason for closed session on the item; and (4) the statutory authority for closed session on the item.

3. Emergency situations are limited to (1) a work stoppage, crippling activity or other activity that severely impairs public health, safety or both or (2) a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring the Council to provide one-hour notice before holding an emergency meeting under this section could endanger the public health, safety or both.

4. Only items on the written agenda or added pursuant to Section (c)(2) above may be discussed during closed session. Any action taken on an item that is not described in accordance with this section is subject to invalidation pursuant to the provisions of Government Code Section 54960.1.

(d) Approval in Open Session of Certain Closed Session Discussions

1. All proposed agreements for the purchase or sale of real estate must be approved by the Council in open session. For transactions less than \$1 million, the item must be noticed on the agenda, and the memo and a substantially final version of the

agreement posted with the agenda, at least 10 calendar days before a regular meeting. For transactions \$1 million and more, the item must be noticed on the agenda, and the memo posted with the agenda, at least 14 calendar days before a regular meeting.

2. All proposed contracts with represented and unrepresented employees and the Council Appointees must be approved by the Council in open session. For contracts less than \$1 million, the item must be noticed on the agenda, and the memo and a substantially final version of the term sheet posted with the agenda, at least 10 calendar days before a regular meeting. For contracts \$1 million and more, the item must be noticed on the agenda, and the memo posted with the agenda, at least 14 calendar days before a regular meeting.

3. All proposed settlements of litigation or claims for which the City agrees to pay \$50,000 and more must be approved by the Council in open session. For settlements less than \$1 million, the item must be noticed on the agenda, and the memo and a substantially final version of the settlement posted with the agenda, at least 10 calendar days before a regular meeting. For settlements \$1 million and more, the item must be noticed on the agenda, and the memo posted with the agenda, at least 14 calendar days before a regular meeting.

(e) Disclosure of Closed Session Discussions and Actions

1. After every closed session, the Council must meet in open session to make the following disclosures:

A. Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as a friend of the court in any form of litigation must be reported in open session at the public meeting during which the closed session is held. The report must identify, if known, the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the

announcement need not identify the action, the defendants, or other particulars, but must specify that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars will, once formally commenced, be disclosed publicly.

B. Approval given to its legal counsel of a settlement of less than \$50,000 of pending litigation at any stage prior to or during a judicial or quasi-judicial proceeding must be reported after the settlement is final, as specified below:

i. If the Council accepts a settlement offer signed by the opposing party, the Council must report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.

ii. If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, the Council must disclose the fact of that approval, and identify the substance of the agreement.

C. Final agreements reached as to claims of less than \$50,000 must be reported as soon as reached in a manner that identifies the name of the claimant, the name of the person or entity claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant.

D. Action taken to appoint, employ, discipline, dismiss, accept the resignation of, or otherwise affect the employment status of a Council Appointee in closed session must be reported at the public meeting during which the closed session is held. Any report required by this paragraph must identify the title of the position. The general requirement of this paragraph notwithstanding, the report of discipline, dismissal or the non-

renewal of an employment contract will be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

E. Appraisals used in the condemnation of property must be disclosed after the condemnation proceedings have concluded.

F. Formal claims rejected by the Council must be reported in a manner that identifies the name of the claimant, the name of the person or entity claimed against and the substance of the claim.

2. The Council may, upon a determination that disclosure is in the public interest and by motion and majority vote, disclose any portion of its discussion that is not confidential under federal or state law. The disclosure must be made through the Chair of the Council or his or her designee who was present in the closed session.

3. Disclosures may be made orally or in writing, but must be supported by copies of any contracts, settlement agreements, or other documents related to the action that was approved in the closed session. The supporting documents that embody the information required to be disclosed, except for documents otherwise required to be kept confidential by state or federal law, must be provided to any person who has made a written request about that item or who has made a standing request for all such documentation as part of a request for notice of meetings.

4. A written summary of the disclosures required to be made must be posted by the close of business on the next business day after the open session in the place where the agendas of the Council are posted.

RULE 2
ORDER OF BUSINESS

The business of the Council, at its meetings, is conducted in accordance with the following order of business.

- CLOSED SESSION
- CALL TO ORDER
- INVOCATION
- PLEDGE OF ALLEGIANCE
- ORDERS OF THE DAY
- CLOSED SESSION REPORT
- CEREMONIAL ITEMS
- CONSENT CALENDAR
- STRATEGIC SUPPORT SERVICES
- COMMUNITY & ECONOMIC DEVELOPMENT
- NEIGHBORHOOD SERVICES
- TRANSPORTATION & AVIATION SERVICES
- ENVIRONMENTAL & UTILITY SERVICES
- PUBLIC SAFETY SERVICES
- JOINT CITY COUNCIL/REDEVELOPMENT AGENCY
- OPEN FORUM (to be heard jointly with Redevelopment Agency public discussion)
- GENERAL PLAN HEARINGS
- PUBLIC HEARINGS (for specially noticed items)
- OPEN FORUM (for evening meetings)
- ADJOURNMENT

The order of business may be altered by the Rules and Open Government Committee or the City Council. Also, the Chair has the discretion to call matters on the agenda out of order in order to manage the meeting. In addition, the Chair will be responsible for establishing the

order of and length of time allocated for any audio/visual presentations to be made at the meeting.

