

# Summary of San José Governance Structure - Summary of Powers & Practice

*Revised April 21st, 2021*

<b>Chart of Powers as Outlined in City Charter</b>	<b>2</b>
<b>Council</b>	<b>3</b>
Composition and Election	3
Appointments	4
Policy	5
Budget & Implementation	6
<b>Mayor</b>	<b>7</b>
Selection and Removal	7
Appointments	7
Policy	8
Budget & Implementation	8
<b>City Manager</b>	<b>9</b>
Selection and Removal	9
Appointments	9
Policy	10
Budget & Implementation	10
<b>Emergency Powers</b>	<b>11</b>

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## **A Note About This Document**

This document contains a summary chart comparing the Mayor-Council and Council-Manager forms of government, alongside the specifics of San José’s form. In addition, key sections of the San José City Charter have been organized into sections that outline the various powers and responsibilities of the Council, Mayor and City Manager as outlined in the City Charter, as well as how those powers and responsibilities have been implemented in practice during the past few decades.

## Chart of Powers as Outlined in City Charter

	Mayor-Council	Council-Manager	San Jose
<b>Underlying principles</b>	- Separation of powers - Modeled after national and state systems of government	- Separation of partisan politics from administration - Professional management - Modeled after U.S. corporate structure	--
<b>Legislative authority</b>	Council	Council and Mayor	--
<b>Executive/administrative authority</b>	Mayor (optional CAO)	Manager (CEO and CAO)	--
<b>Selection of Mayor</b>	Elected	Elected (or chosen by Council)	Elected (at-large)
<b>Removal of Mayor</b>	Recall election	Recall (or removed by Council)	Recall
<b>Conditions for removal of CEO</b>	Recall election or end of term	Can be removed without cause at any time	Yes
<b>Mayor is member of Council</b>	No	Yes	Yes
<b>Mayor votes with Council</b>	No	Yes (or only in a tie)	Yes
<b>Veto authority</b>	Mayor may have veto	Mayor rarely has veto	Mayor has no veto
<b>Appointment &amp; removal of CAO</b>	Mayor	Council	<i>Appointment:</i> Council (Mayor nominates) <i>Removal:</i> Council or recall
<b>Appointment &amp; removal of department heads</b>	Mayor (with or without council confirmation)	Manager (with or without Council confirmation)	<i>Council:</i> City Attorney, City Clerk, City Auditor, Independent Police Auditor <i>Mayor:</i> Public Information Officer <i>Manager:</i> all others (with Council confirmation)
<b>Appointment of advisory boards</b>	Varies	Varies	Council

<b>Policy development</b>	Council, Mayor can propose	Council and Mayor, Manager can recommend	Council and Mayor, Manager can recommend
<b>Policy advice</b>	Staff	Manager and staff	Manager and staff
<b>Policy approval</b>	Council	Council	Council
<b>Prepare budget</b>	Mayor	CAO	Mayor delivers budget message, Council reviews, Manager submits proposed budget
<b>Approve Budget</b>	Council	Council	Council
<b>Policy implementation</b>	Mayor, no role for Council	Manager, no role for Council	Manager, no role for Council outside of budget
<b>Purchasing</b>	Mayor (with restrictions)	CAO (with restrictions)	< \$100k - Manager & Dept Heads > \$100k - Council

## Council

### Composition and Election

#### 401. Composition of Council.

“The composition of the Council shall be as follows:

- A. NUMBER OF MEMBERS. The Council shall consist of eleven (11) members, one of whom shall be the Mayor, each of whom shall have the right to vote on all matters coming before the Council.
- B. DISTRICTS. Except as otherwise provided elsewhere in this Charter and excepting the Mayor who shall be elected at a Regular Municipal Election from the City at large, each member of the Council shall be elected at a Regular Municipal Election by one of ten (10) Districts designated by number within the City. The term “by Districts” shall mean the election of eligible persons, as defined in Section 404, to the office of member of the Council by the voters of each District alone.”

#### 403. Elections by Districts.

“For the purpose of electing members of the Council, excepting the Mayor, the City shall be divided into ten (10) numbered Districts as nearly equal in population as practicable.”

“By no later than February 1 in the year following the decennial census, the Council shall appoint an Advisory Commission whose purpose shall be to study and make appropriate recommendations with respect to such redistricting.”

### **410. Filling of Vacancies.**

If, for any reason, a vacancy, as defined by Charter Section 409, occurs in the office of Mayor or Council member, the Council shall either fill the vacancy by appointment by a majority of its remaining members, or call an election for the purpose of filling such vacancy.

