



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Amendment to Rules Resolution **DATE:** March 27, 2008

RECOMMENDATION

Adoption of a Resolution amending the Rules for the Conduct of City Council and City Council Committee Meetings, superseding Resolution No. 73948, to implement certain provisions regarding Closed Session.

OUTCOME

Implementation of the provisions about how the City Council and Board of the Redevelopment Agency will conduct closed session meetings including: agenda disclosures, topics discussed in closed session, statement of reasons for closed sessions, open session approval and disclosures after closed session.

BACKGROUND

On May 23, 2007, the Sunshine Reform Task Force (SRTF) issued its Phase I Report and Recommendations. In May and June of 2007, the Rules and Open Government Committee discussed the SRTF's Report and developed recommendations to the City Council. On August 21, 2007, the Council adopted provisions about how the Council and the Board of the Redevelopment Agency will conduct closed session meetings, among other things.

One of the provisions requires that the Council disclose on the closed session agenda "the likely range of the value of the property at issue" for real estate negotiations. Another provision requires the Council to report in open session, after meeting in closed session for real estate negotiations, "a disclosure of the use of funds not previously budgeted for that purpose and a full disclosure of the opportunity cost of the use of those funds." We will discuss these two provisions and our recommendations about them in the analysis below.

In order to implement the provisions about closed session meetings, we have prepared a Resolution amending Resolution No. 73948. The proposed changes to the Rules for the Conduct of City Council and City Council Committee Meetings are attached and the changes are in ~~strikeout~~ or underscore to facilitate review.

ANALYSIS

This Resolution, if adopted, would modify how the Council and the Board of the Redevelopment Agency conduct closed session as follows:

Agenda requirements: The Brown Act includes discretionary methods for describing closed session agenda items. The Council approved that the Brown Act descriptions be mandatory with some additional information. For example, in the case of litigation, the amount of money or other relief requested in the lawsuit would have to be described on the agenda; for real estate negotiations, the likely range of the value of property at issue would have to be specified on the agenda; in a personnel matter, the number of employees and the agency or department involved would have to be identified on the agenda.

Since December 18, 2007, the City Attorney's Office has been implementing the agenda requirements for closed session.

We have considered carefully how to implement the provision that "the likely range of the value of property at issue" be disclosed and we have serious concerns about the impact such disclosure would have on the City's ability to negotiate the best price for property it wants to buy or sell. We recommend that the Council not require the disclosure of the likely range of the value of property at issue. The proposed changes to the Rules for the Conduct of City Council and City Council Committee Meetings that is attached to this memo has this provision highlighted. We recommend that this requirement be deleted from the proposed Resolution.

Topics discussed in closed session: The Council approved two changes to the topics permitted to be discussed in closed session.

First, the Council or Board of the Redevelopment Agency could not discuss any re-budget decisions in the context of real estate negotiations. This means that discussions about the purchase or development of real property could not include any conversation about what money would be used to do so if money was not already allocated for that purpose.

Second, the decision to file an amicus brief must be discussed in open session unless the City Attorney advises that, because of potential liability, the matter should be discussed in closed session.

Statement of Reasons for Closed Sessions: The Brown Act requires the Council to 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, before adjourning to closed session. The Council approved one change to the statement of reasons for

closed session. 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.

Open session approval: The Council approved some changes to the noticing requirements for open session approval of certain items.

In the case of real estate or labor negotiations, if the value of the agreement is less than \$1M, the item must be noticed 10 days before the meeting. The value of a litigation settlement must be at least \$50,000 to require 10 days notice.

For real estate, labor and litigation agreements, if the expenditure exceeds \$1M, the item must be noticed 14 days before the meeting.

Disclosures after closed session: The Brown Act requires that certain reports be made in open session about topics discussed in closed session after closed session has been held. The Council approved five changes to the practice under the Brown Act:

1. Although the City must report out certain information about pending litigation in open session, the Brown Act does not require routine disclosure when the City has filed or intervened in a lawsuit; the Brown Act simply requires that the City respond to an inquiry if a lawsuit has actually been filed. Now, routine disclosures must be made when the City or Redevelopment Agency has filed or intervened in a lawsuit.
2. The Council also approved the recommendation that the Council and Board of the Redevelopment Agency report in open session when either has rejected a formal claim.
3. The Council approved the recommendation that reports of real estate negotiations "include a disclosure of the use of funds not previously budgeted for that purpose and a full disclosure of the opportunity cost of the use of those funds." However, the Brown Act limits discussion for real estate negotiations to price and terms of payment. In addition, the Council has already directed that re-budget decisions not be discussed in the context of real estate negotiations. Consequently, this provision about reporting re-budget decisions is inconsistent with the Brown Act and the Council's express direction.

We recommend that the Council not enact a provision that is inconsistent with the Brown Act and the Council's express direction. The proposed changes to the Rules for the Conduct of City Council and City Council Committee Meetings that is attached to this memo has this provision highlighted. We recommend that this requirement be deleted from the proposed Resolution.

4. The Council approved the recommendation that appraisals used in the condemnation of property be disclosed routinely after the condemnation proceedings have concluded.

5. Finally, a written summary of the reports made in open session must be posted by the close of business the following day.

PUBLIC OUTREACH/INTEREST

This memorandum is posted on the City's website for the April 8, 2008 Agenda.

CEQA

Not a project.

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For questions please contact Lisa Herrick, Sr. Deputy City Attorney, at 535-1963.