RULE 3

AGENDA

(a) Content

The City Clerk prepares for each meeting of the Council an agenda specifying the time and place of the meeting and setting forth a brief general description of each item of business to be considered by the Council at that meeting. The agenda for each regular meeting includes all items of business requested to be placed on the agenda by the City Council or the Council Rules and Open Government Committee. Any member of the Council or the Council Appointees (i.e. the City Manager, the City Attorney, the City Clerk, the City Auditor, or the Independent Police Auditor) may submit items to be placed on the agenda to the Rules and Open Government Committee or to the Council as a whole under the Orders of the Day. The City Clerk must refer all written requests from the public for an agenda item to the Administration. The City Clerk must provide a copy of each written request to the Rules and Open Government Committee.

(b) Draft Agenda

The City Clerk prepares a draft agenda for the Rules and Open Government Committee on the second Wednesday immediately preceding the date of Council meeting. The Rules and Open Government Committee, upon considering such agenda, may add any items of business thereto, and may delete items therefrom, except for items placed on the agenda by an individual Council member, unless such items have been referred to staff or a Committee.

(c) Time Certain

Some items may be listed on the agenda for a time certain or not before a certain time.

Such listing means that the item is heard as soon as reasonably possible after the specified time, but not before.

(d) Orders of the Day

Items may be added to the agenda, under Orders of the Day, by the Chair, or any Councilmember or Council Appointee, if that person determines that there is a necessity as described by and in compliance with the Brown Act to so add. However, no such item may be heard unless the change to the Orders of the Day has been approved by a two-thirds vote of the members of the Council present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present. The agenda must include a statement under Orders of the Day that items recommended to be added, dropped or deferred are usually approved under Orders of the Day unless the Council directs otherwise. Requests about items on the agenda may be heard during Orders of the Day unless a member of the Council objects. If a member of the Council objects, the item will be heard in its noticed order on the agenda. In addition, if a motion is made on an individual item during Orders of the Day and the Council debates the motion, the public may offer testimony during that debate.

(e) Posting

The agenda for each regular meeting must be posted in accordance with the Brown Act and the additional rules of procedure as described in Rule 6.5. The City Clerk must maintain a record of such posting in a form approved by the City Attorney.

(f) Actions

The Council may not take action on any matter not appearing on the posted agenda unless one of the exceptions listed in the Brown Act is applicable.

RULE 4

PUBLIC HEARINGS AND OTHER AGENDA ITEMS

(a) Time for Consideration

Hearings and matters publicly noticed or ordered to be held by the Council at any specified time, commence at the time specified for hearing or consideration of such matter, or as soon thereafter as is reasonably possible, and continue until the same have been completed or until other disposition of such matters has been made.

(b) Continuance of Hearings

Any hearing being held, noticed or ordered to be held at any meeting of the Council may, by order or notice of continuance, be continued or recontinued to any subsequent meeting of the Council, in the same manner and to the same extent hereinabove set forth for the adjournment of meetings; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing must be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

(c) Public Testimony on Matters set for Public Hearing

Before a call for the question may be heard, the Chair must inquire if there are any persons present who desire to speak on the matter which is to be heard or to present evidence respecting such matter. Any person desiring to so speak or present evidence must submit a speaker's request card to the City Clerk and upon being recognized by the Chair, such person may speak or present evidence relevant to the matter being heard. No person may

be denied the right to speak because he or she declines to disclose his or her name, address or telephone number. Members of the Council who wish to ask questions of the people or of each other, or who wish to discuss the subject matter of the hearing during the course of the hearing, may do so, but only after being recognized by the Chair. The Chair must conduct the meeting in a manner which affords persons wishing to speak or present evidence an opportunity to be heard on the merits of the matter set for hearing.

All persons interested in the matter which is the subject of the hearing are entitled to submit written evidence which will be part of the record and must be given opportunity to present other evidence relevant to such subject. All evidence presented must be retained by the City as part of the Clerk's record; however, parties displaying models and large exhibits may withdraw them. The City Clerk can request that substitute photographs be submitted to be part of the record. Also, within the time limits which may be set as described below, interested persons must be given reasonable opportunity to present oral arguments for or against any proposed action. However, no person may, during such hearing, speak or present evidence respecting matters not relevant to the matter which is the subject of the hearing.