## **Appointments**

### **411.1 Department Heads; Policy Objectives; Consent to Hire.**

- A. “The Council shall adopt a written Statement of Policy for each City Department which is under the administration of the City Manager. Said Statement of Policy shall set forth the broad goals, objectives and aspirations to be accomplished by that Department.”
- B. “When the position of head of each Department becomes vacant, the Council shall review and, if necessary, amend the previously approved Statement of Policy. The Council also shall adopt a set of questions which are intended to elicit responses from each prospective appointee concerning the goals, objectives and aspirations in the Statement of Policy.”

“Prior to appointing any Department head, the City Manager shall submit to the Council, for its review, the responses to the Council’s questions submitted by the proposed appointee, and shall seek the Council’s advice and consent. The appointment shall be made only if the Council, by the affirmative vote of a majority of its members, advises the City Manager that it concurs with the proposed appointment. This section shall not apply to the appointment of any “acting” department head to serve in an interim capacity.”

### **809. Office of the Independent Police Auditor**

“The Office of the Independent Police Auditor is hereby established. The Independent Police Auditor shall be appointed by the Council” for a 4 year term, or, in event of a vacancy, the remainder of the incumbent’s term.

“The Council, by resolution adopted by not less than ten (10) of its members may remove an incumbent from the office of the Independent Police Auditor, before the expiration of his or her term, for misconduct, inefficiency, incompetence, inability or failure to perform the duties of such office or negligence in the performance of such duties, provided it first states in writing the reasons for such removal and gives the incumbent an opportunity to

be heard before the Council in his or her own defense; otherwise, the Council may not remove an incumbent from such office before the expiration of his or her term.”

### **901. Officers and Employees; Appointment and Removal.**

“The City Manager, the City Attorney, and the City Clerk shall be appointed and may at any time be removed by the Council.”

“The Council shall appoint, and may at any time remove, an Acting City Manager, an Acting City Attorney, Acting City Clerk, Acting City Auditor and Acting Independent Police Auditor to perform the functions and duties of the respective offices in the case of absence or disability.”

Councilmembers shall appoint any assistants to serve in his or her office.

## **Policy**

### **800. Administrative Organization; General Provisions.**

- A. The Council may establish new City offices, departments and agencies and prescribe their functions, powers and duties;

The Council may at any time prescribe additional functions, powers or duties or take away, reduce or otherwise change the functions, powers or duties of any office, department or agency;

The Council may at any time abolish or discontinue any office, department or agency other than those established by the Charter (Police, Fire, Public Works, Parks and Recreation, Personnel, Planning, Airport, Library).

- B. “Subject to the limitations hereinafter specified in subsection (c) of this Section, the Council may contract with public and private agencies.”
- C. “No power, duty or function assigned to the office of City Clerk, City Attorney, City Auditor, Independent Police Auditor or to the Finance Department, shall be discontinued, assigned or transferred to any other office, department or agency, nor to any ‘public agency’ or ‘private agency’.”

### **807. Administrative Organization; Other Departments.**

- A. “The following Charter departments are hereby established: A Police Department, a Fire Department, a Public Works Department, a Parks and Recreation Department, a Personnel Department, a Planning Department, an Airport Department and a Library Department.”

- B. "Additional departments may be created by Council from time to time pursuant to Section 800."
- C. "Each department shall have such functions, powers and duties as Council may from time to time prescribe."

### **1002. Other Boards and Commissions.**

"In addition to those specific boards and commissions which are established by other provisions of this Article, the Council may create such other boards and commissions as in its judgment are required, and may grant them such functions, powers and duties as are consistent with the provisions of this Charter. In addition, the Council may create such temporary committees as it may deem advisable to render counsel and advice to the Council, the City Manager or any board or commission on any specified matter within the jurisdiction of such authorities. All boards, commissions and committees created by the Council shall be subject to such direction and supervision, if any, as the Council may specify, and the members thereof shall be appointed by the Council, or by the Mayor if such is authorized by the Council, for such terms as the Council may deem advisable.

#### **In Practice:**

- Per other sections Council and other Council appointees can hire outside Contractors.

## **Budget & Implementation**

### **411. The Council; Interference With Administrative Matters.**

"Neither the Council nor any of its members nor the Mayor shall interfere with the execution by the City Manager of his or her powers and duties, nor in any manner dictate the appointment or removal of any City officers or employees whom the City Manager is empowered to appoint except as expressly provided in Section 411.1. **However, the Council may express its views and fully and freely discuss with the City Manager anything pertaining to the appointment and removal of such officers and employees.**"

### **1204. Fiscal Administration; Submission of Budget and Budget Message.**

- D. "The Council shall hold a public hearing to consider the Mayor's budget message and to make any revisions or changes in it which the Council deems advisable. The Council shall fix a time and place for the public hearing, and shall give notice in the manner specified in Section 1206. Upon close of the public hearing, the Council shall approve the Mayor's budget message as presented, or as revised, by the affirmative vote of a majority of its members."

