



**SPECIAL RULES AND OPEN GOVERNMENT COMMITTEE**

Meeting Report  
August 29, 2008

**PRESENT:** Mayor Reed, Vice Mayor Cortese and Council Members Chirco and Constant.

**ABSENT:** None.

**STAFF:** City Attorney Richard Doyle, City Manager Debra Figone, City Clerk Lee Price, Redevelopment Agency Assistant Director Gary Miskimon, Senior Deputy City Attorney Lisa Herrick, Director of Communications Tom Manheim, Public Records Manager Tom Norris, Council Agenda Manager Alicia Bosco and Legislative Secretary Susan Davis.

**(a) Open Government Initiatives**

**(1) Review Administration and Accountability Section of Sunshine Reform Task Force (SRTF) Phase II Recommendations.**

- (a) Sunshine Reform Task Force Phase II Report and Recommendations**
- (b) Staff's Response to Phase II Report and Recommendations of the SRTF**
- (c) SRTF Chair's Response to the Staff Report responding to Phase II Report and Recommendations of the SRTF**

Documents Filed: The Sunshine Reform Task Force Phase II Recommendations, Administration and Accountability Staff Presentation, dated August 29, 2008.

Director of Communications Tom Manheim and Senior Deputy City Attorney Lisa Herrick provided an overview of the Sunshine Reform Task Force Phase II Recommendations on Administration and Accountability.

On behalf of the Sunshine Reform Task force, Bob Brownstein described the Sunshine Reform Task Force perspective behind the Task Force recommendations regarding the Open Government Commission and Officer. He emphasized the need for independent oversight, enforcement and accountability. He voiced objections to Staff's alternative recommendation that the Rules and Open Government act in this capacity because it is a Committee of the Council. Mr. Brownstein also noted that given the change in direction by the Council regarding the taping of closed sessions, the Open Government Officer position may only need to be part-time.

Lengthy Committee discussion ensued.

**(a)(1) (Cont'd.)**

**Public Comments**

Ken Podgorsek, Task Force member, remarked that the Open Government Committee could be a model for open government. He added that the Task Force did not analyze the work load of the Open Government Officer, but rather outlined responsibilities. He said he had no objections to the Elections Commission taking on the role, or inserting the Rules and Open Government Committee into the process as long as there is an independent third party.

Ed Davis, outside Counsel to the Sunshine Reform Task Force, asked the Committee to keep in mind changes proposed by the Task Force that are yet to be considered such as law enforcement records, and noted that if adopted, they will also need to be implemented and monitored. He added that there was no intent to usurp the City Council's authority, but rather to avoid litigation. In closing, he noted that there are different procedures for complaints regarding closed sessions than those for records, and argued that the appeal process outlined is really very simple.

Bert Robinson, San José Mercury News, suggested that the role of the Rules and Open Government Committee as an avenue of appeal is not obvious and proposed that the Committee may not be the appropriate body to consider issues concerning complaints about closed sessions. He argued for an independent opinion rendered by either the Election Commission or an outside attorney.

Mike Smith, Vice Chair of the Elections Commission, commented that the Elections Commission has been following these issues and would like to be involved in this process.

Ed Rast, Chair of the Sunshine Reform Task Force, observed that the weak point in all other model sunshine ordinances is enforcement and accountability. He explained that the public does not know that the Rules and Open Government Committee has the authority to rule on complaints relative to the release of public records or open government concerns. He added that an Open Government Officer could help change perception by educating the public and staff.

End of Public Comments.

Additional Committee discussion followed about how the Sunshine recommendations would impact quasi-judicial bodies, like the Retirement Boards.

**(a)(1) (Cont'd.)**

Action: The Committee requested that Staff: (1) Return with ordinance language that outlines the Rules and Open Government Committee process for considering complaints about the release of public records and/or meetings violations including: (a) clarifying what happens when a member of the public comes to the Rules and Open Government Committee with a records request and Rules denies the request (e.g. does the issue move to a citizens review panel like the Elections Commission or to the City Council? If the matter moves directly to the City Council, should there be an exemption to the Sunshine requirement on a case-by-case basis for the purpose of expediency, taking into consideration calendar management and the public's interest? (b) considering the options for Rules to refer matters to the Elections Commission or permitting the public to go directly to the Elections Commission; (c) considering the option of alternative dispute resolution; and (d) designating someone with the responsibilities outlined for the "Open Government Officer"; and (2) Consider what avenues are available to the public if they have complaints about the conduct of a meeting by the City Council or about City quasi-judicial bodies and the release of records and/or meetings violations.

Director of Communications Tom Manheim explained that Staff will come back to the Rules and Open Government Committee with all the provisions in late October. He added that Ethics and Conduct will be considered at the next meeting.

**Adjournment**

The meeting was adjourned at 11:15 a.m.



---

Mayor Chuck Reed  
Rules and Open Government Committee