(d) Consideration of Question by Council

After the conclusion of the public testimony upon the subject of any hearing, the Council may consider what disposition it wishes to make of the question(s) presented to it at said hearing. No member of the public is allowed, without the consent of the Chair, to speak upon the question or subject during or after such discussion and consideration by the Council. While considering any matter presented to them at such hearing, members of the Council may speak upon addressing the Chair and being recognized by the Chair. Councilmembers may address other members of the Council only through the Chair.

(e) Public Comments on Agenda Items

Before any motion is adopted relating to the merits of an agenda item, except on ceremonial items or during Orders of the Day, the Chair must inquire if there are any persons present who desire to speak on the agenda item. Members of the public may comment on any discussion item on a regular or special meeting agenda. Any person desiring to so speak must submit a speaker's request card to the City Clerk and upon being recognized by the Chair, such person may speak relevant to the matter being heard. No person may be denied the right to speak because he or she declines to disclose his or her name, address or telephone number. Members of the Council who wish to ask questions of the speakers or of each other, or who wish to discuss the agenda item during the course of the discussion on the agenda item, may do so, but only after being recognized by the Chair.

(f) Time Limits

The Chair may set such time limits as he or she finds reasonable under the circumstances.

RULE 5

MOTIONS

(a) Main Motions

When a motion is made and seconded, it may be debated by the Council. Members of the Council may speak in debate of a motion only when addressing the Chair and being recognized by the Chair. Whenever the subject of the motion has been discussed and considered, no further discussion or debate may take place except that members of the Council may explain their vote or propose supplemental motions.

(b) Subsidiary Motions

Motions to amend (seeking a change or modification to the main motion that is the subject of debate) and substitute motions (motions that are new and different and replace the main motion that is the subject of the debate) are permissible. Both require a second, are debatable, adopted by a majority vote and take precedence over the main motion.

Motions to amend may be amended but only one amendment may be considered at any one time.

(c) Reconsideration

Any action taken by the City Council is subject to reconsideration if the motion to reconsider is made by a Councilmember who voted with the majority. A motion to reconsider may only be made at the Council meeting where the original vote was taken or at the next Council meeting that meets the notice requirements of Rule 6.5. If the motion to reconsider is to be made, a member of the Council who voted with the majority must submit a memo to the City Clerk no later than noon of the third day after the original action requesting that the motion be placed on the City Council agenda. In addition, notice of the item must comply with the requirements of the Brown Act and the additional rules of procedure as described in Rule 6.5. If a motion to reconsider is made at the next Council meeting, and if a majority of the City Council has voted to reconsider an action, the reconsideration can be held immediately, if the agenda has provided appropriate notice that the reconsideration may be held at that meeting, or at a later Council meeting as designated by the Council.

RULE 6

VOTING

All members of the Council who are present at a meeting when a question comes up for a vote, must vote for or against the measure in accordance with City Charter Section 600.

RULE 6.5

ADDITIONAL RULES OF PROCEDURE

The Council has adopted the following additional rules of procedure for the conduct of its meetings, proceedings and business:

(a) Agendas

1. Regular Meetings

a. City Council

i. At least 10 calendar days before a regular meeting, the City Clerk must post, on the City's website and in a location that is freely accessible to members of the public, an agenda for the meeting.

ii. No later than 6 calendar days before a regular meeting, the Rules and Open Government Committee may permit substantive changes to the agenda.

iii. No later than 3 calendar days before a regular meeting, the City Clerk may post, on the City's website and in a location that is freely accessible to members of the public, an amended agenda to make administrative, nonsubstantive changes to the agenda.

iv. After an amended agenda has been posted as described in the subsection above, the City Clerk, in consultation with the Mayor, City Attorney, City Manager and/or Executive Director of the San Jose Redevelopment Agency, may add an item to the Agenda under Orders of the Day. The added item must be posted, on the City's website and in a location that is freely accessible to members of the public, along with the agenda or amended agenda with an explanation as to why the item is being added. The Council may consider the item only when it makes a good faith, reasonable determination by a two-thirds vote of the body, or if less than two-thirds of the members are present, a unanimous vote of those present, that the item must be resolved at that meeting.

b. Council Committees

i. At least 7 calendar days before a regular Council Committee meeting (except for the Rules and Open Government Committee, which requires 5 calendar days before a regular meeting), the City Clerk must post, on the City's website and in a location that is freely accessible to members of the public, an agenda for the meeting.

ii. No later than 3 calendar days before a regular meeting, the City Clerk may post, on the City's website and in a location that is freely accessible to members of the public, an amended agenda to make administrative, non-substantive changes to the agenda.

2. Special Meetings – City Council and Council Committees

a. A presiding officer or a majority of the members of the body may call a special meeting with 4 calendar days notice.

b. A special meeting is permitted on less than 4 days notice but with at least 24 hours notice only when the members of the body make a good faith, reasonable determination by a two-thirds vote of the body, or if less than two-thirds of the members are present, a unanimous vote of those present, that an issue has arisen that must be resolved in less than 4 days.