#### **In Practice:**

- **411.** The Mayor can exert a lot of pressure on the City Manager if they or their staff or other Council Members complain about the Manager or Department Heads.
- **1204.** The Mayor prepares their Budget Message with input from the Council. The Council submits Budget requests for projects in their Districts to be included in the Budget, and the Mayor decides whether to include these requests.

## Mayor

### Selection and Removal

#### **500. Mayor.**

“There shall be a Mayor of the City of San José, elected at large, who shall be the eleventh member of the Council. Except as otherwise provided elsewhere in the Charter, the Mayor shall be elected by a majority of the votes cast citywide at a Regular Municipal Election, for a term of four (4) years from and after the first day of January following the year of the election.”

#### **502. The Mayor; Powers and Duties.**

- E. The Mayor shall preside at meetings of the Council and shall have a vote as a member of the Council. The Mayor shall have no veto powers;
- F. The Mayor shall have 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 the Council;
- H. The Mayor shall exercise such other powers and perform such other duties as may be prescribed by the Council, provided the same are not inconsistent with this Charter.

#### **In Practice:**

- In the past the Mayor sat on the Rules Committee and controlled what was on the Agenda. Now the Vice Mayor sits on the Committee.

### Appointments

#### **808. Public Information Office.**

“A Public Information Office is hereby established. This office shall be administered by a Public Information Officer appointed by the Mayor.”

“The functions and duties of this office shall be to gather and disseminate to the public and to the news media, in a timely manner, accurate and complete information concerning the

policies of the Council and other information regarding the City and the general region in which it is located, and to perform such other duties as may be assigned by the Council.”

### **901. Officers and Employees; Appointment and Removal.**

The Mayor shall appoint any assistants to serve in his or her office.

## Policy

### **502. The Mayor; Powers and Duties.**

- A. “The Mayor shall have the power to make recommendations to the Council on matters of policy and program which require Council decision.”

#### **In Practice:**

- The Council has this ability as well.

## Budget & Implementation

### **502. The Mayor; Powers and Duties.**

- D. “If the Mayor recommends any increases in the City budget, the Mayor shall recommend the method of financing such expenditures. If the Mayor proposes the curtailment of any service, the Mayor shall provide specific recommendations and the reasons for the proposal.”
- G. “The Mayor shall have the power to direct and supervise the Public Information Office of the City.”

### **808. Public Information Office.**

“The Public Information Officer shall be under the direction and supervision of the Mayor.”

### **1204. Fiscal Administration; Submission of Budget and Budget Message.**

- E. “The Mayor shall deliver a budget message which shall include:
  - A statement of the fiscal priorities which the City should adopt for the ensuing year.
  - Which Departments, Offices or Agencies the Mayor proposes to be expanded or to receive reduced budgeted allocations. --Specific recommendations concerning any proposed additions to or deletions from the budget.”
- F. “The Mayor shall deliver the Mayor’s budget message during a meeting of the Council to be held following the receipt of the budget request from the City Manager.”
- G. “The Council shall hold a public hearing to consider the Mayor’s budget message and to make any revisions or changes in it which the Council deems advisable. The Council shall fix a time and place for the public hearing, and shall give notice in the manner specified in Section 1206. Upon close of the public hearing, the Council shall



approve the Mayor’s budget message as presented, or as revised, by the affirmative vote of a majority of its members.”

## City Manager

### Selection and Removal

#### **702. Removal by Council.**

“The Council may remove the City Manager from office at any time.”

#### **703. Removal by People.**

“The City Manager may be removed from office by the People of the City pursuant and subject to the provisions of Section 1604 of this Charter.”

### Appointments

#### **411.1 Department Heads; Policy Objectives; Consent to Hire.**

“Prior to appointing any Department head, the City Manager shall submit to the Council, for its review, the responses to the Council’s questions submitted by the proposed appointee, and shall seek the Council’s advice and consent. The appointment shall be made only if the Council, by the affirmative vote of a majority of its members, advises the City Manager that it concurs with the proposed appointment. This section shall not apply to the appointment of any “acting” department head to serve in an interim capacity.”

#### **704. Acting City Manager.**

“The City Manager may appoint, subject to approval of the Council, or if he or she fails to do so the Council may appoint, an officer of the City as Acting City Manager to exercise and perform the powers and duties of the City Manager during the temporary absence or disability of the City Manager.”