(b) Agenda Packet

1. "Agenda packet" means agendas of meetings and any other documents that have been or are intended to be distributed to a body that is subject to the Brown Act in connection with a matter anticipated for discussion or consideration at a public meeting.

2. Unless the Rules committee has permitted a waiver of these requirements for a meeting of the City Council, the agenda packet distributed with the agenda must include:

- a. Any memorandum pertaining to a matter to be considered at the meeting (with the exceptions listed in section 5).
- b. Any contract in substantially final form.
- c. Any ordinance, except those relating to an appropriation, in substantially final form.
- d. Any resolution, except those relating to appropriation-related funding sources or giving authority to negotiate and/or execute contracts, in substantially final form.
- e. The report of any outside consultant pertaining to a matter to be considered at the meeting.

3. To the extent possible, every page of a draft document should state that the document is a draft and advise any person seeking a final version of the document to contact the Office of the City Clerk at a particular telephone number and/or email address. In addition, every agenda should note that documents attached to or referenced in the agenda may not be final documents and that final documents may be obtained by contacting the Office of the City Clerk at a particular telephone number and/or email address. Any document provided to a body that is subject to the Brown Act must be included in the agenda packet that is available for public inspection and copying in the Office of the City Clerk during usual business hours. If a document distributed or intended to be distributed in connection with a matter on the agenda is less than fifteen pages, it may also be available on the City's website.

4. The agenda packet need not include:
 - a. Any material exempt from public disclosure;
 - b. Presentation and/or discussion materials including handouts used at a meeting of the body.

5. The following documents need not be distributed with the agenda packet but will be distributed as soon as possible:
 - a. The following staff memos:
 - i. Planning Commission action where there was no significant change to the project description provided in the exhibit memo;
 - ii. Contract Bid Awards or procurement contracts where the initial memo was already distributed;
 - iii. Supplemental memos where additional information has been received after the initial memo was released but does not affect the recommendation of staff;
 - iv. Emergency items that may need to be added to the agenda to preserve public welfare (i.e., health, safety and financial matters) and that need immediate Council action;
 - v. Grant application memos where the Administration needs Council authority to submit applications and grant deadlines do not allow conformance with the 10-day requirement;

vi. Council Committee minutes and Council Committee packets, which will be distributed 7 days in advance of a meeting;

vii. Items where Council action is required to satisfy a legal deadline;

viii. Items heard by a Council Committee that require full Council action such as:

1. Emergency repair funding;

2. Appointments to boards, commissions, committees and other bodies when a timely appointment is needed;

3. Approval of the City's position on legislation, if a timely response is necessary; and

4. Implementation of arbitration decisions and approval of tentative labor agreements.

ix. Reports regarding the second reading of an ordinance, provided that no substantial/material changes have been made from the first reading of a proposed ordinance.

x. Any other document for which the Rules Committee has permitted a waiver of these requirements if the document relates to an item to be considered by the City Council. If the document relates to an item to be considered by a Council Committee, it may be added to a meeting agenda with 3 calendar days notice, but the Committee must determine, before actually considering the item, whether the item should be heard or

deferred. If the Committee determines that the amount of notice to the public is appropriate for the document, it may choose to hear and act upon the item; if the Committee determines that additional noticing is warranted, it may defer the item.

b. Memos prepared by members of the body for which agenda is being distributed.

(c) Staff Memos

1. Format

Memos from the City Manager's Office must include sections on "Policy Alternatives" and "Fiscal/Policy Alignment". All staff memos must include staff contact information.

2. Outreach

The following criteria should be used as guidelines for determining when an item is of "Significant Public Interest" and the type of outreach required:

a. Criteria 1: Requires Council or Board action on the use of public funds equal to \$1,000,000 or greater. Website posting is required while email to appropriate stakeholders, community meetings and notice in appropriate newspapers may be appropriate.

b. Criteria 2: Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. Website posting and email to appropriate stakeholders is required, while community meetings and notice in appropriate newspapers may be appropriate.

c. Criteria 3: Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by

staff, Council/Board or a Community group that requires special outreach. Website posting, and email to appropriate stakeholders, community meetings and notice in appropriate newspapers are required.

3. Distribution

a. Contracts and expenditures of \$1,000,000 or more

Memos for contracts and expenditures of \$1,000,000 or more, with the exception of public works placeholder items, to the Council/Agency Board will be posted on the City's website 14 days before the meeting, unless the Rules Committee has permitted a waiver of these requirements.

b. Public subsidy of \$1,000,000 or more

For cost/benefit evaluations of a public subsidy of \$1,000,000 or more, an informational memo must be posted on the City's website 28 days in advance of the Council meeting. The staff report must be posted on the City's website 14 days in advance of the meeting and include the following information:

i. **Accountability:** The options available if the projected returns do not occur and an after-action report describing the extent to which the proposal is actually generating the outcomes predicted.

ii. **Net fiscal impact:** A calculation of tax revenues generated by the subsidy minus tax revenues lost.

iii. **Net job impact:** The number of jobs generated as a result of the project in each of the following salary categories: \$1 to \$20,000, \$20,000 to \$40,000, \$40,000 to \$60,000, \$60,000 to \$80,000 and over and whether the employer provides health insurance.

iv. Housing impact: (1) The number of housing units constructed or demolished as part of the project, categorized by level of affordability, and (2) an estimate of the number of ELI (Extremely Low Income) housing units that would be required for employees of the project.

v. Source of funds: Information describing the source of funds and any restrictions on the use of funds.

vi. Neighborhood impacts: Information about the impact on neighborhoods, including data contained in EIRs and traffic studies as well as impacts on other public infrastructure and services such as parks, community centers and libraries.

(d) Memos Signed by Councilmembers

1. Memos Requesting Council Action

Any memo submitted by a Councilmember or more than one Councilmember to request Council consideration must be distributed with the notice requirements described in this Rule.

2. Memos Responding to an Agenda Item with More Than One Signature

Any memo signed by more than one Councilmember that responds to an agenda item must be distributed 4 days before the applicable meeting. If the memo is distributed less than 4 days before the applicable meeting, the body must determine, before actually considering the item, whether the item should be heard or deferred. If the body determines that the amount of notice to the public is appropriate for the late Council memo, it may choose to hear and act upon the item; if the body determines that additional noticing is warranted, it may defer the item.

3. Memos Responding to an Agenda Item with One Signature

Any memo signed by one Councilmember that responds to an agenda item may be distributed at any time, but they are discouraged if distributed less than 4 days before the applicable meeting.

(e) Appeals to be Heard by the Rules and Open Government Committee and City Council

1. Appeals related to requests for public records

Requestors who believe that records have been inappropriately withheld from disclosure by a City department may utilize the City's appeal process for public records requests. A requestor has a number of options:

a. The requestor may appeal to the City Public Records Manager.

b. The requestor may appeal to the Rules and Open Government Committee either before or after an appeal to the City Public Records Manager by contacting the Office of the City Clerk.

c. If the response of the Rules and Open Government Committee is unacceptable to the requestor, he or she may appeal to the Elections Commission or directly to the City Council by contacting the Office of the City Clerk.

d. If the response of the Elections Commission is unacceptable to any party, the party may appeal to the City Council by contacting the Office of the City Clerk.

e. At any time, the requestor may file complaint with the Santa Clara County Superior Court.

2. Appeals related to complaints about meetings violations

a. Any person may submit a complaint alleging that a public or closed session meeting has been held or is threatened to be held by members of a body in violation of the Brown Act or the Open Government requirements to the Rules and Open Government Committee, the Santa Clara County Office of the District Attorney or the Santa Clara County Superior Court.

b. The Rules and Open Government Committee will consider the complaint as part of its regular meeting agenda. If the Committee determines that additional consideration is warranted, it will set a schedule for additional hearing(s), which will be conducted in accordance with the Brown Act and the additional rules of procedure as described in this Rule.

c. If the Rules and Open Government Committee determines that a member or members of a body held or are threatening to hold a public or closed session meeting in violation of the Brown Act or the Open Government requirements, it will issue a notice that the member or members of the body must cure or correct the action challenged.

d. Within 30 days of receipt of the notice from the Rules and Open Government Committee, the member or members of the body must cure or correct the challenged action and inform the Committee in writing of either (1) its actions to cure or correct or (2) its decision not to cure or correct the challenged action.

e. If the body takes no action within the 30-day period, the inaction will be deemed a decision not to cure or correct the challenged action and the Rules and Open Government Committee may refer the matter to the City Attorney or the City Council for further action.

3. Failure to follow administrative procedures does not result in invalidation

The City's failure to follow these administrative procedures will not result in the invalidation of any action taken by the City.

(f) Violation of Additional Procedural Rules

An action taken in violation of these additional procedural rules may not be determined to be null and void if the action was in substantial compliance with the rules, or taken in connection with the sale or issuance of notes, bonds, other evidences of indebtedness, or the action taken gave rise to a contractual obligation upon which a party has in good faith relied.

RULE 7

ROBERT'S RULES OF ORDER

Except as otherwise provided herein, the Council is governed by the rules of procedure set forth in the current version of Robert's Rules of Order, as it may be amended from time to time.

RULE 8

STUDY SESSION

The Council may meet in a Study Session at such time(s), and at such place(s), as it may deem advisable. The City Manager or any member of the Council may request that the Rules and Open Government Committee set the Study Sessions.