#### **901. Officers and Employees; Appointment and Removal.**

“Except as otherwise provided by this Charter, all other officers, department heads and employees of the City, except members of boards and commissions, shall be appointed by the City Manager and, except as otherwise provided elsewhere in this Charter, shall serve at his or her pleasure.”

“The City Manager shall, subject to the provisions of Section 411.1, appoint a person to act as the head of a department or office, other than the office of City Clerk, City Attorney, City Auditor, Independent Police Auditor and Public Information Officer in the case of absence or disability of the head of such department or office.”

### In Practice:

- The City Manager brings forth their selection for department head and the Council interviews the person in closed session before voting to approve appointment..

## Policy

### SECTION 701. City Manager; Powers and Duties.

- C. "The City Manager shall have the right to attend all meetings of the Council, other than closed executive sessions where the City Manager or another Council appointee is the subject of discussion, and to take part in its discussions, but not to vote."
- G. The City Manager shall make such other reports as the Council from time to time may request concerning the operations of City departments, offices and agencies subject to his or her direction and supervision; shall keep the Council fully advised as to the financial condition and future needs of the City; and make such recommendations to the Council concerning the affairs of the City as he or she deems desirable or as requested by Council.

### In Practice:

- The City Manager can be excluded for personnel matters that are deemed confidential or sensitive, including matters concerning Council members, i.e. ethics complaints or other violations of Council Policy. (In addition to the Charter there is a Council Policy Manual.)

## Budget & Implementation

### 411. The Council; Interference With Administrative Matters.

"Neither the Council nor any of its members nor the Mayor shall interfere with the execution by the City Manager of his or her powers and duties, nor in any manner dictate the appointment or removal of any City officers or employees whom the City Manager is empowered to appoint except as expressly provided in Section 411.1. However, the Council may express its views and fully and freely discuss with the City Manager anything pertaining to the appointment and removal of such officers and employees."

"Except for the purpose of inquiries and investigations under Section 416, the Council, its members and the Mayor shall deal with City officers and employees who are subject to the direction and supervision of the City Manager, City Attorney, City Auditor, Independent Police Auditor or City Clerk, solely through the City Manager, City Attorney, City Auditor, Independent Police Auditor or City Clerk, respectively, and neither the Council nor its members nor the Mayor shall give orders to any subordinate officer or employee, either publicly or privately."

### **801. Direction by City Manager.**

“Except as otherwise provided elsewhere in this Charter, all offices, departments and agencies established by or pursuant to the provisions of this Article shall be administered by an officer appointed by and subject to the direction and supervision of the City Manager.”

### **1204. Fiscal Administration; Submission of Budget and Budget Message.**

- F. “At least thirty (30) days prior to the beginning of each fiscal year, or at such earlier time as the Council may specify, the City Manager shall submit to the Council a budget for the ensuing fiscal year, together with an accompanying report.

In addition to complying with the requirements of Section 1205, the budget shall contain the City Manager’s financial plan for the activities of the City proposed for the ensuing fiscal year which reflects accurately the recommendations and priorities specified in the budget message as adopted by the Council.

The report of the City Manager accompanying the budget shall specify the budget allocations which implement each component included within the budget message as adopted by the Council.”

#### **In Practice:**

- **411.** Interference happens all the time depending on who’s Mayor and who’s on the Council, but this section is intended to give the City Manager leverage to stop that.

## **Emergency Powers**

The City Manager is the head of the Office of Emergency Services and has emergency powers under San Jose Municipal Code Section 8.08.250 and is empowered to enact rules and regulations (e.g. like a curfew) subject to later ratification by the Council. ([Link to the applicable Muni Code sections.](#))

### **8.08.250 - Powers during local emergency or state of emergency.**

In the event of a proclamation of a local emergency, or the proclamation of a state of emergency by the governor or the director of the state office of emergency services, or the existence of a state of war emergency, the director is hereby empowered:

- A. To make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided, however,

such rules and regulations must be confirmed at the earliest practicable time by the city council.

- B. To obtain vital supplies, equipment and such other properties needed for the protection of life and property, and to obligate the city for the fair value thereof and, if required immediately, to commandeer for public use.
- C. To require emergency services of any city officer or employee and, in the event of the proclamation of a state of emergency in Santa Clara County or the existence of a state of war emergency, to command the aid of as many citizens of this community as he or she deems necessary. Such persons shall be entitled to all privileges, benefits, and immunities as are provided by state law for registered disaster service workers.
- D. To requisition necessary personnel or material of any city department or agency.
- E. To execute all of the ordinary powers as city manager, all of the special powers conferred upon him or her by this chapter or by resolution or emergency plan adopted by the city council, as well as all powers conferred by any statute, by any agreement approved by the city council, and by any other lawful authority.