The Mayor or, in the Mayor's absence, the Vice Mayor, presides as the Chair of the Study Session. In the absence of both the Mayor and the Vice Mayor, the Mayor has the discretion to appoint the Chair for the Study Session. In the event the Mayor is unable to appoint the Chair, the Council must designate the Chair.

Council Members study and consider all matters which may be referred to it by the City Council or the Rules and Open Government Committee; and all recommendations made at the Study Session are reported to the Council for action.

RULE 9

COUNCIL COMMITTEES

(a) Council Committees Established

Five Standing Committees of the City Council are hereby established.

1. Rules and Open Government
2. Transportation and Environment
3. Neighborhood Services and Education
4. Community and Economic Development
5. Public Safety, Finance and Strategic Support

(b) Committee Rules

The rules included in Rule 9(g), Conduct of Committee Business, governs the conduct of all Committee meetings. Each Committee may adopt, by a majority vote of its entire membership, such additional rules, not in conflict with this Rule, as it may deem necessary for the conduct of Committee business.

(c) Committee Meetings

Each Committee meets regularly and without notice at a regularly scheduled time to be recommended by the Rules and Open Government Committee, adopted by the Council and posted by the City Clerk.

Each Committee will meet in Room W-118/119 of City Hall unless otherwise noticed.

Each Committee may, by majority vote of its membership, set special meetings or adjourned meetings as it deems necessary, in accordance with the Brown Act and the additional rules of procedure as described in Rule 6.5.

The Council Committees meet jointly with the Committees of the Redevelopment Agency.

The provisions of Rule 1(b), 1(c) and 1(d) of this Resolution apply to each Committee, except that the word Mayor as used therein means Chairperson, and the word Council as used therein means Committee.

The provisions of the Brown Act and the additional rules of procedure as described in Rule 6.5 apply to the meetings of each Committee.

(d) Committee Appointments and Duties of Committee Members

The Mayor appoints the members of each Committee from among the members of the City Council.

The Chairperson and the Vice Chairperson of each Standing Committee are appointed by the Mayor. The Chairperson and Vice Chairperson may be removed in the same manner. The term for each Committee appointment is one year, from the first day in January to December 31st and until a successor is duly appointed. Should a vacancy occur in any Committee for whatever reason, appointment to the vacated position is for the unexpired term of the position created by said vacancy.

In the absence of both the Chairperson and Vice Chairperson, the Committee members present may elect the Chair-pro-tem.

It is the duty of a Councilmember to attend every meeting of every Committee of which the Councilmember is a member and the Councilmember is charged with fulfilling the responsibilities of such Committees. Requests to be excused from attendance must be a regular item on the Council's Consent calendar.

(e) Staff Assignments to the Committees

Committee staff must deliver to each Committee member, the balance of the Council and to Council Appointees, all papers and documents relating to matters referred to such Committee pursuant to these rules. The City Clerk serves as secretary to Study Sessions and all of the Council Committees. The City Manager shall designate staff to prepare the agenda and related materials for Council Committees to forward to the City Clerk for proper posting and distribution.

(f) Reports

The reports from the Committees must be in writing and presented to the City Council for approval on the Consent Calendar. Any item in the Report may be pulled for comment. Items requiring formal Council action beyond approval of the Report must be cross-referenced pursuant to this Rule.

(g) Conduct of Committee Business

Except as otherwise provided in these rules, Committee hearings are conducted as follows:

1. The Chairperson presides at meetings of the Committee. If the Chairperson is absent, the Vice Chairperson assumes the duties of the Chairperson. If both the Chairperson and Vice Chairperson are absent, one of the Committee members present assumes the duties of the Chairperson by vote of all the members present.

2. The Chairperson directs the order of presentation of the arguments for and against matters for consideration by the Committee, and permits questions to be asked by the various members of the Committee, members of the public and the Administration in an orderly fashion and in keeping with proper decorum.

3. Any proposal to make substantial changes to recommendations pending before a Council Committee that is made public less than four days before the meeting, whether through a memo or from the dais, may be discussed by the Committee, but action should be deferred until the next Committee meeting.

4. Any member of the Committee including the member assuming the duties of the Chairperson may make or second a motion.

5. At the discretion of the Chairperson, any Council Committee, including the Rules and Open Government Committee, may meet with only two Committee members present. Committees with only two members present may not take action on any matter, but may hear the matter and refer it without a recommendation to the City Council.

6. The Committee Chairperson, in consultation with Committee staff, sets the Committee agenda. The Chairperson sets the date for any continued hearing and notifies the Committee secretary of such date.

7. The Committee secretary must post the Committee agenda in accordance with the Brown Act and the additional rules of procedure as described in Rule 6.5. The agenda must be composed of items referred by the Council or Rules and Open Government Committee as well as items within the Committee work plan.

8. All reports and matters approved by Council Committees at a regular meeting must be forwarded to Council and appear on the Council agenda at the second Council meeting following the Committee meeting except as follows:

(a) If the Committee meets weekly or on a Monday, the report may appear on the agenda at the third Council meeting following the Committee meeting.

(b) The Chairperson of any Committee can direct that an item be reported at an earlier Council meeting.

9. The Council must vote to accept the Committee Report and to take all actions specified in the Report, other than to approve an ordinance, resolution or contract which requires separate action by the Council. Councilmembers who do not concur with a recommendation may request a separate vote or may ask that a 'no' vote be recorded with regard to that recommendation. Staff recommendations that are contained in other materials must be restated in the Committee Report or separately agendized for Council consideration.

10. The Committee may recommend that: (a) an ordinance or resolution be introduced or amended; (b) a contract be awarded; or (c) some other action requiring Council approval be considered by the City Council as a "cross-reference" out of Committee. A "cross-reference" may be placed on the same Council agenda as the Committee report or on a different Council agenda at the request of the Committee. If an action requires an ordinance, resolution or contract and the legal document is not ready for formal action and public review, the Committee Report may be understood to provide direction to the City Attorney to prepare the necessary documents upon the Council's acceptance of the Committee Report.

11. The Committee secretary must keep a record of the meetings and actions taken by the Committee.

12. No Committee action may be taken on any item outside a duly constituted Committee meeting.

13. Council Appointees or their designees, may attend and speak at all Committee meetings, but have no vote therein.

14. The Committees must report on all matters referred to them by the Council without unnecessary delay. The Rules and Open Government Committee approves and may make changes to Committee Work Plans.

15. Council and Committee referrals or requests for information or direction to the Administration staff must be processed in accordance with the Council Referral procedures in Council Policy No. 0-12.

(h) Rules and Open Government Committee

The Rules and Open Government Committee is composed of four members and an alternate member. The Mayor is the Chairperson of the Rules and Open Government Committee and the Vice Mayor is the Vice Chairperson. If one or more members of the Rules Committee cannot attend, the alternate member of the Committee may attend in the absent member's stead. The Rules and Open Government Committee may, if requested by the Council, consider and make recommendations on the operations of the Council, including relationships between the Council and the Council Appointees, appointments to boards and commissions, the operation of Council offices, rules regarding the Council conduct, renovation and construction of Council Chambers and offices, elections and initiatives, and

organizational and operational matters pertaining to the offices of Council Appointees. The Rules and Open Government Committee also reviews the Council and Study Session agendas in advance of the Council or Study Sessions and may add or withdraw items as needed except for those items placed on the agenda by a majority vote of Council. The Rules and Open Government Committee's area of responsibility includes the approval of the Standing Committees' work plan and the City Auditor's work plan. The Rules and Open Government Committee may also refer any item directly to Standing Committees or the Administration for consideration. The Rules and Open Government Committee also considers and makes recommendations to the Council on disputes over Public Records Act requests.

(i) Division of City Operations

Except for budget matters, which are considered by the Council as a whole, most matters to come before the Council must go through one of the Standing Committees for a public hearing.

The policy areas or mission statements for Standing Committees are as follows:

Rules and Open Government Committee

Council Agenda Setting; Committee Work Plan; City Auditor Work Plan; Commission Appointments (not required to be interviewed by Council); Ensuring accessible, responsive, transparent and accountable government.

Transportation and Environment

To provide the community with safe, secure, and efficient surface and air transportation systems that support San José's livability and economic vitality and to provide environmental leadership through policy development, program design and reliable utility services and infrastructure.

Neighborhood Services and Education

To serve, foster and strengthen community by providing access to lifelong learning, opportunities to enjoy life, ensuring a diverse range of housing opportunities, preserving healthy neighborhoods.

Community and Economic Development

To manage the growth and change of the City of San José in order to encourage a strong economy, ensure a diverse range of arts cultural and entertainment offerings, and create and preserve healthy neighborhoods.

Public Safety, Strategic Support and Finance

To effectively develop, manage and safeguard the City's fiscal, physical, technological and human resources to enable and enhance the delivery of City services and projects and to provide prevention and emergency response services for crime, fire, medical, hazardous and disaster related situations.

(j) Amending Council Committee Rules

Committees may set their own rules as long as they are consistent with Rule 9. Any rule which conflicts with Rule 9 must be authorized by resolution adopted by the Council.

(k) Certain Other Committees Abolished

All other Standing Committees heretofore established by this Council consisting solely of members of Council, except those mentioned in this Resolution, are hereby abolished. The Mayor or the Council may appoint *ad hoc* committees from time to time.

(l) Matters Requiring Public Hearings

No matter may be referred or assigned to a Committee pursuant to these rules for which a public hearing by the City Council is required by law or where the decision with respect to

such matter is delegated to or reposed in a body or individual other than the Council, nor may a Committee initiate on its own motion consideration of any such matter.

RULE 10

PETITIONS AND COMMUNICATIONS

(a) General

Within the established rules for the conduct of the Council's official proceedings, any person or group of persons may personally, or through authorized representatives, present grievances or offer suggestions to the Council for the betterment of municipal affairs at any regular meeting of the Council. Such may be done either by filing with or presenting to the Council written petitions or communications respecting such matter and/or orally speaking thereon.

(b) Written Petitions on Agenda

If a written petition has been filed and placed on the agenda pursuant to Rule 3, such petition must be considered by the Council at the time such agenda item is taken up by the Council. Any person or group of persons desiring to speak to the Council respecting the subject matter of such petition will be permitted to do so personally or through authorized representatives, subject to applicable rules, at said time, provided that no person may speak unless the person has submitted a speaker's request card, is recognized by the Chair, and is given permission by the Chair to speak. Any person desiring to so speak may complete a speaker's request card and submit it to the City Clerk. No person may be denied the right to speak because he or she declines to disclose his or her name, address or telephone number on the speaker's request card.

(c) Petitions or Communications Not on Agenda

If a person or group of persons wishes to present to the Council, at a regular Council meeting, a written or oral petition or communication, that is within the subject matter jurisdiction of the Council, which has not been placed on the Council's agenda pursuant to Rule 3, such will be permitted at the time the Council takes up "open forum" as shown on the agenda for any regular meeting. Any person or group of persons desiring to speak to the Council respecting the subject matter of such petition or communication that is within the subject matter jurisdiction of the Council will be permitted to do so personally or through authorized representatives, subject to applicable rules. Any person desiring to so speak must submit a speaker's request card to the City Clerk. No person may be denied the right to speak because he or she declines to disclose his or her name, address or telephone number on the speaker's request card. However, no person may speak until recognized by the Chair.

The Chair may limit public comments at special meetings to only those relevant to items described on the special meeting notice/agenda.

The Chair sets such time limits as he or she finds reasonable under the circumstances. The Council must not take any action on any matter not appearing on the posted agenda unless one of the exceptions in the Brown Act is applicable.

RULE 11

DISORDERLY CONDUCT

Pursuant to the provisions of Section 502 of the Charter of the City of San José, the Mayor has the authority to preserve order at all Council meetings, to remove or cause the removal of any person from any meeting of the Council for disorderly conduct, to enforce the rules of the Council and to determine the order of business under the rules of Council. For the above

purposes, the Mayor or, in the Mayor's absence, the Chair of the meeting may command the assistance of any peace officers of the City to enforce all lawful orders of the Mayor or Chair.

Disorderly conduct includes, but is not limited to, each of the following:

1. Willfully disturbing or breaking up, without authority of law, any meeting of the Council; or doing any act or engaging in any conduct, at any Council meeting, without authority of law, with intent to disturb or break up such meeting of the Council, which urges the disturbance or breaking up of such meeting, or urges others to commit acts or engage in conduct which will disturb or break up such meeting. Acts or conduct deemed disturbing to the meeting include, but are not limited to, unreasonably loud and prolonged yelling, screaming, clapping or other noise-creating acts which render it impossible or difficult for the Council to conduct or continue with its proceedings;
2. Doing any act or engaging in any conduct, at a meeting of the Council and in the immediate view or hearing and presence of the Council, with intent to disturb the proceedings of the Council or to impair the respect due to the authority of the Mayor, the Chair or Council, which tends to interrupt the proceedings of the Council or impair the respect due to the authority of the Mayor, the Chair or the Council;
3. Doing any act or engaging in any conduct, at any Council meeting, with intent to cause a riot, which urges a riot, or urges others to commit acts of force or violence, or the burning or destroying of property, under circumstances which produce a clear and present and immediate danger of acts of force or violence or the burning or destroying of property. As used herein, "riot" means any use of force or violence, disturbing the public peace, or any threat to use such force or violence, if accompanied by the immediate power of execution, by two or more persons acting together and without authority of law;

4. Threatening, at any meeting of the Council, to commit or cause bodily injury upon any member of the Council, or upon any officer or employee of the City, or upon any other person, or to burn or destroy or cause the burning or destruction of any property if the Council fails or refuses to act, or to refrain from acting, in accordance with the wishes of the threatening person;

5. Willfully refusing or failing, at a meeting of the Council, to comply with any rule of the Council or with any reasonable order of the Mayor, the Chair or the Council.

SECTION 2. Resolution No. 74574 and all other prior Resolutions inconsistent herewith are hereby superseded.

ADOPTED this 12th day of January, 2010, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,
KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE, REED.

NOES: NONE.

ABSENT: NONE

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST



LEE PRICE, MMC
City Clerk